



Appeal Decision

Site visit made on 22 July 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2025

Appeal Ref: APP/E3335/X/23/3328735

Winterwell Farmhouse, Winterwell Lane, Chesterblade, Shepton Mallet, Somerset BA4 4QZ

- 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 Mrs Anna Green against the decision of Somerset Council.
 - The application ref 2023/1125/CLE, dated 17 June 2023, was refused by notice dated 23 August 2023.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is described in the application form as the 'Erection of a C3 dwelling not in compliance with 112363/005'.
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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 operation which is found to be lawful.

Preliminary Matters

Main Issue

2. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue is whether the Council's decision to refuse to grant a LDC is well founded.
3. The test of the evidence is on the balance of probability and the onus of proof is on the appellant.

The development subject of the appeal and the main considerations

4. Section 191(1) of the 1990 Act sets out the three matters for which an LDC application may be made. An LDC application may be made to ascertain whether any of these three matters are lawful. These matters are, in short (a) any existing use of buildings or other land; (b) any operations which have been carried out in, on, over or under land; and (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted.
5. The matter for which the LDC is sought is described in the application as the 'erection of a C3 dwelling not in compliance with 112363/005'. I note the Council's

decision to refuse to grant the LDC and I understand how such a decision might come from the description given in the LDC application form. Whether or not a dwellinghouse has been constructed in compliance with a planning permission might be relevant to the determination of an LDC application. This matter does not, however, fall within one of the matters specified in section 191(1) of the 1990 act for which an LDC application may be made.

6. It is clear from the application form that the matter that is the subject of the application is development comprising the erection of a dwellinghouse. This falls within section 191(1)(b) of the 1990 Act. Accordingly, and having regard to the provisions of section 191(4) of the 1990 Act, I will determine the appeal on the basis that the development for which the LDC is sought is the erection of a dwellinghouse, falling within Class C2 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended.
7. Section 191(2) of the 1990 Act informs that:

‘For the purposes of this Act uses and operations are lawful at any time if:

 - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force’.
8. Having had regard to the case made by each party, there appears to be no dispute that the development comprising the erection of the dwellinghouse is lawful within the meaning of section 191(2). I say this because it is the appellant’s case that the development is lawful because the dwellinghouse was erected without the benefit of planning permission (i.e. in breach of planning control), but that the time for enforcement action against this breach of planning control has expired. On the other hand, it is the Council’s case that the development is lawful because the dwellinghouse was constructed with the benefit of the planning permission.
9. Accordingly, it is clear that the main dispute between the parties is not whether or not the development in question is lawful. The main dispute is the reason why the development is lawful. Nevertheless, I must determine the appeal considering whether or not the development comprising the erection of a dwellinghouse was lawful on the date the LDC application was made. However, I will, of course, set out in my decision the reasons for my conclusion and I will also specify these reasons in any certificate I may grant.

Reasons

10. I note that two planning permissions have been granted for the ‘erection of an agricultural workers dwelling’ on the appeal site. The first, reference 112363/004, was approved on the 30 January 1998 (referred to hereafter as the 1998 permission). The second, reference 112363/005, was approved on 16 December 1999 (hereafter referred to as the 1999 application and the 1999 permission). The appellant says that the 1999 permission was granted for a larger dwelling than that approved in 1998. There is also a difference in the layout between the two.

11. I note that a breach of condition notice has been issued by the Council that refers to a breach of a condition of the permission granted in 1998. The appellant suggests that reference to the 1998 permission in this notice was an error. Whilst the Council does not say whether or not this is correct, it has referred to the 1999 permission in making its case that the dwellinghouse has been constructed with the benefit of planning permission. I will, therefore, take from this that there is no dispute that the development does not have the benefit of the 1998 permission.
12. The appellant provides a number of reasons why she says that the development does not have the benefit of the 1999 permission. I summarise these as follows:
- The development has not been constructed in accordance with the plans approved by reason of the 1999 permission;
 - The dwellinghouse was constructed with an associated garden that was greater in size than that approved by reason of the 1999 permission;
 - Certain conditions of the 1999 permission were 'condition precedent' conditions and these have not been discharged.

