



Appeal Decision

Site visit made on 17 June 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2025

Appeal Ref: APP/C3240/X/24/3343388

Rodwin, Meadow Drive Junction to Admaston Junction, Allscott, Telford TF6 5EQ

- 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 Davis against the decision of Telford and Wrekin Council.
- The application ref TWC/2023/0807, dated 24 October 2023, was refused by notice dated 19 December 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 change of use of land from agricultural to residential.

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.

Preliminary Matters

2. The application was made in the name of Mr and Mrs N Davis whereas the appeal was made by Mr Mike Davis. It is clear from the evidence submitted that the names of the applicants are Mr Mike Davis and Mrs Nicki Davis and, since the appeal has been submitted in the name of Mr Davis only, I have identified the applicant as 'Mr Davis' in the banner heading above.
3. The application form describes the existing use as 'change of use of land from agricultural to residential'. On their appeal form, the appellant describes the use 'as a garden'. The Council describes the application as for 'private garden land' in its decision notice. The evidence provided points towards the land having been used for purposes incidental to the residential use of the dwellinghouse, Rodwin. There is no evidence to suggest it has been used independently of the dwellinghouse Rodwin, for residential purposes.
4. The Planning Practice Guidance is clear that precision in terms of any certificate is vital so that there is no room for doubt about what was lawful at a particular date. The Act allows the local planning authority to modify the description of the existing use and I may exercise this power on appeal, to issue a lawful development certificate for any use 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 form.
5. While I have used the description from the application form in the banner heading above, I wrote to the parties to query whether the description should be changed so that it reflects how the land has actually been used. In response to my query, the appellant now states their intention is to 'obtain clarification that this land is,

and always has been, part of our residential curtilage'. However, this is **not** what the appellant has applied for and so the Council has not had the opportunity to comment on this through the appeal. Furthermore, curtilage is not a use of land. Section 191(1)(a) of the Town and Country Planning Act 1990 (as amended)(the Act) concerns 'any existing **use** of buildings or other land'. It is therefore not open to me to certify that the **use** of land is curtilage¹.

6. The appellant has raised concern with the suggested wording and seeks reassurance that such a certificate would not prevent them from pursuing outline planning permission or other appropriate applications in the future. However, it is not clear how future applications (including outline planning permission) would be prejudiced by changing the wording, since an application for planning permission would be considered on its own merits. Moreover, I can only issue a certificate for a use which is shown to be lawful on the facts and evidence. I remain of the view that the description should be modified to reflect the way in which the evidence shows the land has been used: 'use of the land for purposes incidental to the residential use of the dwellinghouse known as 'Rodwin' and have considered the appeal on this basis.

Main Issue

7. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness is well-founded.

Reasons

8. Section 191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful; or (c) any other matter constituting a failure to comply with any condition or limitation subject to which Planning Permission has been granted is lawful – they may make an application for the purpose to the Local Planning Authority, specifying the land and describing the use, operations or other matter.
9. In an LDC, the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the 'balance of probabilities'. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
10. The appeal site comprises a substantial plot of land, which adjoins the residential property and garden of 'Rodwin'. The appellant owns the dwelling, Rodwin, together with the land around it, including the appeal site. The appeal site is bound by close boarded fencing and mature vegetation and is separated from the grounds of Rodwin by fencing, a gate and mature vegetation. The land appeared well maintained at the time of my visit, with some play equipment present.
11. Notwithstanding there is some physical delineation between the appeal site and the dwellinghouse, from the evidence provided and from my inspection of the site, I consider the appeal site forms part of the residential planning unit, as it

¹ Notwithstanding, it may be possible to certify that the use of land for purposes incidental to the enjoyment of a dwellinghouse is not development where it is within the curtilage of a dwellinghouse because such a use does not involve development of the land by virtue of section 55(2)(d) of the Act.

comprises a single unit of occupation with one primary use, where any other activities are incidental or ancillary.

