



Appeal Decision

Site visit made on 22 April 2025

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date 07 May 2025

Appeal Ref: APP/L3625/X/24/3349950

Field House, Babylon Lane, Lower Kingswood, Tadworth, Surrey KT20 6XE

- 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 A Li against the decision of Reigate and Banstead Borough Council.
- The application ref 23/02628/CLE, dated 19 December 2023, was refused by notice dated 13 February 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 was described as 'Use of land as part of the curtilage of dwellinghouse'.

Summary of Decision: The appeal is allowed in part and is dismissed in part, as set out below in the Formal Decision.

Preliminary Matters

1. The 'curtilage' use applied for is not a use of land. The main parties also referred to 'residential land' and 'garden land'. In exercise of the powers transferred to me in section 191(4) of the Act, I shall therefore modify the description to 'residential garden land'. I am satisfied that this will cause no injustice to any party.

Main Issue

2. The main issue is whether the Council's refusal to grant a certificate of lawfulness was well founded.

Reasons

3. The application is to ascertain whether use of the land edged red in the application plan as residential garden land was lawful at the time it was made to the Council (the relevant date). For the appeal to succeed, the onus is on the appellant to demonstrate, on the balance of probabilities, that this use begun 10 years before the relevant date (by 19 December 2013) and had continued without significant interruption.
4. Part of the land is the original plot of Field House, subsequently amalgamated with some land behind Tudor House. Albeit a snap-shot in time, the appellants 2003 aerial photo is consistent with the Council's equivalent copy. Both show that this land included mown lawn or cut grass, though this is not necessarily determinative in itself. But set within or next to this land was a section of a meandering path, an outdoor swimming pool with patio surround next to a pergola over decking, a long, narrow outbuilding, a driveway and a tennis court. The appellant's 2005 aerial photo and 2015 and 2018 photographs from the rear of Field House, as well as

the Council's 2008, 2019 and 2021/22 aerial photos, essentially show the same. The Council has provided little evidence to the contrary about this part of the land, nor do neighbour recollections contradict the extent or continuity of the domestic nature of it over a 10 year period.

5. The 2003 aerial photograph also shows some mown lawn or cut grass jutting out seamlessly into part of a field to the north and overlapping behind the plot of Ishtar Gate to the east. This land included the rest of the path with a spiral end sloping up a circular grass mound, two parallel lines of ornamental trees, a small clump of trees near a round trampoline inset at ground level and some ornamental shrubs and hedgerow. Even if there was no intervening fence, this photograph shows a clear visual demarcation and physical distinction between the domestic nature of this incorporated part of the land and rough pasture beyond in the rest of the field. The Council has provided little contrary evidence about this incorporated land, nor do recollections of neighbours contradict the domestic nature of this part of the land over a 10 year period.
6. However, some of this incorporated land had reverted to rough pasture in the 2008 aerial photograph (at the edge, along the north and east corner) and can still be seen as such in the 2015 and 2018 photographs. Though reinstated as mown lawn or cut grass by the 2019 aerial photograph, this was many years after 2008.
7. The appellant does not dispute neighbour recollections that most of the field had been used by local farmers to keep sheep and cattle or to keep horses by a previous owner of Tudor House. There is little evidence that a stable block in the field and a (since removed) sand school were used other than in connection with horses in the field; nor that any of these uses of the field were domestic in nature over a 10 year period as opposed to grazing land within the meaning of agriculture in section 336 of the Act, consistent with the 2003 aerial photograph and later photographs for most of the field.
8. The 2015, 2018 and 2020 estate agent particulars vaguely refer to Field House as set in a 9 acre plot with extensive landscaped 'grounds' and views across a 'combination of formal lawns with meandering paths', 'wild meadow beyond' and a stable block or stabling 'for 7' (horses). It is not unusual that the field and the stable block were being sold with Field House, but the particulars do not include a property plan or cover a 10 year period and do not anyway claim or substantiate use of the entire field as domestic in nature.
9. The 2021/22 aerial photograph shows some additional incorporation of rough pasture in the field further to the north and east to increase the extent of mown lawn or cut grass. I also saw a vegetable patch formed by block pavements set in concrete with raised earth beds even further into the field beyond the grass mound, as well as a wood chip path around the inside perimeter of the field. There is little evidence that any of these features as they exist now were established on the land by 19 December 2013, nor are they mentioned in the appellant's appeal statement or by neighbours.
10. The appellant has provided no statutory declarations to which I can attach significant weight, such as from a previous owner of any of the land, nor made any final comments in response to the Council's appeal statement.

11. Taking account of all the above, the appellant has demonstrated on the balance of probabilities that use of some of the land as residential garden land had begun 10 years before the relevant date and continued without significant interruption. This area can be marked on a plan having regard to the relevant photographs. But, on this same basis, the appellant's case is not sufficiently precise and unambiguous¹ to demonstrate that all of the land was residential garden land begun 10 years before the relevant date or that some of it continued without significant interruption.

Conclusions

12. Section 193(4)(a) of the Act provides that a certificate may be issued for the whole or part of the land specified in the application. For the reasons given above, and on the evidence now available, the Council's decision to refuse to grant a certificate was well-founded in part. To this extent the appeal does not succeed and I will exercise the powers transferred to me in section 195(3) of the Act. However, the Council's decision to refuse to grant a certificate was also not well-founded in part. To this extent the appeal succeeds and I will exercise the powers transferred to me under section 195(2)(a) of the Act.

Formal Decision

13. The appeal is allowed insofar as it related to part of the land but is dismissed in all other respects. Attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Robin Buchanan
INSPECTOR

¹ *Gabbitts v SSE & Newham BC* [1985] JPL 630 7

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 December 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 submitted evidence demonstrates, on the balance of probability, that use of the land edged in black on the plan attached to this certificate as residential garden land has occurred for a continuous period in excess of 10 years and has not been substantially abandoned or that further material change of use has since occurred.

Signed

Robin Buchanan
Inspector

Date 07 May 2025

Reference: APP/L3625/X/24/3349950

First Schedule

Use of the land as residential garden land.

Second Schedule

Land at Field House, Babylon Lane, Lower Kingswood, Tadworth, Surrey KT20 6XE

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 07 May 2025

by Robin Buchanan BA (Hons) MRTPI

Land at: Field House, Babylon Lane, Lower Kingswood, Tadworth, Surrey KT20 6XE

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Scale: Not to Scale

