



Appeal Decision

Site Visit made on 18 February 2025

by **J Whitfield BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14th April 2025

Appeal Ref: APP/J0405/X/24/3340225

12 Brackley Road, Buckingham, MK18 1JD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Karen Sutherland against the decision of Buckinghamshire Council - North Area (Aylesbury) (the LPA).
 - The application ref 23/02843/CPE, dated 19 September 2023, was refused by notice dated 14 November 2023.
 - The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The use and development for which a certificate of lawful use or development is sought is described as, existing use of land as residential curtilage together with construction of landing deck to edge of riverbank.
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Decision

1. The appeal is dismissed insofar as it relates to the material change of use of land to residential garden.
2. The appeal is allowed insofar as it relates to the construction of a landing deck to the edge of riverbank and attached to this decision is a certificate of lawful use or development describing the existing operation which is considered to be lawful.

Preliminary Matters

3. The application describes the development for which an LDC is sought as the existing use of land as residential curtilage together with construction of landing deck to edge of riverbank. However, curtilage is a legal concept, it is not a use of land. Likewise, the use of land is not development. To that end, I have determined the appeal on the basis that an LDC is sought for the material change of use of land for residential garden and the construction of landing deck to edge of riverbank.

Main Issue

4. The main issue is whether the LPA's decision to refuse the LDC application was well-founded.

Reasons

5. S191(2) of the Act states that uses and operations are lawful at any time if - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not

constitute a contravention of any of the requirements of any enforcement notice then in force.

Use

6. The relevant time limit for taking enforcement action in respect of the use of the land as residential garden is 10 years under S171B of the Act. It is necessary, therefore, for the appellant to demonstrate, on the balance of probabilities, that the material change of use of the land to residential garden took place on or before 19 September 2013 and continued thereafter for 10 years, such that the LPA could have taken enforcement action against the use of the land at any point during that period.
7. The appeal property is a detached dwellinghouse with front and rear gardens. The appeal relates to an area of land beyond the rear of the dwellinghouse and its garden, bound by the River Great Ouse to the south.
8. The appellant states that there has been no material change of use of the land before going on to say that the evidence submitted confirms that the land has always been a garden attached to the dwelling.
9. Clearly, the land cannot always have been garden associated with the property. By definition, it must have had a previous use. Nonetheless, the implication of the appellant's submission is that they say the commencement of the use of the land as residential garden significantly pre-dated 19 September 2013.
10. The appellant says that they purchased the property in 1996 and obtained planning permission to extend and refurbish the dwelling. In the 1996 application, the appellant says the LPA described the land as "residential". However, in subsequent applications from 2002 onwards, the land is described as a "paddock".
11. The appellant also says that the site and location plan submitted with the 1996 application together with the Land Registry plan relating to 12 Brackley Road shows the boundaries are similar, which suggests that the land as a whole was within the residential curtilage of the property. However, both the red line on a site location plan for a planning application and that on a Land Registry plan are intended to denote ownership. They provide no assistance in determining the use of the land.
12. The appellant has provided a landscaping plan dated April 1998. The plan shows only part of the land and it is annotated to suggest the grass be kept longer on the land. It is also annotated to show a tree and herbaceous planting with steps from the rear of the property down to the land. The appellant says it seems highly unlikely that these steps would have been built as access to a paddock and thus the steps strongly suggest that the land has been in continuous use as residential since the appellant purchased the property in 1996. However, it is not improbable that the appellant would want to be able to access the land in their ownership from their garden, regardless of whether or not that land was being used as a garden in itself. To that end, I am not persuaded that the fact easier access was facilitated to the land is in itself evidence of its actual use. Moreover, the landscaping plan does not show any residential paraphernalia or structures to be shown on the land. In any event, the mere existence of the plan does not mean that the landscaping scheme was implemented.

