
Appeal Decision

Site visit made on 20 May 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 28 July 2025

Appeal Ref: APP/Q3115/X/23/3332826

2 Cranford Cottages, Moulsoford, Wallingford OX10 9HR

- 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 (LDC).
 - The appeal was originally made by Mr Robert Crabbe against the decision of South Oxfordshire District Council.
 - The application Ref P23/S2379/LDE, dated 12 July 2023, was refused by notice dated 23 September 2023.
 - 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 the land as a residential garden in association with 2 Cranford Cottages.
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Summary Decision: the appeal is allowed and a Certificate of Lawful Use or Development is issued in the terms set out below in the Formal Decision

Procedural matters

1. This appeal was originally made by Mr Robert Crabbe, the previous owner of land. Following his death, the appeal is now progressing in the names of Mr Archie and Ollie Crabbe, being the sons of the original appellant and executors of the estate.
2. Section 191(4) of the Town and County Planning Act 1990 (the 1990 Act) allows the Local Planning Authority to modify the description of the existing use, operation or other matter. An Inspector may exercise this power on appeal and is indeed obliged to issue an LDC for any use or development that is shown to be lawful on the facts and evidence, rather than refuse a certificate on the basis of some error or misunderstanding in the application.
3. As originally submitted, the 'red line' on the application plan submitted as part of the LDC application encompasses the dwelling known as 2 Cranford Cottages and an associated outbuilding. The former cannot form part of the use of the land as a residential garden in association with that dwelling, that being the use for which the LDC is sought. Furthermore, there is no evidence before me that the outbuilding was used solely or primarily in relation to the garden rather than being incidental to the dwellinghouse as such.
4. Section 191(5) of the 1990 Act requires that a certificate under that section shall *specify* the land to which it relates (emphasis added). The word 'specify' connotes a level of precision greater than, say, to 'indicate' or 'state'. Similarly, the Planning Practice Guidance (PPG) advises that precision in the terms of any certificate is vital, so that there is no room for doubt about what

was lawful at a particular date, as any subsequent change may be assessed against it. The corollary is that the plan originally submitted with the LDC application lacked the precision required by Section 191(5) of the 1990 Act and the PPG.

5. Consequently, having regard to the guidance in the PPG, I was not able to consider a LDC on the basis of the application site enclosed by the 'red line' as originally submitted. I therefore suggested that a corrected plan was submitted on which the dwelling known as 2 Cranford Cottages and an associated outbuilding are excluded from the red line area. I determined this appeal on the basis of the corrected plan that was submitted in response.

Reasons

6. Section 191(4) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

The Appellants' evidence

7. The LDC application was supported by affidavits from persons familiar with the appeal site over many years. Although described as Affidavits, I note that they are signed in the presence of a solicitor and include the form of words set out in the Schedule to the Statutory Declarations Act 1835. Consequently, they meet all the requirements of a Statutory Declaration and I have treated them as such. Accordingly, I afford them the same weight as sworn first-hand evidence.
8. In his Affidavit, Mr Robert Crabbe states, as the owner of the appeal site, that he had known it for well over 10 years. Prior to taking ownership in 2012, Mr Crabbe had acted as Estate Manager for the Cranford Lodge Estate, as a result of which he had known the site and the associated land to be in domestic garden use, used as such by the previous residential tenants of 2 Cranford Cottages.
9. Mr Crabbe confirmed that to the best of his knowledge the whole of the garden land in association with 2 Cranford Cottages has been used for typical domestic activities and social gatherings across that whole time. In particular, Mr Crabbe recalled a family birthday party held in 2005, which he explained was a large and well attended event and for that reason stood out in his memory. He went on to explain that the land had remained mown to enable conventional garden use in all that time. He confirmed that the land in association with 2 Cranford Cottages had always been in domestic garden use in association with the cottage and that it had not been in any other use in that time.

