

Appeal Decision

Site visit made on 16 April 2025

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 20th May 2025

Appeal Ref: APP/E2530/X/24/3336918

Sunnyside Cottage, Edenham Road, Lound, Bourne PE10 0LJ

- The appeal is made by Stuart Eling under section 195 of the Town and Country Planning Act 1990 against a refusal by South Kesteven District Council to grant a lawful development certificate.
 - The application Ref: S23/0652, dated 3 April 2023, was refused by notice dated 6 June 2023.
 - The application was made under section 191(1)(a).
 - The development for which the certificate is sought is "Continued use of land as garden in connection with the dwelling known as Sunnyside Cottage".
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use relating to the existing use described in the application, which I consider to be lawful at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the use at the time of the application. The planning merits of the use are not relevant to the appeal and there is no planning application before me.
 3. The Council refused the application for the following reason: -

"There is a clear distinction in character, and physical separation, between the existing residential garden and the woodland to the rear of the land that is the subject of this application. In the opinion of the Local Planning Authority it is considered that insufficient evidence has been provided by the applicant to conclude that, on the balance of probability, the entirety of the area of land identified has been used continuously as a domestic garden area to Sunnyside Cottage, Edenham Road, Lound for a period in excess of 10 years. Therefore, based on the evidence it is considered that the use of the land as domestic garden is unlawful."
 4. I note that previous applications for planning permission here have considered whether the development then proposed would be within the curtilage of the Cottage. The curtilage of the Cottage may indeed be limited to the area shown
-

on the plan approved in 2013 for a side extension to the Cottage, but that does not necessarily mean that land beyond that area, as well as land within it, is not in lawful use as residential garden land. The term 'curtilage' is a legal term that relates to land intimately associated with the Cottage; it is used in connection with the householders' permitted development rights but it is not a land-use planning category in its own right. All the land in this appeal may be outside the curtilage, but this does not prevent it from having a lawful use as residential garden land if the appellant can establish this as a matter of fact on the balance of probability.

5. As the appellant has pointed out, the area between the Cottage and the boundaries of the land is not physically separated and selling agents' marketing brochures indicate that this was the case in 2011 and 2014. The appellant and his wife have executed a statutory declaration in which they state that they purchased the Cottage in 2014 on the basis that all the land was garden land and had been used as such by the previous owner; they have continued to use the whole of the land as their garden and there has never been a physical division or difference in use between areas concerned; the open area is mown grass and is used for games of football, exercising dogs, growing plants and vegetables and for residential paraphernalia such as climbing frames, swings, sheds and greenhouses; the 'stable' at the rear of the garden which was erected by the former owner of the property had never been used as a stable, which was immediately apparent when they moved to the property, and the land used as garden was never used for grazing or exercising a horse in association with the 'stable'.
6. Neighbours who have lived in the village for many more years and who know the land well have confirmed that the land has only been used as garden land in connection with the occupation of the Cottage. They state that the 'stable' that once stood on the land was never used as such and that they are not aware of any horses or livestock having been kept on the land. They point out that the only access to the land is to the side of the Cottage and that the land has never been subdivided by a fence.
7. It appears from the appeal material submitted by the Council and from what I ascertained at my site visit that the Council accept that the certificate should be granted except for the woodland. The woodland is a belt of woodland trees on lower ground near to the watercourse on the western boundary of the land, which is separate from the fruit trees growing near to the southern boundary.
8. The woodland is not physically separate from the rest of the land and it is not fenced off. The woodland is inaccessible except from the rest of the land and tracks lead into it from the rest of the land. It is included in the marketing brochures and has been sold as part and parcel of the land belonging to the Cottage and forming part of its grounds. There is no evidence that it has been used for any other purpose apart from garden land and my inspection of it indicated long-term residential use for purposes including children's play areas, composting and log cutting and storage.
9. I have come to the conclusion on the balance of probability that the available evidence is sufficiently precise and unambiguous to support the grant of the certificate for the whole of the land, including the woodland. I am satisfied that the Council's refusal of the application is not well-founded. The appeal has

therefore been allowed and, as required by section 195(2), a certificate of lawful use has been granted.

D.A.Hainsworth

INSPECTOR