13. The appellant has also provided several letters from other people. A letter from Mr Taylor says he visited the appellant regularly at the property between 1995 and 2023 and that he is aware the land has been continuously used as residential garden land since 1996. However, Mr Taylor does not say how often he visited the property or indeed what activities were being carried out on the land which led him to the conclusion it was being used as a garden.
14. Mr Imrie indicates that he designed and supervised the extension at the rear of the property, having known the appellant since 1984. He says the land was always treated as lawn and the extension orientated to look out over it. He says the area has been cut and used as garden and he has visited the property regularly over the years.
15. However, again Mr Imrie does not say how often he visited the property or the land. Moreover, the fact that it was lawned does not demonstrate its use as a garden. Indeed, Mr Imrie does not say what activities were being carried out on the land that led him to conclude it was garden associated with the house.
16. A letter from Ms Dowdell says she has known the appellant since 1994 and between 1997 and 2023, visited the appellant at the property whilst a letter from Ms Philips says she has known the appellant since 2005. A letter has also been provided from the person who occupied 11 Brackley Road between 1997 and 2004, whilst a letter has also been provided by the occupier of 10 Brackley Road who says they have lived there since 1999. The occupiers of 12 Brackley Road have also written to say they have lived there from 1984 to the present day. Finally, a letter from Mr Purefoy says he has known the appellant since 1992 and between 1996 and 2023 has visited the property.
17. The authors of these letters all say that they are aware the land to the rear has been continuously used as residential garden land in association with the property since they have known the appellant, or since the appellant moved in.
18. However, none of the letters say how many times they visited the property nor whether they ever went onto, or observed, the land itself. Indeed, none of them offer details of how they were aware the land was being used continuously as residential garden for the periods of time suggested.
19. A letter from a Mr and Mrs Neal does nevertheless say that, as close neighbours, they are aware that the land has always been used as residential garden by the previous owner and since the mid-1990s by the appellant. Indeed, they state they have attended several parties in the garden with friends and neighbours,
20. However, again, the details of the frequency of such visits are not before me. Reference to 'several' parties is somewhat vague. Moreover, it does not say how the land was used to facilitate such parties. Ultimately, the level of detail is such that it offers little in support of the continuous use of the land as a garden.
21. Several, undated photographs have been provided which are said to be from 1996 through to 2002. There is nothing in the images from 1996 or 1997 which shows the land being used as residential garden. In 1997, it is simply being used for the stockpile of vegetation and soils. Whilst part of the land can be seen as mown in 1997 and 1998, there is no evidence of residential paraphernalia such as garden furniture, play equipment, washing lines, sheds, or other domestic structures or features.

22. An image from 2001 is said to show garden furniture on the land close to the riverbank. However, it is not possible to ascertain that from the image given the resolution.
23. Nonetheless, in images said to be from 2001 and 2002, a children's swing can be seen on the part of the land closest to the driveway and the raised area of the existing garden whilst a picket fence appears to have been erected along the riverbank. A child's digger toy can also be seen on the land at one point. A contact sheet provided at appeal stage dates those images from that time.
24. Although only snapshots of a particular time, such images appear to show the land being used as residential garden in that short period. However, there are no images which demonstrate it was used as such before that date. Moreover, there are no photographs of the land from 2002 for another 11 years until May 2013 by which point the picket fence or children's play equipment cannot be seen. Whilst I acknowledge the appellant's submissions that this is due to their children having grown up, ultimately there is no photographic evidence before me of the use of the land throughout the period from 2002 to 2013. An aerial image said to be from April 2007 is provided which is said to show a climbing frame and swing with other ancillary structures. However, the resolution is such that it is difficult to ascertain whether it is indeed children's play equipment. Even if it was play equipment, it is immediately adjacent to the rear garden, and thus does little to support the proposition that the entire land was put to use as residential garden throughout the period. Moreover, an aerial image said to be from 2003 does not appear to depict any children's play equipment on the land at that point.
25. A photograph of a greenhouse has been provided dated 19 May 2013. Whilst the LPA have cast doubt on whether the photograph is indeed from the land itself, the appellant has provided the meta data of the image which locates the image close to the appeal site. Moreover, given the arrangement of the trees and vegetation in the background of the image, I am satisfied it is an image taken of the land.
26. However, the image only provides evidence that there was a greenhouse on the land as of May 2013. It does not indicate how long the greenhouse had been on the land and whether it was on the land at the time the appellant says they commenced use of the land as garden in the mid-1990s. The Statutory Declaration of Mr Hopkin indicates that it can be seen on an aerial photograph from 2009, however, the image is not particularly clear and I cannot ascertain if indeed the greenhouse is present on the land at that point. Mr Hopkin declares that the greenhouse was removed in 2018 having been damaged.
27. The image does little to support the proposition that the land has been used continuously as a garden since then. In any event, even if the greenhouse had been on the land for the relevant 10 year period, it is difficult to see how its existence alone would point to the use of the entire land as residential garden. Indeed, there is no evidence of other domestic paraphernalia in or on the land in the background of the image.
28. Likewise, an image of the patio area to the rear of the house dated 2 October 2014 shows the land in the background, but there is nothing in the image which indicates the land is being used as a garden. It is simply laid to grass with no paraphernalia or structures apparent. Indeed, all that can be seen in one image is

a solitary, plastic patio chair located close to the riverbank. I am not satisfied that is sufficient evidence to point to actual residential use of the land at that time.