12. The main thrust of the appellant's case is that they have been using the land as a garden since 2009. This appeal will therefore turn on whether the appellant can show, on the balance of probability, that the use of the land for purposes incidental to the residential use of Rodwin (as residential garden) began on or before 24 October 2013 and continued for a period of at least 10 years without significant interruption thereafter.
13. The appellant has provided a statutory declaration, which states that they fenced the land in and had it graded and laid to lawn in April 2009 and have used it as part of their garden ever since, for ball games and recreation by their family and friends. They state that the land is mowed regularly and is used for playing with their dog. In support of their case, the appellant has provided a letter, dated 1 February 2005, from the appellant to the site manager of the Allscott Sugar Factory, which suggests the appeal site is within their ownership (the appellant's). A letter of reply, dated 7 March 2005 from British Sugar, agrees that the land has been previously conveyed and suggests the appellant arrange to install fencing to enclose the area and make their own access arrangements.
14. A Google Streetview image, dated April 2009, shows that, by this point, the area has been enclosed, the grass is neatly cut and play equipment (goal post) is present. This is consistent with the appellant's statutory declaration and a statutory declaration provided by a friend of the appellant, who states that their husband built an extension at the property around 2007 and used the land for construction access and that in 2009 it was graded and laid to lawn for use as part of the appellant's garden. A photograph dated 19 April 2009 is submitted as part of the statutory declaration and shows the area to be enclosed with the grass neatly cut.
15. A photograph, dated 4 June 2010, shows the land is still well maintained, with the grass neatly cut and shows individuals playing a game of what appears to be rounders. The photograph is supported by a statutory declaration of an individual who states they have visited the site and regularly cycle past it, and that the area has not changed its appearance and is still being used for playing with their dog.
16. A Google Streetview image, dated June 2011 also shows the area to be well maintained and is consistent with the use of the land as a residential garden. Photographs dated 25 April 2013 and 12 November 2014 show the land to be fenced off and to maintained, with the grass cut short. A photograph, dated 1 July 2016, shows the site is still well maintained, with a rabbit using the land. Photographs dated December 2017, 30 June 2018 and 31 July 2018 similarly show what appears to be a well maintained site, which has been fenced off. Photographs dated 4 November 2021 and 22 May 2022 both show the land fenced off, and a dog present.
17. While people and/or animals are not visible in all of the photographs provided, the well-maintained appearance of the land is consistent with the appellant's suggestion that they regularly mow the land. Although non-residential land has to be maintained, the appellant's gardening activities are likely to have been carried out incidentally to the residential use of the dwelling-house and support the appellant's case that it has been used as part of their residential garden for more than 10 years.

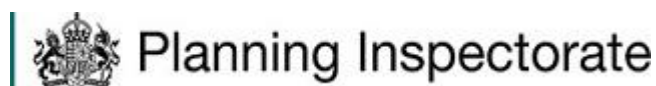
18. From the evidence it seems likely that the appeal site has been fenced off since April 2009, and has been used by the appellant for purposes which are incidental to their enjoyment of the dwellinghouse, Rodwin. Significantly, there is no evidence to show it has been used for any other purpose since April 2009, or to contradict the appellant's case that the land has been used as residential garden for more than 10 years at the date of the LDC application.
19. The Council states that it is not satisfied that there is sufficient evidence to demonstrate 'beyond reasonable doubt' that the appeal site has been used as private garden land for a continuous period of time of 10 years or more. However, 'beyond reasonable doubt' is the criminal standard. While the Council goes on to conclude 'on the balance of probability', this raises concern that the correct test has been applied. As set out above, the civil standard should be used in an application for a lawful development certificate.
20. Taking the evidence together, in my view, it shows, on the balance of probabilities, that the use of the land for purposes incidental to the residential use of the dwellinghouse known as 'Rodwin' was immune from enforcement action by the date of the LDC application.

Conclusion

21. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for use of the land for purposes incidental to the residential use of the dwellinghouse known as 'Rodwin' is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

M Savage

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 24 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:

It has been shown, on the balance of probabilities, that the land has been used for purposes incidental to the residential use of the dwellinghouse known as 'Rodwin' for at least 10 years, without significant interruption and was therefore immune from enforcement action at the date of the application.

Signed

M Savage

Inspector

Date: 18 September 2025

Reference: APP/C3240/X/24/3343388

First Schedule

Use of the land for purposes incidental to the residential use of the dwellinghouse known as 'Rodwin'.

Second Schedule

Land at Rodwin, Meadow Drive Junction to Admaston Junction, Allscott, Telford TF6 5EQ

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: 18 September 2025

by **M Savage**

Land at: Rodwin, Meadow Drive Junction to Admaston Junction, Allscott, Telford TF6 5EQ

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Scale: Not to Scale

