



Appeal Decisions

Site visit made on 25 March 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Appeal A Ref: APP/Y3940/X/24/3354233 (LDC)

Secret Valley, 35 The Fairway, Devizes, Wiltshire SN10 5DX

- 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 Mr Matthew North against the decision of Wiltshire Council.
- The application ref PL/2024/07180, dated 30 July 2024, was refused by notice dated 24 September 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 described as “existing use as residential garden incidental to the dwelling house”.

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Appeal B Ref: APP/Y3940/W/24/3350844 (S78)

Secret Valley, 35 The Fairway, Devizes, Wiltshire SN10 5DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Matthew North against the decision of Wiltshire Council.
- The application Ref is PL/2024/02245.
- The development was originally described as “retention of ancillary utility building containing garden room and tractor/mower store”.

Summary Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decisions.

Appeal C Ref: APP/Y3940/C/24/3355189 (ENF)

Appeal D Ref: APP/Y3940/C/24/3355190 (ENF)

Secret Valley, 35 The Fairway, Devizes, Wiltshire SN10 5DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made Mr Matthew North (Appeal C) and Miss Amy Towill (Appeal D) against an enforcement notice issued by Wiltshire Council.
- The notice was issued on 21 October 2024.
- The breach of planning control as alleged in the notice is “Without planning permission, operational development comprising the erection of a building for ancillary residential use in the approximate location annotated with a blue circle on the attached plan titled “*Notice Plan*” and shown in the attached document titled “*Notice Photograph*””.
- The requirements of the notice are to:
 - (a) Demolish the building shown in the approximate location annotated with a blue circle on the attached plan titled “*Notice Plan*” and shown in the attached document titled “*Notice Photograph*”; and
 - (b) Remove all material resulting from requirement (a) from the Land.
- The period for compliance with the requirements is within four months from the date the Notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeals are dismissed and the enforcement notice is upheld.

Applications for Costs

1. The appellants have submitted applications for costs in respect of each of the appeals. These are the subject of a separate decision notice.

Preliminary Matters

2. Each of the appeals relates to a plot of land within Secret Valley, which forms part of the title to no. 35 The Fairway: Appeal A relates to the refusal of an application for a Lawful Development Certificate (LDC) which sought to confirm the lawful use of this parcel of land as garden to the main dwelling; Appeal B relates to the refusal of planning permission for the retention of an ancillary outbuilding within this land; and Appeals C and D relate to an enforcement notice which has been issued by the Council in respect of the outbuilding. Given the degree of overlap between the appeals, I have dealt with them together in the same decision notice.

APPEAL A (LDC APPEAL)

3. The evidence of both parties refers to the appeal site being used as “curtilage”. However, curtilage defines an area of land in relation to a building and is not a use of land. A building’s curtilage can change over time and its extent is not reliant upon planning permission, nor an LDC, defining it. In terms of this appeal, an LDC under s191(1)(a) of the 1990 Act can only confirm whether an existing use of land is lawful. In this instance, the existing use is said to be residential garden, and I have determined the appeal on this basis.
4. The appellant says historic records and evidence suggest the appeal site has been used as garden incidental to the residential use of the main dwelling since before 1 July 1948, when planning legislation first came into effect. Notwithstanding this position, the appellant says the site’s use as garden is clearly evidenced since 1987, and therefore says its use has become lawful, irrespective of any previous use. Conversely, the Council says the appellant’s evidence is insufficient to demonstrate the appeal site had been used as a garden continuously and uninterrupted for a period of at least ten years prior to the date of application. In turn, they say its use as garden is not lawful.
5. As this appeal relates to an application for an LDC, the burden is on the appellant to demonstrate their case. In the case of LDC applications for existing use, Planning Practice Guidance says that if a local planning authority has no evidence itself, not any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Main Issues

6. In this context, the main issues are:
 - whether the appeal site was used as residential garden incidental to the dwellinghouse on or before 1 July 1948; and
 - if not demonstrated, whether the site had been used as garden incidental to the dwelling for a continuous and uninterrupted period of at least ten years prior to the date of application.