10. The evidence of Mr Robert Crabbe is corroborated by his son, Mr Archie Crabbe. In his Affidavit, Mr Archie Crabbe confirms that the family moved into 2 Cranford Cottages in 2012 and that he spent time there playing cricket, football and other recreational pursuits with family and friends. He goes on to confirm that the garden was used to host various family gatherings and BBQs, and recalls how his father taught him to mow the grass of the garden.
11. In his Affidavit, Mr Hugh Colver states that he has known both the appeal site and Mr Crabbe since 2008, and therefore for at least 15 years. During that time, Mr Colver saw the whole of the garden land to 2 Cranford Cottages in use as a residential garden area. He himself took part in many social activities on the garden land where it was in use as a domestic garden in association with 2 Cranford Cottages. He confirms that during that whole time, the land was in domestic garden use and that use was uninterrupted.
12. Mr Edward Bonnington explains in his Affidavit that he first came to know the appeal site in 1999. At that time, his children attended Moultsford Preparatory School and his knowledge of the site continued firstly as a school governor and latterly as chair of the governors. Across the intervening 24 years, Mr Bonnington confirms that he has seen the whole of the land in association with 2 Cranford Cottages to be in use for domestic garden purposes and kept mown for that use. He concludes his Affidavit by confirming that the whole of the land in connection with the cottage has remained in residential garden use and with no other intervening use in the last 24 years.
13. In his Affidavit, Mr Christopher Symonds explains that he has known the appeal site since 1998, and that he has seen it in use as domestic garden land in connection with 2 Cranford Cottages since 2001. From 1988, Mr Symonds was employed as a teacher at Moultsford Preparatory School and lived at the school in his capacity as Housemaster between 2002-2015. He confirms that from 2001 to the date of his Affidavit (some 22 years) that the land was in garden use and recalls seeing one of Mr Crabbe's children and his friends playing cricket, football, and other recreational pursuits on the land. Mr Symonds also corroborates the evidence of Mr Crabbe insofar as the garden was used to host parties and other outdoor social events.
14. Mr Anthony Seeney explains that he is a lifelong friend of both the previous and current owners of the appeal site, Mr Roger Bosley and Mr Robert Crabbe respectively, and that he has known the appeal site since 2000. During the previous 23 years (from the date of his Affidavit), Mr Seeney has worked at the wider Cranford Lodge Estate and occasionally helped Mr Crabbe with the maintenance of the appeal site. Mr Seeney confirms that the appeal site has always been used as domestic garden land in connection with the residential use of the cottage and that this land has never been used for any other purpose in all of those 23 years.
15. The appellants have also provided a series of time dated recorded photographs from a period between 2012 and 2021 and which show the land in use as a mown garden area. They depict the land being used for conventional domestic garden purposes. These include photographs of the land laid to lawn, being mown, a greenhouse and children and adults involved in various informal recreation and social activities.
16. The appellants have also provided a plan showing from where the photographs were taken. I note that the time/date on which the photographs were taken is

not embedded within the photographs themselves but is provided as a separate header to each photograph. Nevertheless, I take these photographs as supporting the written evidence provided in the Affidavits and not necessarily as stand-alone evidence.