Compliance with the approved plans

13. The 1999 permission was not granted with a plans condition that is usually now common place on a planning permission. Whilst certain plans I have been provided with are referred to in the decision notice, there is no express requirement to carry out the development in accordance with these plans. Nevertheless, to understand whether or not the development carried out on site has the benefit of the 1999 permission, it is appropriate to have regard to the plans submitted with the application.
14. There is no dispute that the location of the dwellinghouse does not accord with the location plan submitted with the application subject of the 1999 permission. I note the plan number JR-1991A-01, submitted by the appellant, which suggests the position of the dwellinghouse as constructed and the position as approved. What this drawing shows is not disputed by the Council.
15. The appellant suggests that the dwellinghouse is located some 4.5 metres southwest of its approved location. She suggests that the difference cannot be 'de minimis' or within the minor tolerances that would mean that it would fall to be regarded as a non-material minor amendment for the purposes of section 96 of the 1990 Act. I have not, however, been pointed to any guidance or statute that defines what is to be regarded as a material or a non-material difference between one scheme of development and another. To my mind, whether works have been carried out in accordance with a relevant planning permission is a matter of judgement. I note the appeal decisions referred to by the Council, all of which indicate that the context of the overall scheme is important to that judgement.
16. With the above in mind, whilst I have no reason to doubt the 4.5 metre shift in the footprint of the as built dwellinghouse, I note that there is still some considerable overlap between the dwellinghouse as built and the footprint of the approved location. Furthermore, the dwellinghouse as constructed almost mirrors the layout and dimensions shown on the plans and its orientation is also in accordance with that of the footprint shown on the site layout plan. Given the location of the dwellinghouse, fairly remote from other buildings and set fairly centrally within a

substantial garden, it would be particularly difficult to detect the difference between the location of the as built scheme and that approved. Indeed, the services of a chartered surveyor have been employed in order to detect these differences.

17. Notwithstanding the above, the evidence indicates that the size, internal layout and external appearance of the dwellinghouse constructed on site is broadly in accordance with the plans approved by reason of the 1999 permission. The appellant points to the addition of two modestly sized windows in two separate elevations of the building and the omission of a small window within the side elevation. Having regard to the number of window openings in the building, and the location and size of the windows added, the difference in the fenestration is of little effect in this case.
18. Having regard to the development as a whole and the context of the site, I am not persuaded that the differences between what has been constructed and what was approved are such that the dwellinghouse falls outside of the confines of the planning permission granted.

The plot

19. The appellant refers to the 'planning unit' she says was granted by reason of the 1999 permission and points to the differences between the boundary of the applications site shown on the site location plan submitted with the 1999 application and the boundary within which the dwellinghouse was constructed.
20. The planning unit is a concept ordinarily used as a means of determining the most appropriate physical area used for a particular purpose and against which one can assess the materiality of a change in use. I can agree that the appeal site is a planning unit used as a dwellinghouse with associated garden. A planning unit is not, however, approved with the grant of planning permission. Instead, it is something that might result from the implementation of a planning permission.
21. What was approved in 1999 was the construction of a dwellinghouse and, as a consequence of this, a material change of use of the land to a residential use. I can agree that, in this case, the site location plan defines the extent of land for which planning permission has been granted for a change of use. Whilst more land than this was enclosed with the dwellinghouse when it was constructed, this only signifies that there was a material change of use of land (i.e. the land falling beyond the 1999 application site boundary) for which planning permission had not been granted. Whilst there might have been a breach of planning control on this land, the use of the remainder of the appeal site (i.e. the land that falls within the 1999 application site boundary) for residential purposes would still have had the benefit of the 1999 permission.
22. I am not, therefore, persuaded that the above breach of planning control would have rendered the development in its entirety unlawful.

The conditions of the 1999 permission

23. The appellant suggests that conditions 3, 6 and 10 of the 1999 planning permission are 'condition precedent' conditions. There appears to be no evidence that the conditions referred to were ever discharged. If the development is carried out in contravention of a condition precedent, then it cannot properly be described as having commenced or been carried out in accordance with the planning

