



Appeal Decision

Site visit made on 27 May 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 June 2025

Appeal Ref: APP/R0660/X/24/3352569

Brink Barn, Buxton New Road, Macclesfield, Cheshire East SK11 0AN

- 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 & Mrs James & Anna Marcham against the decision of Cheshire East Council.
 - The application ref 23/4138M, dated 31 October 2023, was refused by notice dated 14 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 domestic garden in connection with the dwelling known as Brink Barn.
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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.

Applications for costs

2. An application for costs is made by Mr & Mrs James & Anna Marcham against Cheshire East Council in relation to the appeal. This application is the subject of a separate Decision.

Procedural Matter

3. 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 domestic garden, not residential curtilage.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

5. The onus is on the appellants 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 appellants' version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.

6. Planning permission for the conversion of the appeal property to a dwelling was granted in 2010¹. The approved drawings included a small area of land to the side and rear of the building included within the red edged area.
7. An aerial photograph dated 1 January 2006 clearly shows a rectangular parcel of land immediately to the south of the building. This parcel of land appears to be enclosed by a fence and is split in two by a fence down the middle. An aerial photograph dated 10 October 2010 shows the same parcel of land and fencing, with the eastern half containing unknown items/structures.
8. This parcel of land in the 2006 and 2010 aerial photographs is wider and projects further from the rear elevation of the building than the parcel of land that is the subject of this appeal. However, both the 2006 and 2010 aerial photographs likely predate the conversion of the building into a dwelling. I note there are no rooflights in the building in Brink Barn in either of these photographs, whereas there are in the later photographs from 2015 onwards, supporting the view that the building had not yet been converted in the 2006 and 2010 photographs.
9. The 2015 Cheshire Tithe Map aerial photograph shows the parcel of land as it is in its current configuration, narrower and shallower than in 2006 and 2010. It is a single parcel of land, not split in two. It's reasonable to conclude that the subject land was altered to its current configuration during the conversion of the building to a dwelling between 2010 (when planning permission was granted) and 2015 (the earliest photograph showing the existing configuration).
10. The statutory declaration from Blair Whitehurst states that when they moved into Brink Farm on 11 July 2013, the occupant of Brink Barn used the land that is the subject of the appeal as a garden area, with the area of hardstanding used for the parking of cars and the siting of a small shed and the area of land to the south and east maintained as a grassed area within the garden. This supports the appellants' case that the subject land had been in use as a garden since at least 11 July 2013.
11. Moreover, Blair Whitehurst states 'Mr and Mrs Marcham have simply continued to use this land as garden since they moved into the dwelling in March 2016'. This suggests the boundary fence line of the subject line has not changed since they moved into Brink Farm on 11 July 2013.
12. The statutory declaration of James Marcham states that since they bought the property in March 2016 they have used the land for parking cars, keeping chickens and growing vegetables and herbs. They have also mown the grass regularly. They have done such residential activities on this land continuously since they moved in. Whilst the aerial photographs do not show chicken coops or raised beds there appears to be shrubs/trees and parking. Furthermore, from the 2015 aerial photographs onwards there is no fence along the northern perimeter of the

¹ Council reference 10/1949M

parcel of land. It is freely accessible from the remaining land surrounding the dwelling, supporting its use as a garden.

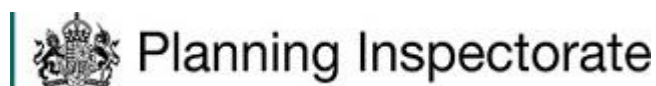
13. I find therefore, the evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, the appeal land has been used as domestic garden in connection with Brink Barn for a period of ten years or more prior to the date the LDC application was made and has been used as such continuously without significant interruption. It is therefore lawful.

Conclusion

14. For the reasons given above, I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development is not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) 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 31 October 2023 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 domestic garden in connection with the dwelling known as Brink Barn for a period of ten or more years prior to the date of the LDC application.

Signed

A Walker

Inspector

Date: **11 June 2025**

Reference: APP/R0660/X/24/3352569

First Schedule

Use as domestic garden in connection with the dwelling known as Brink Barn

Second Schedule

Brink Barn, Buxton New Road, Macclesfield, Cheshire East SK11 0AN

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: **11 June 2025**

by **A Walker**

Land at: **Brink Barn, Buxton New Road, Macclesfield, Cheshire East SK11 0AN**

Reference: **APP/R0660/X/24/3352569**

Scale: Not to Scale

