



Appeal Decision

No site visit was made

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2025

Appeal: APP/X3540/X/23/3330147

Houseboat Constance, New Quay Lane, Woodbridge, Suffolk IP12 1BJ

- 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 the failure of East Suffolk Council to determine an application for a certificate of lawful use or development (LDC) within the prescribed period.
 - The appeal is made by Mr Roland Mann.
 - The application Ref DC/23/2447/CLE is dated 21 June 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990, as amended.
 - The development for which a LDC is sought is described as use of garden land ancillary to a residential houseboat, known as Constance.
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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 extent of the existing use which is considered to be lawful.

Application for Costs

2. An application for an award of costs was made by Roland Mann against East Suffolk Council. This application is the subject of a separate decision.

Preliminary Matters

3. Whilst I intended to visit the site and view the development it did not prove possible to access the land. Nonetheless, given that applications made under s191 of the 1990 Act are based on evidential fact and legislation rather than planning merits and/or impacts, I am determining the application, accordingly, on the basis of the evidence adduced.
4. The *Gabbitas* 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.

The Legal Background

5. In an appeal under s195 of the Act, against the refusal of a LDC, the burden of proof is upon the appellant who will need to demonstrate immunity from planning

enforcement action on the balance of probability. Accordingly, the key is that the evidence should be precise and unambiguous to this end.

Main Issue

6. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

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. In this particular instance the land, used for residential garden purposes, comprises a linear strip within which there are various structures. It is claimed that the strip has been used as associated garden land since 2010. For the purposes of immunity from planning control the appellant must demonstrate that the said use of the land commenced at least ten years prior to 21 June 2013 ie ten years prior to the date of the LDC application.
9. To support the submission the appellant has produced a series of photographs to illustrate how the site was developed and also a Statutory Declaration from the appellant which says that he purchased the land in June 2010, together with the houseboat/barge known as 'Constancie' which, itself, has the benefit of a LDC (ref C/10/0563), as a private home. This was granted in May 2010.
10. A houseboat known as 'Avail' on a neighbouring site with an associated garden also enjoys lawful use rights by way of a LDC (ref DC/17/3763/CLE) granted in 2017. This would tend to indicate a pattern of use within the immediate vicinity.
11. Block Plan 'B' shows a number of structures that stand on the garden land used in conjunction with Constancie. These include a small workshop, a pottery studio, a yurt, a composting toilet, a greenhouse and a duck-house. A short foot-bridge bridge was also apparently erected at the embankment, crossing water, to join the two strips of land which comprise the garden area.
12. Wildfield Lodge, whose curtilage lies immediately to the north of the garden area also enjoys a LDC (ref DC/23/0911/CLE), granted in April 2023, which confirms its lawful use as a single-family dwellinghouse and also the immunity of the various structures referred to above due to the passage of time. A submitted plan shows that this separate piece of land (edged in blue), although not part of the current appeal site, is under the appellant's ownership and control. This confirms a close relationship between Constancie and Wildfield Lodge whose occupiers, it is understood, share the use of the garden land.
13. Although the Council failed to determine the application, necessitating this appeal, its Statement in response to the appellant's representations says that the Council holds no records to rebut the appellant's claims. As I also hold no contrary evidence to that put forward by the appellant I have no reason to disagree with the lawfulness of use claimed.
14. For the reasons given above I conclude, from the evidence available, that, on the balance of probability, the use of garden land ancillary to the residential houseboat, known as Constancie, was lawful on 21 June 2023, within the meaning of section 191(2) of the Town and Country Planning Act 1990.

15. Accordingly, I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR

Lawful Development Certificate

APPEAL REF. APP/X3540/X/23/3330147

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 21 June 2023 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 use did not contravene any of the requirements of any enforcement notice or breach of condition notice then in force.

Timothy C King

INSPECTOR

Date: **26 June 2025**

16. First Schedule

Use of Garden land ancillary to a residential houseboat.

17. Second Schedule

Houseboat Constancie, New Quay Lane, Woodbridge, Suffolk IP12 1BJ

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 as amended.
2. 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, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. 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 attached to the Lawful Development Certificate dated: **26 June 2025**

by Timothy C King BA (Hons) MRTPI

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Woodbridge, Suffolk IP12 1BJ

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Scale: Do not scale