- permission. For a condition to be a condition precedent, it must expressly prohibit any development taking place before a particular requirement has been met and the condition must go to the heart of the planning permission.
24. I am satisfied that all three of the conditions expressly prohibit any development on the site before the submission and approval of details of materials and samples of materials (condition 3); details of hard surfacing (condition 6); and sewerage disposal and surface water drainage (condition 10).
25. With regard to conditions 3 and 6, the reasons for these given in the decision notice are in the interests of the character and appearance of the development and the surrounding area. I acknowledge that the materials to be used in the construction of the dwellinghouse and the associated hardstandings would have been an important element of its design. Ensuring that the materials used are in keeping with the local vernacular is as important in this location as it would be in, say, an urban environment. It has not, however, been suggested that the dwellinghouse is in a sensitive location where particular attention is required for the design of buildings and pallet of materials. For example, I have not been advised that the building is in a conservation area or in the setting of a listed building.
26. Turning to the report prepared in respect of the 1999 planning application, I can see that a large part of the analysis deals with the justification for the dwellinghouse in this rural location. This was clearly a fundamental issue and I have no doubt that the condition that controls the occupation of the dwellinghouse penetrates the heart of this permission. That said, it is not a condition precedent as it does not prohibit any development taking place before a particular requirement has been met. The design of the building has been considered under the title 'Normal Planning Requirements' in the report. Unlike the consideration of the justification for the dwellinghouse, the materials to be used in the dwellinghouse and hard surfacing are given very little analysis. Whilst important, it was clearly not a fundamental matter.
27. Furthermore, although required by the conditions to be submitted before any development starts on the site, I see no reason why the submission and approval of such details would have been necessary prior to, for example, the foundation works.
28. As for condition 10, the reason for this condition is to protect the quality of the water environment. Again, there is little analysis of the means of foul and surface water drainage in the report, suggesting that this also was not a fundamental matter. The letter on the file from the Environment Agency does not suggest that there is any particular issue relevant to the matter of site drainage in the area.
29. My understanding is that the proposal was for foul water to drain to an existing septic tank, which it appears that both the Environment Agency and the Council's building control officers were satisfied with. Accordingly, the submission of details of sewerage disposal does seem unnecessary.
30. That foul water is drained to the septic tank and kept separate from surface water is, however, clearly a necessary requirement. I acknowledge that it would have been desirable to understand the means of achieving this prior to the commencement of any works. However, in this case, and given the proposal to connect foul drainage to an existing system, I do not consider it so fundamental that

such information was submitted to and approved prior to the commencement of the foundation works for the dwellinghouse.

31. In an advisory note, the decision notice indicates that failure to comply with the 3 conditions referred to 'may render the development unauthorised and liable to enforcement action'. I acknowledge what is implied by this and that this adds weight in favour of the appellant's case with regard to the status of these conditions. It does not, however, change the way that these matters were considered by the Council in its officer report. Balanced against this, and for the reasons given above, I am not persuaded that conditions 3, 6 and 10 of the 1999 planning permission are true conditions precedent. Accordingly, any failure to comply with these conditions does not mean that the development has been carried out otherwise than in accordance with the 1999 planning permission.

Other Matters

32. I have been given no other reason to conclude that the dwellinghouse on the appeal site does not have the benefit of the 1999 planning permission. As there is no usual plans condition on the 1999 permission, the failure to carry out the development in accordance with the plans does not mean that the development has been carried out in breach of a condition. That other of the conditions of the 1999 permission may have been contravened, including those mentioned above, does not mean that the development does not have the benefit of that permission. Furthermore, I have been given no other reason to conclude that the dwellinghouse on the appeal site is not lawful.

Summary

33. For the reasons given above, I conclude that, on the balance of probability, the dwellinghouse was constructed with the benefit of the 1999 planning permission. It therefore follows that the development comprising the erection of a dwellinghouse was lawful for the purposes of section 191(2) of the 1990 Act on the date that the LDC application subject of the appeal was made. Whilst this means that I will find the Council's decision to refuse to grant an LDC is not well founded, my reasons for doing so are in agreement with the case made by the Council.

Conclusion

34. In view of my findings above, I must conclude that the Council's refusal to grant a certificate of lawful use or development for the development comprising the erection of a dwellinghouse 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. However, in doing so I will make clear the reason for the grant of the certificate.

J Moss

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 17 June 2023 the operation 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 is more likely than not that the dwellinghouse was constructed with the benefit of the planning permission granted by reason of the planning application reference 112363/005, which was approved on 16 December 1999.

Signed

J Moss

Inspector

Date: 10 October 2025

Reference: APP/E3335/X/23/3328735

First Schedule

The erection of a dwellinghouse falling within Class C2 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended.

Second Schedule

Winterwell Farmhouse, Winterwell Lane, Chesterblade, Shepton Mallet, Somerset
BA4 4QZ

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 operation described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date

Plan

This is the plan referred to in the Lawful Development Certificate dated: 10 October 2025

by J Moss

Land at: Winterwell Farmhouse, Winterwell Lane, Chesterblade, Shepton Mallet,
Somerset BA4 4QZ

Reference: APP/E3335/X/23/3328735

Scale: Not to Scale



