

Appeal Decision

Site visit made on 19 May 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 27 May 2025

APP/C1625/X/23/3329885

Manor Farm, Nupend, Horsley, Stroud, Gloucestershire GL6 0PY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a failure by Stroud District Council to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended)
- The appeal was made by Ms Marianne Simpson.
- The application, reference S.23/1369/CPE, was received by the Council on 11 July 2023. The application was not determined.
- The Application for a Certificate of Existing Lawful Development was for “Existing use is as a garden, ancillary to the house Manor Farm.”, at Manor Farm, Nupend, Horsley, Stroud, Gloucestershire GL6 0PY.

Summary of decision: The appeal is dismissed.

Appeal land and application

1. Manor Farm is a large detached dwelling at the corner of The Street, (B4058), Nupend and Hollingham Lane. The application and appeal concern an area of land to the rear and north of the house at the south-western corner of a larger area of land, part of the land attached to Manor Farm house.
2. The Appellant, Ms Marianne Simpson, said the house at Manor Farm was originally a barn that was converted into a residential dwelling in the late 1980's. Her application claims that the appeal land, outlined in red on the application plan dated 21 July 2023, was originally used for the casual grazing of cattle. This rough grazing land became garden land as part of the house. It was landscaped to a lawn and planted garden to the house. It had been so used for almost 20 years.
3. Stroud District Council said Ms Simpson had not provided sufficiently precise and unambiguous information to demonstrate that the application land had been used as a residential garden, (a C3 use – The Town and Country (Use Classes) Order 1987 (as amended)), associated with Manor Farm for a period in excess of 10 years.

Considerations

Scope of the application

4. The s.191(1)(a) application for a certificate of lawfulness asserts that the appeal land has an existing use as a garden, ancillary to the house, Manor Farm. The determination of the appeal must be whether the evidence shows, on the balance of probabilities, the land lies within the garden of the house.
5. The Council officer's report includes the statement, “The use of land for garden related purposes does not automatically serve to bring that land within the residential

curtilage of the dwelling.”. However, in my view, this application seeks certification that the land in question has been used for purposes incidental to the enjoyment of the dwelling house Manor Farm. Had I found in favour of the Appellant the certificate would have been determinative only of that incidental use, not that the application land formed part of the curtilage of the dwelling at Manor Farm, especially as the application land does not form one enclosure with the dwelling, (*Lowe v SoS* [2003] EWHC 537 Admin, - curtilage ‘connotes a building or piece of land attached to a dwellinghouse and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers). Nor was there reference to curtilage in the application. In the case of *Methuen-Campbell v Walters* [1979] 1 QB 525, the Court of Appeal agreed that, for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building. The *Burford v SSCLG* [2017] EWHC 1493 (Admin) judgement endorsed the view that curtilage is an area of land ‘attached to’ a house and ‘forming one enclosure with it.’.

6. Land outside the curtilage of a building or dwelling may become garden land if it can be shown to have been used as garden land for a period of at least 10 years up to the date of the application for a certificate of lawfulness.
7. The Appellant Ms Simpson needed to show, on the balance of probabilities, that a material change of use of the application land to use for garden purposes started on or before 8 July 2013 and that it had continued thereafter for a period of 10 years to the extent that the Council could have taken enforcement action at any time in that period. The case of *Thurrock BC v SSETR & Holding* (COA 27.2.02, J 1080) is authority for that position; also *Ravensdale Ltd v SSCLG* [2016] EWHC 2374 (Admin). That is unlike the situation, where, if, for example, a dwelling has a lawful residential use, the dwelling could be unoccupied for sometimes lengthy periods of time without losing that lawfulness, (*Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461). In the case of an unlawful use, if that use ceased at any time during that period, the time up to that point would not count towards immunity. The “clock” would restart if and when the unlawful use recommenced.
8. The Court in *Ravensdale* endorsed the Inspector’s conclusion in that case that the sparse nature of the declarations and ‘patchy’ evidence of lettings was insufficient to satisfy the onus of proof. It is for the decision-maker to rule on the evidence provided; there is no duty to explain what evidence might have been satisfactory.
9. Ms Simpson provided screenshots from Google Earth satellite images showing the land at different times in the past. A declaration was submitted, a neighbour stating that their daughter used to keep a horse in a field next to the application land. It stated that the application land always had the lawn cut short.
10. My visit to see the application land and the other adjoining much larger area of land in Ms Simpson’s ownership to the north and east showed the 2 areas had substantial similarities. Each area was characterised by sloping cut grassland with extensive tree and shrub cover. Although most of the grassed area of the application land appeared to be regularly but roughly cut, it could not reasonably be said to form or look like a domestic lawn as part of a cultivated garden. Also, a moderate amount of mowing had been carried out on the much larger area of Ms Simpson’s land, delineating, for example, walkways. Although more maintenance seems to have been carried out on the application part of Ms Simpson’s land, there were no recognisable boundaries or divisions between the 2 areas. There was an old trampoline on the application land, but little or no domestic or garden paraphernalia or formal flower beds were to be seen at the time of my visit or were shown on photographs taken in the 10 years up to the date of the certificate application.

11. My assessment of the current state of the land does not determine its state and use in the 10 year period to the application date, although its appearance seems to have hardly changed over the years. Whilst the open grassland appeal site appears to have shown little sign of active agricultural use for some time, as perhaps confirmed by past Google aerial photographs, its appearance may not have been dissimilar had grass crops had been taken for hay, silage or haylage purposes. But when and whether any of the domestic use of the land amounted to a material change of use of the land is difficult to demonstrate or determine. Not only was the evidence of when and what occurred vague, it was not shown if or when a change in the scale of a domestic use of the land amounted to a material change of use, or whether an incidental use became a primary use, either in a separate planning unit or as a new element in a mixed, dual or composite use.
12. I am not persuaded that a material change of use of the appeal land from agricultural use of a domestic garden use has been shown. There must also be doubt, even if on the balance of probabilities, there was such a material change of use, or that there has been an ongoing uninterrupted breach of planning control. It may be unrealistic to expect, or indeed require continuous evidence of a residential or domestic garden use of the land. However, it would have been necessary to show not only that a material change of use of the whole of land had taken place, but that it had continued uninterrupted for a period of at least 10 years up to the date of the application for an LDC over the entire area.
13. An interruption in the 10 year period can take the form of some cessation in activity or change to the character of the use or size of the planning unit. However, the break must be minor if it is not to be fatal to the possible issue of an LDC. A short suspension in activity during a change of ownership or period of illness, or non-material fluctuations in the scale of a use will not usually stop the clock. However, a break in the domestic use of the land during the winter, for example, would make it difficult for the Council to be aware of, notice or recognise an ongoing breach of planning control in the form of a new non-agricultural or domestic garden use of the land having taken place and, or was subsisting. Most of the time, it is likely that the appearance of the land would have been no different from that of an agricultural or unused field.
14. As was held in *Ravensdale* an appellant seeking to make out a lawful use pursuant to ground (d), (s.174(2)(d); s.171B(3) of the Act), must provide sufficient evidence which shows on the balance of probabilities that there had been a material change of use of the land and that use had been continuous for the relevant immunity period. I consider that task was not accomplished on the basis of the evidence before me. The appeal fails.

Conclusion

15. For the reasons given above I conclude that the Council's deemed refusal to grant a Lawful Development Certificate in respect of Use of the land as garden associated with the dwelling, Manor Farm, Nupend, Horsley, Stroud, Gloucestershire GL6 0PY was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

FORMAL DECISION

16. The appeal is dismissed.

 INSPECTOR