Reasons

Use on 1 July 1948

7. The appeal dwelling, which sits on an elevated position within the north-western corner of the plot, is understood to have been erected in or around 1938. The house opens out onto a garden at a similar level to its south, and the site then drops steeply down into a valley to its east (which I'll refer to as the "Lower Land"). Originally, the site included land to the north and south of the Lower Land, but these parcels have subsequently been sold off to neighbouring occupiers.
8. Historic search records suggest the whole of the appeal site, including the Lower Land, has been treated as residential land for a long time. These records include a Local Search from 1981, which confirms the primary use of the appeal site at that time was residential. Whilst there is some anecdotal evidence from a neighbour that the site may once have been used for llama farming, there is nothing within the formal records to support this. Notably, no mention of any agricultural use appears in the historic search records, and the Rural Payments Agency has also confirmed no record of any agricultural holding within the appeal site.
9. It therefore seems possible that the site has been in residential use since the house was first constructed in 1938. However, the sparsity of evidence in this regard means the position is inconclusive.

Continuous Period of Ten Years

10. Nonetheless, the appellant has submitted first-hand accounts which attest to the site's use in more recent years. A statement from Bryony Tillet, the daughter of the owners of the property between 1987 and 2016, confirms the "*valley was very much part of my parent's garden*". In particular, she recalls the land being used by children for playing, including for cricket matches. A sworn statement from Christopher Callow, who has lived next to the appeal property since 1999, also says his children used to play and camp within the appeal site. Mr Callow says he had always thought of the Lower Land as part and parcel of the appeal property. These statements both corroborate the site having been used as part of the garden to the main dwelling since 1987.
11. The appellants acquired the appeal property in 2016. Their sworn statements confirm that the site has continued to be used as a garden incidental to the main dwelling throughout their ownership, and therefore up until the time of the LDC application. In particular, Mr and Mrs North confirm the site has been used for dog walking, sitting out, playing, sunbathing, entertaining guests, picnics and sports throughout their period of ownership, all of which are activities typical of a domestic garden use. Photos of the site support this narrative.
12. Whilst the intensity of activity within the appeal site may well have fluctuated at times, this is not inconsistent with it having been used continuously and uninterrupted as a garden. Indeed, intensity of garden usage will typically vary throughout any given year due to weather and other seasonal changes.
13. In terms of physical character, the Lower Land is more rural in character than the more formal garden to the south of the dwelling. Nonetheless, it is not uncommon for different parts of a garden to assume a different character to other parts. It is also common for different areas of a garden to be used for different types of

garden activities. In turn, the difference in physical character between the upper and lower parts of the garden does not undermine the appellant's overarching narrative of the site's use.

Conclusion (Appeal A)

14. Overall, formal records suggest the site may have been in residential use on or before 1 July 1948, when planning legislation first came into effect. If that was the case, then use of the land as garden incidental to the residential use of the main dwelling would remain lawful (noting there is little to suggest any such use has been abandoned).
15. However, even if this were not the case, I am satisfied the appellant has demonstrated, on the balance of probability, that the appeal site had been used continuously and uninterrupted as garden incidental to the residential use of the main dwelling, for a period of at least ten years prior to the date of the application. The Council has presented little evidence to make the appellant's version of events less than probable. If the use of the land had once been different (such as use for agriculture), then its subsequent use as garden would have constituted a material change of use, owing to the domesticating impact of this use on the land. In accordance with s171B(3) of the 1990 Act, this use would therefore have been immune from enforcement on the date of application, and pursuant to s191(2) of the 1990 Act, would have been lawful.
16. In turn, I conclude that the Council's refusal to grant a certificate of lawful use or development for existing use as residential garden incidental to the dwelling house was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).
17. I have used the Land Registry plan for the purpose of the LDC, as this clearly distinguishes the area of the appeal site in which the lawful use as garden was disputed.
18. I should highlight that approval of the LDC merely confirms that use of the appeal site as residential garden was lawful, as at the date of application. However, this cannot be conflated with the appeal site being subsumed into the residential curtilage of the dwelling, which is a separate consideration. As set out in *Burford*¹, *"all that the CLEUD determined was that the Site may lawfully be used for purposes incidental to the enjoyment of the dwelling-house. The CLEUD did not consider whether the land was within the curtilage of the dwelling-house"*. The same is true in this case. The outcome of the LDC appeal therefore has no definitive bearing on the extent of curtilage to the main dwelling, an issue which is addressed in Appeals C and D.

APPEAL B (PLANNING PERMISSION APPEAL)

19. The appellant's original description of development referred to the retention of an ancillary utility building containing garden room and tractor/mower store. At the request of the Council, this description was amended to also encompass a material change of use of the site to curtilage.

¹ *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin)

20. As set out above, curtilage is not a use of land and should not have formed part of the development description. I have therefore determined this appeal based on the appellant's original description of development, which comprises the operational development alone.

