



Appeal Decision

Site visit made on 1 April 2025

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 07 April 2025

Appeal Ref: APP/A0665/X/24/3344341

Spinney Cottage, Lower Lane, Rushton, Tarporley CW6 9AN

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended, (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Jeremy Markham against the decision of Cheshire West and Chester Council.
 - The application ref 23/00961/LDC, dated 20 March 2023, was refused by notice dated 7 March 2024.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which an LDC is sought is use of land to rear of Spinney Cottage as garden.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
3. The appellant has referred to a different application for an LDC that sought permission for the use of land as garden. That application was approved by the Council (ref 23/01876/LDC). I am not able to take this information into account. My decision is based on the facts of the case before me, and on relevant planning law and judicial authority. Similarly, comments from interested parties about the disproportionate size of the land and its effect on the countryside are not relevant since this concerns the planning merits. Such matters are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act.
4. The Council makes an argument about curtilage and caselaw is referenced. However, the reference to curtilage is misleading since this is not related to a use of land. It is a legal term and is not relevant to the matters at issue here. My findings below do not indicate that the appeal land is within the curtilage of the dwellinghouse, nor vice versa. Any conclusion on this matter would require a separate assessment of the facts, which is not appropriate for this decision.

Main Issue

5. In order to succeed in this appeal, the appellant must show on the balance of probabilities, that a material change of use of the land to garden, which is classed as residential use, occurred ten or more years prior to the date of the application and continued after the date of change without significant interruption, such that it is now immune from enforcement action.
6. I must consider whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

7. The appeal property is a detached house fronting onto Lower Lane. There is a modest area of land immediately surrounding the house, which includes a driveway and an outbuilding. The appeal concerns land to the rear, which is relatively large and roughly rectangular in shape. At the time of my visit the grass was mown, aside from an area adjoining the southern boundary which contained mature trees. There were three containers sited in the north-west corner along with an open store for a lawnmower. There was also a summer house, and a small shed located close to the house. The site was fenced and separated from other land to the east, also under the control of the appellant.
8. The appellant states that the land has been used continuously as a garden since he purchased the property in 2003, and it was used as such by previous owners dating from the 1970s. An extract from sales particulars, dated 2002, has been provided, which describes "the garden to the rear and side of the property being principally laid to lawn". The appellant says that the lawn has been maintained as such over the years.
9. It is explained throughout the appellant's evidence, in total 11 witness statements are provided, that the rear lawn has been used to provide a safe and secure environment for the appellant's children and their friends to enjoy a range of age-related activities. This includes for children's play, sporting and other recreational activities, camping, barbecues, and for garden parties and other celebratory events, and as a place for the family dogs to exercise. Photographs have been submitted showing some of these pursuits. Other gardening interests are described, such as growing fruit trees or planting in pots.
10. The Council argues that 'Google Earth Imagery' provides contradictory evidence, although it is acknowledged that the aerial images show play / sports equipment on the site at various times and the land has been mown over the years. It is maintained that the site has remained in agricultural use, because social gatherings and children's games / sports appear to have been sporadic or temporary and could equally have taken place within land otherwise used as a paddock. Due to the large size, and the presence of a dividing hedge, it is claimed that it is unlikely the land would all have been used for residential purposes.
11. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously, as a matter of fact and degree.

12. I accept that the mowing of land does not in itself show a residential use. However, the evidence is that the site has been mown regularly with the lawn being kept relatively short to enable its use for a variety of activities. This is a higher level of maintenance than that which occurs when a paddock is 'topped' to allow for grazing, or where agricultural land is managed for the production of hay or silage.
13. The size of the plot is not determinative of use. Many gardens are relatively large, and the land is not all used or occupied for residential activities all the time. For example, there may be dedicated sitting areas that are used more frequently in the summer months, areas set aside for planting or the small-scale growing of fruit or vegetables, washing lines or land used for children's play which may have associated play equipment. It is inevitable that the use of these areas would change over time and with the seasons.
14. What I must consider is whether there has been a significant difference in the character of the use of the land. The Council has supplied a 'Google Earth Image' dated 1945, which indicates the land was in agricultural use at that time. The main house is visible but the land to the rear is similar in character to the surrounding fields.
15. During my site visit I saw that the appeal site was laid out and used for residential purposes. It had the appearance of residential garden rather than agricultural land. Moreover, there is significant evidence that the land has been used for residential purposes since at least 2003. This includes numerous statements describing the character of the land and the nature of its use over the years. The evidence strongly indicates the land has been maintained in a similar manner for at least 10 years.
16. The totality of the appellant's evidence carries significant weight and there is limited contradictory information that gives an alternative version of events or makes the appellant's evidence less than probable. As such, I am satisfied that the appellant's evidence is sufficiently precise and unambiguous.

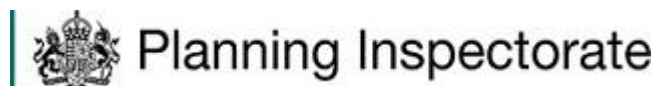
Conclusion

17. I conclude that the appellant has shown, on the balance of probabilities, that a material change of use of the land to a residential use occurred ten or more years prior to the date of the application, as a matter of fact and degree, and that use continued after the date of change without significant interruption.
18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the use of land to rear of Spinney Cottage, Lower Lane, Rushton, Tarporey CW6 9AN as garden is not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

19. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

D Moore Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 20 March 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and **edged in red** on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Signed

D Moore

Inspector

Date: **07 April 2025**

Reference: APP/A0665/X/24/3344341

First Schedule

Use of land to rear of Spinney Cottage as garden

Second Schedule

Land at Spinney Cottage, Lower Lane, Rushton, Tarporley CW6 9AN

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: **07 April 2025**

by **D Moore**

Land at: **Spinney Cottage, Lower Lane, Rushton, Tarporley CW6 9AN**

Reference: **APP/A0665/X/24/3344341**

Scale: Not to Scale