29. Images are provided dated 28 October 2015 showing the land being mown. However, again mowing grass is not something which is unique to residential gardens. It is not unreasonable to assume that a landowner would maintain their land, regardless of whether or not it was in use as a residential garden. Likewise, images from March and May 2016 simply shows the land laid to grass. Again, there is no evidence of actual residential use from the image.
30. Images are provided showing children on the land in August 2016, although only a very small part of the land is shown and its full extent and use cannot be seen. Images from September 2016 show glimpses of the land with the grass mown. Again, however, nothing else can be seen which points towards residential use.
31. An image from March 2017 is said to show garden furniture on the land close to the riverbank. However, the image is not sufficiently clear to ascertain whether or not the items are actually garden furniture. Moreover, an image showing part of a chicken run said to be on the land again does not show the entirety of the land, and other than a parked car, there is little in the image which points towards the whole use of the land for residential purposes.
32. Likewise, aerial images from April 2017 and photographs from August 2018, April 2019 and July 2019 simply show parts of the land as mown grass. In all those images, the land is otherwise absent of anything else and thus they do not point to actual residential use.
33. Images from October 2018 show dogs on the hard surfaced driveway which runs alongside the existing garden and down to the land in question. The dogs are not actually on the grass itself and again, there is nothing in the images which indicate the land is being used as garden.
34. Two images from March 2020 do show dogs and chickens on the land, with a wooden and wire chicken run in the background. The number of chickens and dogs, and the scale of the chicken run, appear to be domestic in scale. Those images thus being to point towards some degree of residential garden use on the land. However, in isolation, they provide only a singular snapshot of such use in March 2020, which does not assist in demonstrating the use had occurred prior to September 2013. Indeed, subsequent images from April, May and June 2020, including an aerial image from May 2020, simply show part of the land laid to grass. Apart from a car parked on it, there is no evidence of any residential paraphernalia present on the land at any of those points in time. Indeed, it is noted that the images show people utilising the patio area closest to the house for sitting on garden furniture and relaxing – activities which one would expect to see occurring in a residential garden, and which are not apparent to be taking place on the land in any of the images provided.
35. Chickens of domestic number in scale can be seen on grass in images from June 2020. However, again, they do not in themselves point to residential use of the land. Likewise, images of construction work to the garden area to the rear of the property only show the chicken run and two parked cars. There is no residential paraphernalia or other evidence of residential garden use of the land which can be seen.

36. Two images of persons on the land are provided from June 2020. Whilst the implication is that they are playing on the land, it is apparent that no garden furniture, ornamental planting or residential paraphernalia such as washing lines or play equipment that is typically found in gardens can be seen in the images.
37. An image from inside the chicken run and image showing a fallen tree from June 2020 is said to show the land comprising mown grass. However, the land does not appear recently mown and in any event, there is nothing in the image suggesting residential garden use. The same is true of images from September 2020, December 2020, April 2021, June 2021, August 2021, January 2022, February 2022, October 2022 and December 2022 in many of which only very small parts of the land can be seen.
38. An image is provided from 4 September 2021 which is said to show a garden party. Three bell tents can be seen on the land at 14:02 before an image from the evening is taken looking back towards the house where it appears a number of people are gathered on the patio area, albeit the quality of the image is poor. Whilst it is not unusual for people to utilise gardens for parties or gatherings and indeed is not uncommon for people to erect temporary shelters to facilitate them, a single event of this nature does little to assist in demonstrate a continuous period of such use for ten years. Moreover, the detail one is able to glean from the two photographs is limited at best. The presence of bell tents could point towards use of the land as a campsite as easily as it does use a residential garden.
39. Images from April 2022 and June 2022 show people relaxing on the patio area to the rear of the property with the land behind. Again, the land is mown but no paraphernalia or other activity is apparent. Once more, it is notable that people are utilising the area to the immediate rear of the house for sitting on furniture to relax and eat, activities one expects to take place in a garden, rather than the land in question.
40. Overall, the images are largely absent of items and paraphernalia typically found in residential gardens and demonstrate little activity of a domestic nature taking place. Indeed, the land largely lacks the formality and arrangement of a residential garden throughout the period, in contrast to the patio areas to the immediate rear of the property. There is a distinct separate character in the use of the land and the use of the existing garden throughout the period.
41. The appellant ultimately says that the land has been used as residential garden since they purchased the property in 1996. None of the photographs provide assist in demonstrating such use across the ten-year period until 2006.
42. Furthermore, even if the use of the land commenced at the latest possible date for immunity – 19 September 2013 – the images show only limited snapshots of potential use as residential and not that it was actually used continuously as such. Moreover, the only image which pre-dates 19 September 2013 is that of the greenhouse which I am not satisfied sufficiently shows the land was in residential use at that time.
43. The appellant has provided a Statutory Declaration with the appeal, as has their partner, in which they declare the land has always and continually been used as residential garden land.