Main Issue

21. In this context, the sole main issue is the effect of the outbuilding on the rural character of the area.

Reasons

22. The outbuilding is located within the south west corner of the appeal site, within the Lower Land. This part of the appeal site incorporates an extensive section of grassland, and includes a modest sized pond towards its southern boundary. Much of the Lower Land is surrounded by tall trees and woodland, which gives it a verdant and tranquil character.
23. Whilst this part of the site does have a rural quality, it is nonetheless used as garden to the main dwelling (a use which I have found to be lawful). Owing to this use, the Lower Land also assumes a semi-domestic character, and the use of the outbuilding is consistent in this regard. In turn, its retention would not materially affect the site's prevailing character.
24. The outbuilding, which is modest in size, incorporates a mower/tractor store and a garden room with a small kitchenette and adjoining bathroom. It is discreetly sited within the bottom corner of the appeal site, near to the pond. Given the tall trees and woodland which surround much of the site, only glimpsed views of the building are possible from neighbouring land.
25. The building is clad in rustic timber, which allows it to integrate effectively with its rural surroundings. The building is also seen within the context of other domestic outbuildings within the neighbouring property to the west, which means it is not experienced as a unique or discordant feature of the landscape. Even where the building is visible, these factors ensure the building does not undermine the verdant and tranquil quality of the area.
26. For these reasons, I am satisfied that retention of the outbuilding would not harm the rural character of the area. It is consistent with policies CP51 and CP57 of the Wiltshire Core Strategy (2015), which together require development to achieve high quality design which protects the landscape character of the area. The development is also consistent with Policy H1 of the Devizes Area Neighbourhood Plan (2015) which seeks to protect the settlement geography of the area, and seeks to ensure development blends sympathetically with the surrounding landscape. Finally, the development is consistent with the design objectives of the National Planning Policy Framework (2024).

Conditions

27. I have included a condition which precludes the outbuilding from being used other than for purposes ancillary to the residential use of the main dwelling. This will ensure the outbuilding cannot be used as a holiday let or as an independent dwelling.

Other Matters

28. Alleged damage to the access track through Secret Valley is not a planning consideration, but a civil matter. Even so, the outbuilding is used as a garden room/store, so it is unlikely to introduce a significant number of vehicle movements along this track. A planning condition will also ensure the building cannot be used as a holiday let or as an independent dwelling, thereby securing this position going forwards.
29. There is no tangible evidence before me to indicate the outbuilding has caused any harm to wildlife or ecology. Nor is there any evidence to suggest it will pose any significant security threat to the valley. The Council has confirmed there are no particular issues in terms of ground conditions, drainage or proximity to watercourses. In terms of fire safety, this would be a matter for Building Control.

Conclusion (Appeal B)

30. The development is consistent with the development plan as a whole, and planning permission should be granted.

APPEALS C AND D (ENFORCEMENT APPEALS)

31. The enforcement notice relates solely to operational development comprising the erection of the outbuilding. Notwithstanding the outcome of Appeal B, I have still considered the enforcement appeals fully, however, in practice, the outcome will be of little consequence, as planning permission for the outbuilding has now been granted.

Ground B

32. Pursuant to ground (b), the appellants say the alleged breach of planning control has not occurred as a matter of fact. This is because they say the outbuilding is not an ancillary outbuilding, but instead a domestic outbuilding incidental to the main dwelling. As a legal ground of appeal, the burden is on the appellants to demonstrate their case, on the balance of probability.
33. The outbuilding is used as a store for a tractor/mower, and as a garden room. Whilst such uses are functionally linked to the use of the main dwelling, they are not integral to it. The building's use is therefore incidental to the main dwelling. Nonetheless, "ancillary use" is similar in meaning to "incidental use", and the terms are often used interchangeably in planning. It was therefore not wrong for the Council to describe the building's use as 'ancillary'. Attesting to this point, the appellants' own planning application (addressed in Appeal B) also describes the development as "*retention of ancillary utility outbuilding*".
34. The development alleged in the notice has clearly occurred as a matter of fact, and the appeals on ground (b) therefore fail.

Ground C

35. Pursuant to ground (c), the appellants say the alleged breach does not constitute a breach of planning control. This is because they say the outbuilding is permitted development, by virtue of Class E, Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Subject to certain parameters, Class E permits the erection of

outbuildings within the curtilage of a dwellinghouse. Once again, the burden is on the appellants to demonstrate their case, on the balance of probability.

