



Appeal Decision

Site visit made on 20 May 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2025

Appeal: APP/X1545/X/23/3325229

The Willows, Hackmans Lane, Purleigh, Essex CM3 6RJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr Gary Coveley against the decision of Maldon District Council.
 - The application Ref 22/01272/LDE, dated 29 December 2022, was refused on 26 April 2023.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990, as amended.
 - The development for which a LDC is sought is described as '*Use of dwelling without complying with agricultural occupancy condition imposed upon planning permission FUL/MAL/01/00044 at The Willows, Hackmans Lane, Purleigh.*'
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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 considered to be lawful.

Background

2. An Agricultural Occupancy Condition (AOC) is a planning condition placed on a property that would otherwise not have been granted planning permission to be built in the open countryside. The condition restricts the occupation of the dwelling to those working mainly in agriculture or forestry.
3. Where a property has been occupied by a person who does not comply with the wording of the condition then the condition has been breached. Providing the breach has been occurring continuously for at least ten years, then the time limit for the Council to take enforcement action will have expired and the condition will become unenforceable so long as the occupier – in this case the appellant – continues to reside at the property.

Lawfulness for planning purposes

4. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. In the current appeal the test of the evidence would need to show that the AOC had been breached on an uninterrupted basis since at least 29 December 2012 – otherwise known as the 'material date' – being ten years prior to the date of the application made.
5. To support the claim the appellant must demonstrate, on the balance of probability, that the AOC has not been observed. The key is that the evidence should be precise and unambiguous to this end.

6. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on the evidential facts, planning legislation and relevant case law.

Main Issue

7. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. The main issue in this appeal is whether, on the balance of probability, the dwellinghouse has been occupied continuously without the said condition being observed; thereby amounting to an unfettered residential use during the appellant's continued occupation of the property and, if so, that the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

9. The appellant says that the planning permission ref. FUL/MAL/01/00044 issued over twenty years ago was obtained by Paul Coveley, the brother of Gary Coveley, the appellant. It is further said that Gary Coveley has lived at the property since the dwelling was built and completed in 2009. No other person has resided there.
10. Gary Coveley has never been employed in agriculture. During the period of ten years relevant to this appeal it is claimed that he has worked as a self-employed gardener, with his firm, 'Willow Gardening Services' (WGS) and also as a general maintenance worker since January 2010.
11. The appellant provided a Statutory Declaration, sworn on 7 March 2023, prior to the application being determined, which says that no other persons, other than him, have occupied the dwelling known as 'The Willows', and states that 'I have not been employed in agriculture at this time'. Subsequently, in response to the Council's stance, with it highlighting that there was nothing to show that he had not been employed in forestry during his time at The Willows, the appellant produced an updated Statutory Declaration which states:

'I have not been employed in agriculture or forestry at any time.'
12. To support the above assertion the appellant has submitted a set of HMRC tax returns from the financial years 2012/13 up to 2020/21, throughout. Details of Income and Expenditure Accounts are also submitted for the relevant period. In terms of the appellant's continuous occupation of the dwelling he has provided a set of Council Tax demands from Maldon District Council for the years 2008/2009 up to 2021/2022.
13. In the circumstances it is difficult to see what further evidence the appellant could have provided to support his claims. The *Gabbittas* principle, arising from a court judgement, says that the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application or dismiss the appeal, provided that the supporting

evidence itself is sufficiently precise and unambiguous. This approach has been transposed to the government's planning practice guidance.

14. To summarise, I must conclude that the comprehensive evidence adduced has been largely set aside by the Council who, for example, have concentrated, instead, on the possibility that the appellant might have been employed in forestry during the relevant period. The evidence would suggest that this is far from likely and even though an updated Statutory Declaration was subsequently provided to this end a much more objective and reasoned approach should have been taken by the Council in its assessment.
15. On the evidence available the Council's decision was not well founded. For the reasons given above, I conclude that, on the balance of probability, the AOC's requirements had been breached for a period sufficient to allow for the dwelling's unfettered use in this regard during the appellant's continued occupation. It was therefore lawful on 29 December 2022, within the meaning of section 191(2) of the Town and Country Planning Act 1990.
16. It should be noted that the said condition is not removed by the LDC and it could be revived if someone who meets the AOC's requirements later occupies the property.
17. I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR



Lawful Development Certificate

APPEAL REF. APP/X1545/X/23/3325229

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 29 December 2022 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown 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 time period for enforcement had expired and the dwelling's use by the current occupier without observance of the AOC's requirements did not contravene any of the requirements of any enforcement notice or breach of condition notice then in force.

Date: **24 June 2025**

First Schedule

'Use of dwelling by the current occupier without complying with the agricultural occupancy condition imposed upon planning permission FUL/MAL/01/00044'

Second Schedule

The Willows, Hackmans Lane, Purleigh, Essex CM3 6RJ

Plan

This is the plan attached to the Lawful Development Certificate dated: **24 June 2025**

by Timothy C King BA (Hons) MRTPI

The Willows, Hackmans Lane, Purleigh, Essex CM3

6RJ

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Scale: Do not scale