44. Likewise, a Statutory Declaration has been provided from Suzanne Wilson who says she has been visiting the property every 6 weeks for over 20 years to carry out haircuts. However, whilst she says the land has always and continuously been used as garden in that time, she does not say what activities or features of the land led her to conclude it was being used as garden.
45. As first hand sworn evidence, I afford significant weight to the Statutory Declarations. However, the contemporaneous evidence put forward does not support the proposition that the land has been continuously used as a residential garden in connection with 12 Brackley Road since 1996.
46. Overall, I am not satisfied that it has been demonstrated, on the balance of probabilities, that the land has been used as residential garden for a continuous period of 10 years beginning at any point in time prior to 19 September 2013, such that the LPA could have taken enforcement action against such use at any point in that period.
47. I conclude, therefore, that at the date the LDC application was made, the material change of use of land for residential garden would not have been lawful in the meaning of S191(2) of the Act

Deck

48. There is no dispute that the construction of the deck comprises building operations. Given the current transitional arrangements in place, the relevant time period under S171B of the Act is 4 years. It is necessary, therefore, for the appellant to demonstrate, on the balance of probabilities, that the landing deck was substantially completed on or before 19 September 2019.
49. The appellant says the deck was substantially completed in 2008. Provided is an invoice dated 18 February 2008 and addressed to the appellant at the appeal property for a riverside deck construction. The letter of Ms Suzanne Wilson indicates her partner at the time constructed the deck and that they used to row their boats between her property and the appeal site, utilising the landing deck to do so.
50. A letter from Mr Taylor indicates that the deck was constructed prior to 2010 as he used to row up the river and use the landing deck for visiting his parent's house nearby. Letters from Ms Dowdell, Ms Phillips, Ms Corcoran, Mr Purefoy and Mr and Mrs Moss also state that deck was constructed prior to 2010 albeit they do not say how they know that was the case.
51. A letter has nevertheless been provided from the Environment Agency (the EA) to the occupier of 12 Brackley Road dated 22 February 2010. In the letter, the EA indicated that they visited the site on 28 January 2010 regarding the installation of the deck.
52. The LPA does not dispute the appellant's evidence. It is stated that the LPA is satisfied that the construction of the deck is immune from enforcement action.
53. I am satisfied therefore that the construction of landing deck to edge of riverbank was substantially completed on or before 19 September 2019 and thus enforcement action may not have been taken in respect of it at that date. Moreover, there is no evidence that the construction of landing deck to edge of

riverbank constituted a contravention of any of the requirements of any enforcement notice then in force.

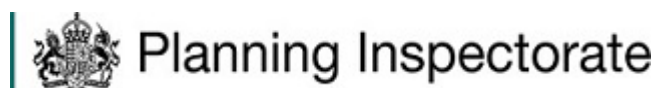
54. Consequently, at the date the LDC application was made, the construction of a landing deck to the edge of the riverbank was lawful within the meaning of S191(2) of the Act.

Conclusion

55. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the material change of use of the land to a residential garden was well-founded and that the appeal should fail in part. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).
56. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development insofar as it relates to the construction of landing deck to edge of riverbank was not well-founded and that the appeal should succeed in part. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

J Whitfield

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 19 September 2023 the **operations** 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, **were** lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of landing deck to edge of riverbank was substantially completed on or before 19 September 2019. Therefore, at the date the LDC application was made, no enforcement action may then be taken in respect of those operations, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

J Whitfield

Inspector

Date: **14th April 2025**

Reference: APP/J0405/X/24/3340225

First Schedule

Construction of landing deck to edge of riverbank.

Second Schedule

Land at the rear of 12 Brackley Road, Buckingham MK18 1JD

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: **14th April 2025**

by **J Whitfield BA(Hons) DipTP MRTPI**

Land at: **12 Brackley Road, Buckingham, MK18 1JD**

Reference: **APP/J0405/X/24/3340225**

Scale: Not to Scale

