



Appeal Decision

Hearing held on 8 April 2025

Site visit made on 8 April 2025

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 10 April 2025

Appeal Ref: APP/X4725/X/24/3356009

Croftfield House, Ryhill Pits Lane, Cold Hiendley, Wakefield WF4 2DU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Dr Shamindra Notay against the decision of Wakefield Council.
 - The application ref 24/01442/CPE, dated 20 August 2024 and received by the Council on 11 September 2024, was refused by notice dated 8 November 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is use of land as domestic garden land for purposes incidental to the enjoyment of the dwellinghouse known as Croftfield House.
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Decision

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

Preliminary Matters

2. It was noted that 3 different application forms were submitted under Wakefield Council application reference 24/01442/CPE; one dated 20 August 2024 received by the Council on 20 August 2024; one dated 20 August 2024 received by the Council on 11 September 2024; and a final hand-written form dated 30 November 2024. The first form received by the Council sought an LDC with respect to "Retention and continued use of land as domestic curtilage", but it is my understanding that an amended form was requested by the Council because curtilage is not a use of land. The hand-written form is dated after the Council's decision was issued and therefore, in this case, the relevant application form is dated 20 August 2024 and relates to "The use of land for purposes incidental to the enjoyment of the dwellinghouse as part of its curtilage".
3. Notwithstanding the description of the proposal on the application form it was agreed by all parties that the description of "Use of land as domestic garden land for purposes incidental to the enjoyment of the dwellinghouse known as Croftfield House" as set out on the Council's decision notice is an accurate and suitable description of the use for which the LDC is being sought.
4. A copy of the original site location plan reference TQRQM24304101424771 had not been submitted with the appeal, but a paper and electronic versions were provided at the Hearing and agreed by all parties.

5. The Council's representative agreed that the statutory declarations and supporting letters submitted with the application relate to the appeal site. In addition, the Council stated that Luke Priestley's statutory declaration had not been received by officers, even though it had been handed over in person to the Council.
6. Mr Sheikh acknowledged that Michael Potts was present at the Hearing and stated that, if helpful, he would be willing to provide his evidence under oath. The Inspector explained that this would not be necessary, or indeed appropriate, at a Hearing.
7. The Inspector explained that the purpose of a LDC is to enable the making of an objective decision based on the best facts and evidence available when the decision is made. Therefore, an Inspector should consider any relevant fresh evidence advanced at appeal, including any evidence that was not advanced at the application stage.

Main Issue

8. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. That falls on whether the appellant has proved on the balance of probability that the use of the land changed to domestic garden for purposes incidental to the enjoyment of the dwellinghouse known as Croftfield on or before 20 August 2014 and that the use then continued for 10 years after the date of the change.

Reasons

9. In an appeal relating to a lawful development certificate the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided it is sufficiently precise and unambiguous.
10. The original application was supported by a range of evidence which included the following:
 - Site location plan reference TQRQM24304101424771;
 - Planning Report for Job Number C/0483/1 dated 20 August 2024 by Acorn Planning Ltd;
 - Supporting letters from M Potts, Amos Luke, Richard Metcalfe of Metcalfe Farming Ltd and Kristy Bentley;
 - Statutory Declarations from Stuart Pywell, Barry Priestley and Luke Priestley;
 - Plan reference LHF001; and
 - Correspondence from Sham Notay dated 10 October 2024 and attached photographs dated 21 April 2024 and 23 March 2024.
11. The Council had expressed concerns that there is additional information submitted by the appellant with their appeal that builds on the case and supporting evidence

submitted during the original application process which directly addresses some of the elements of uncertainty and ambiguity around the statutory declarations and supporting letters and associated location plan LHF001. In addition, at the Hearing, the Council acknowledged that the photographs received in support of pre-application enquiry 19/00266/PRE shown in Appendix 3 of their Statement of Case are undated, that it cannot be determined when they were taken and by whom (although it is likely that they were taken by a person who previously had an interest in the land).

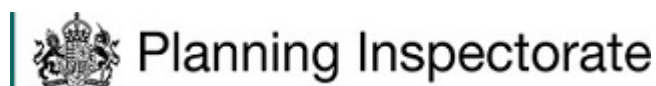
12. Consequently, in the light of the body of evidence submitted with the original application, the evidence confirmed at appeal, the oral evidence of the appellant and Michel Potts at the Hearing and a review of their own evidence, the Council conceded that on the balance of probabilities the appeal site has been used as domestic garden land for purposes incidental to the enjoyment of the dwellinghouse known as Croftfield House for a continuous period of 10 years after the change took place.
13. As such there is no longer any dispute between the appellant and the Council. Based on the evidence now before me I find no reasons to disagree that the appellant's evidence is sufficiently precise and unambiguous to justify the grant of the certificate.

Conclusion

14. For the reasons given above I conclude, on the evidence now available that the Council's refusal to grant a certificate of lawful use in respect of use of land as domestic garden land for purposes incidental to the enjoyment of the dwellinghouse known as Croftfield House was 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).

A A Phillips

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 16 September 2024 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:

On the balance of probabilities the appellant's evidence is sufficiently precise and unambiguous to prove that the use of appeal site as domestic garden land for purposes incidental to the enjoyment of the dwellinghouse known as Croftfield House commenced on or before 20 August 2014 and that the use then continued for 10 years after the date of the change.

Signed

A A Phillips

INSPECTOR

Date: 10 April 2025

Reference: APP/X4725/X/24/3356009

First Schedule

Use of land as domestic garden land for purposes incidental to the enjoyment of the dwellinghouse known as Croftfield House.

Second Schedule

Land at Croftfield House, Ryhill Pits Lane, Cold Hiendley, Wakefield WF4 2DU

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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: 10 April 2025

by A A Phillips

Land at: Croftfield House, Ryhill Pits Lane, Cold Hiendley, Wakefield WF4 2DU

Reference: APP/X4725/X/24/3356009

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

Dr Shamindra Notay

Neil Boughey Acorn Planning Ltd

Shemuel Sheikh Counsel for the appellant appointed by Neil Boughey of Acorn
Planning Ltd

Michael Potts

FOR THE LOCAL PLANNING AUTHORITY:

Adam Hirst Senior Planning Officer

Nia Thomas Principal Planning Officer