Assessment of the evidence

17. The Affidavits, together with the supporting photographs, collectively provide a significant body of evidence in support of the LDC application that covers a period of time well in excess of 10 years from the date on which the application was submitted. This evidence is consistent between the individual Affidavits, and in some cases is specifically corroborated by other Affidavits: for example, more than one Affidavit refers to social gatherings and outdoor events that have taken place on the land. I also note that in some cases recollections are founded through association with notable events: the birthday party held in 2005 is one such example. These personal recollections linked to specific events add further credence to the evidence. For these reasons, both individually and collectively, I afford this evidence substantial weight.
18. Against this, the essence of the Council's position is that in recent planning applications (Council Refs: P19/S1887/FUL and P22/S4300/FUL) the land has been referred to as 'paddock land'. The Council consider that this is synonymous with agricultural grazing land. Furthermore, the Parish Council have also stated that the land has been in use as agricultural and parking for most of the 10-year period. A number of points arise from the Council's position.
19. Firstly, the term 'paddock land' is purely descriptive. It is not a use of land.
20. Secondly, neither the Council nor the Parish Council have provided any evidence of their own to show that the land was in agricultural use at the relevant time and therefore to challenge the appellant's version of events. There may or may not have been changes in land levels during this period (the Council has provided no evidence to that effect), but in any event a change in ground levels is operational development and does not indicate the use of that land.
21. In part, the Council's case is based on an aerial photograph said to have been taken at some point between 2015 and 2018. In this photograph, a 'L'-shaped area of land is visible immediately to the rear of the cottages fronting onto the main road. This part of the site is of a different appearance to the remainder of the site and appears to be enclosed by a fence. In the photograph, some cars are visible parked on the 'L'-shaped area of land and this part of the land may have been used as car parking at that time.
22. However, even if that was the case, Section 55(2)(d) of the 1990 Act provides that the use of land within the curtilage of the dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is not development. The car parking would, more likely than not, have been incidental to the primary residential use of the land. I concur with the appellants that the presence of fencing on land does not, by default, denote the end of one planning use and the start of another. I therefore see no reason to distinguish this part of the land from the remainder of the garden.

23. The salient point to be taken from this photograph is that all of the land on the application site outside of this 'L'-shaped area has a similar and uniform appearance. It is not possible to discern from the photographs exactly what the surface is but there is a series of linear striations clearly visible in that surface. This is entirely consistent with the land being laid to grass and being well mown. Moreover, it is no way consistent with an agricultural use of the land.
24. The Council points to a structure that is visible in this photograph and makes the point that there are no structures elsewhere on the wider site associated with use as a residential garden visible on that photograph. However, this misses the point: the use of the land as residential garden is not dependant on any structures being present on the land.
25. The Council refers to photographs taken of the site in connection with a planning application (Council Ref:P19/S1887/FUL), the point being made that these photographs show moveable garden furniture in the small area to the south-west of the site but that none are permanent structures. I have not been provided with copies of these photographs. However, there is no requirement for the use for which the LDC is sought to be supported by permanent structures. Moreover, to my mind the presence of the moveable garden furniture in these photographs only serves to support the appellants' case that the land was being used as a residential garden at that time.
26. Finally, the Council makes reference to a discussion with one of its planning officers who had visited the site as part of the previous 2019 application (P19/S1887/FUL). It is reported that this planning officer, who is not named, confirmed that the land was not in residential use when they undertook their site visit on 10 July 2019.
27. There is some difficulty with this evidence. The discussion that is said to have taken place has not been set out in a Statutory Declaration, Affidavit or Witness Statement. I have not been provided with a full transcript or even a written note of that discussion. Consequently, that evidence has very little evidential value.

Conclusions on the evidence

28. This is a situation where the local planning authority has no evidence of its own to contradict that of the appellants or make their version of events less than probable. I find that the appellant's evidence is sufficiently precise and unambiguous to show that, on the balance of probability, the use of the land as a residential garden in association with 2 Cranford Cottages had been taking place continuously and without interruption for a period of ten years prior to the date on which the LDC application was submitted.

Conclusion

29. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land as a residential garden in association with 2 Cranford Cottages 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.

Formal Decision

30. 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.

Paul Freer
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 12 July 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 use of the land as a residential garden in association with 2 Cranford Cottages is shown to have been taking place continuously and without interruption for a period of ten years prior to the date on which the application was submitted.

Signed

Paul Freer
INSPECTOR

Date: 28 July 2025
Reference: APP/Q3115/X/23/3332826

First Schedule

The use of the land as a residential garden in association with 2 Cranford Cottages.

Second Schedule

Land at 2 Cranford Cottages, Moulsoford, Wallingford OX10 9HR

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: 28 July 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

Land at: 2 Cranford Cottages, Moulsoford, Wallingford OX10 9HR

Reference: APP/Q3115/X/23/3332826

Scale: Not to Scale