36. When considering the extent of a building's curtilage, regard must be had to three principal factors in respect of the relevant land. These factors concern the building/land's physical layout, its use or function (past and present) and the ownership position (past and present)².
37. As already discussed, the Lower Land (on which the outbuilding is situated) is located within the valley adjacent to the main dwelling, and is accessed via a sweeping downwards path from the upper garden. Physically, it therefore sits much lower than the main house and upper garden, and in turn, feels separate from these spaces. The Lower Land is also more informal and rural in character than the upper garden, which amplifies its separateness.
38. In terms of function, the LDC confirms the appeal site has been used as garden to the main dwelling, which demonstrates a functional relationship between the Lower Land and the main dwelling. However, whilst the Lower Land can be accessed via the path down from the upper garden, there is a separate vehicular access to the Lower Land from the north of the valley. This means the Lower Land is not reliant on the main dwelling or upper garden for access, which weakens the functional relationship between the two.
39. In terms of ownership, the main dwelling and Lower Land are now under the same ownership. However, the title to the property has evolved over the years, with the Lower Land previously forming part of a much larger tract of land through the valley. In turn, the title history is not demonstrative of the Lower Land being part of the main dwelling's curtilage.
40. Owing to these factors, the Lower Land lacks a sufficiently close relationship with the main dwelling to be considered part of its curtilage. This finding is consistent with the principle established in the *Methuen-Campbell* case³, which said for land to fall within the curtilage of a building, it must be so intimately associated with the building to support the conclusion that it forms part and parcel of the building.
41. Given this conclusion, the Lower Land would not benefit from the permitted development rights afforded by Class E of the GPDO, as it is not within curtilage of the dwellinghouse. In turn, the outbuilding is not permitted development, and would not have been lawful without planning permission. The appeals therefore fail on ground (c).

Ground F

42. Pursuant to ground (f), the appellants say that the steps required to be taken in the notice exceed what is necessary to remedy the alleged breach. As per s173(4) of the 1990 Act, the purpose of the notice is to remedy the breach of planning control, being the erection of an ancillary outbuilding. The requirements set out in the notice must achieve this purpose.

² *HM Attorney-General ex rel Sutcliffe & Rouse Hughes v Calderdale BC* [1983] JPL 310

³ *Methuen-Campbell v Walters* [1979] 1 QB 525

43. In this instance, the two steps require the outbuilding to be demolished and removed. These are proportionate steps, which go no further than remedying the breach.
44. Whilst there is suggestion that the outbuilding could be relocated within the appeal site, limited detail is given. However, given permission has now been granted for the outbuilding, any alternative requirement to relocate the outbuilding would be redundant.
45. The appeals on ground (f) therefore fail.

Conclusion (Appeals C and D)

46. For the reasons given, I conclude that the appeals on grounds (b), (c) and (f) should not succeed. I shall therefore uphold the enforcement notice.
47. Notwithstanding this outcome, the permission granted pursuant to Appeal B gives consent for the outbuilding, which means permission has been granted for the totality of the development alleged in the enforcement notice. In these circumstances, pursuant to s180(1) of the 1990 Act, the notice will cease to have effect.

FORMAL DECISIONS

Appeal A

48. 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.

Appeal B

49. The appeal is allowed and planning permission is granted for the retention of ancillary utility building containing garden room and tractor/mower store on land at Secret Valley, 35 The Fairway, Devizes, Wiltshire SN10 5DX in accordance with the terms of the application, Ref PL/2024/02245, and subject to the following condition:
 - 1) The outbuilding hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Secret Valley, 35 The Fairway.

Appeals C and D

50. The appeals are dismissed and the enforcement notice is upheld.

Mr James Blackwell

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 31 July 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown coloured blue 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:

The appeal site had been used as residential garden incidental to the dwelling house continuously and uninterrupted for a period of at least ten years prior to the date of application. In accordance with s171B(3) of the 1990 Act, this use was therefore immune from enforcement on the date of application, and pursuant to s191(2) of the 1990 Act, was lawful.

Signed

James Blackwell

Inspector

Date: 11 April 2025

Reference: APP/Y3940/X/24/3354233

First Schedule

Existing use as residential garden incidental to dwelling house

Second Schedule

Land at Secret Valley, 35 The Fairway, Devizes, Wiltshire SN10 5DX

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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 11 April 2025

By Mr James Blackwell LLB (Hons) PGDip, Solicitor

Land at: Secret Valley, 35 The Fairway, Devizes Wiltshire SN10 5DX

Reference: APP/Y3940/X/24/3354233

Scale: Not to Scale

