



Appeal Decision

Site visit made on 31 March 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 April 2025

Appeal Ref: APP/Y3425/X/24/3354033

Butterbank House, Butterbank Lane, Derrington, Stafford, Staffordshire ST18 9LN

- 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. R. Allen against the decision of Stafford Borough Council.
 - The application ref 24/38658/LDC, dated 22 January 2024, was refused by notice dated 7 June 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 the use of land as a residential 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.

Procedural Matter

2. The parties' evidence refers to both 'residential garden' and 'residential curtilage'. However, the two terms mean distinctly different things. "Curtilage" is not a use of land, but an area delineated through its intimate association with a building. It would not therefore be appropriate to determine the appeal on this basis. Accordingly, I have determined the appeal on the basis of the description of the use on the application form and the Council's decision notice, ie that a certificate is sought for the use of the land as a residential garden, not residential curtilage.
3. The location plan submitted with the LDC application includes 'Building A' within the red edged area. However, the LDC application only sought a certificate for the use of the land, not the erection of Building A or any other operational development. The application was determined on this basis. For the avoidance of doubt, I have also only determined the appeal on the basis that a LDC is sought only for the use of the land as residential garden. My decision does not prejudice the Council's consideration of any future applications concerning operational development.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is well-founded.

Reasons

5. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful

under the provisions of section 191(2)(a) and (b) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. 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 his evidence alone is sufficiently precise and unambiguous.

6. The appeal site forms a relatively large parcel of land comprising a central lawned area. The southeastern section contains a building used as kennels, and an enclosed, fenced grassed area that has the appearance of being used as a dog run. The northwest section of the site contains a large, metal clad building with an extensive asphalt apron to its front. At the time of my site visit, this building contained two covered-up cars, a table-tennis table; a pool table; a camper van; and a collection of tools and equipment that could reasonably be used for residential purposes.
7. The building also contained a mini digger; a small 4x4 forklift truck; and, a small room had been constructed out of timber sheets in the southern corner of the building, which appeared to be an office. However, there is no evidence before me that these were contained within the building at the time the LDC application was made, which is the requisite date on which I must determine the appeal.
8. The northern boundary of the appeal site comprises a post and rail fence, which is clearly of some age. The historical aerial photographs clearly depict a fence in this position dating back to at least 2003. Although a section of this fence is not readily visible on the July 2015 aerial photograph, it is clearly there on the April 2015 and April 2016 aerial photograph. It is therefore reasonable to conclude that its apparent absence in the July 2015 photograph is due to the lighting and quality of the photograph.
9. There is no physical boundary between the appeal site and the dwelling and its remaining surrounding residential garden. They are all contiguous with each other.
10. The sworn declaration from the previous owners states the land was used as the private residential curtilage of the property since they bought it in 1985. I have taken their use of the term "curtilage" to simply mean garden. They used the land for growing fruit trees and vegetables. The photograph showing four people standing in front of what appears to be a large vegetable patch and another photograph showing an apple tree in fruit supports this statement. Although the photographs are not dated, the position of the vegetable patch appears to correlate with a fenced off rectangular area within the appeal site as depicted in the 2003, 2009, 2015 and 2016 aerial photographs.
11. Throughout the historical aerial photographs, the grass on the appeal site is of a different shade of green to the field to the east and west, supporting the appellant's argument it has been maintained as a garden area throughout this time, rather than a field.
12. Notwithstanding the above, there is some dispute over the large building in the northwest section of the site. The building is particularly large for one that is to be used for residential purposes. Its design is also not of a typical design one would

expect to see for such a use. Its utilitarian design, large roller shutter door and wide asphalt apron are more akin to a commercial or agricultural use.

Nevertheless, the appellant confirms in their statutory declaration that the building is used for residential purposes associated with the dwelling. The building is used to store their collection of classic cars, albeit only two cars were stored in the building at the time of my visit. It is also used for the storage of domestic paraphernalia and garden machinery.

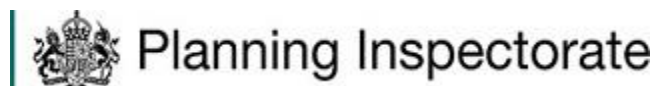
13. Although the Council argue the building may have been in an alternative use, such as agriculture, this argument is made only on the basis of the design of the building. There is no evidence before me that the building has been used for such a use or to contradict the appellant's contention that it has been in residential use. Based on the evidence before me, on the balance of probabilities, the building had only ever been in residential use from when it was constructed up until the date of the LDC application.
14. The appellant's statutory declaration also confirms the appeal site has been used by their children to play on and has had bouncy castles and a trampoline in place on it since they moved into the property in 2016. Such activities are typical for a residential garden.
15. I find therefore, by reason of the appeal site being contiguous with the other residential garden area surrounding the dwelling, with no physical boundary between them; the land having been well-maintained; the land having been used for residential activities associated with the dwelling; and, the absence of any evidence to contradict this, the evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, the appeal land has been in continuous use as residential garden for a period of ten or more years prior to the date of the LDC application.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Walker

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 22 January 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:

The evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, the use of the appeal land has been in continuous use as residential garden for a period of ten or more years prior to the date of the LDC application.

Signed

A Walker

Inspector

Date: 14 April 2025

Reference: APP/Y3425/X/24/3354033

First Schedule

Use of land as a residential garden

Second Schedule

Land at Butterbank House, Butterbank Lane, Derrington, Stafford, Staffordshire ST18 9LN

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: 14 April 2025

by A Walker

Land at: Butterbank House, Butterbank Lane, Derrington, Stafford, Staffordshire ST18 9LN

Reference: APP/Y3425/X/24/3354033

Scale: Not to Scale

