



Appeal Decision

Inquiry held on 29 October 2025

Site visit made on 29 October 2025

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2025

Appeal Ref: APP/Y9507/X/25/3368430

Coloured Ponds, Rogate, PETERSFIELD, GU31 5DL

- 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 Kendra Whittock against the decision of South Downs National Park Authority ('SDNPA').
 - The application ref SDNP/25/01448/LDE, dated 1 April 2025, was refused by notice dated 24 June 2025.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) ('the Act').
 - The use for which a certificate of lawful use or development is sought is the building has been occupied as an independent dwelling in excess of 4 years.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use describing the existing use which is found to be lawful.

Application for costs

2. An application for an award of costs was made by the SDNPA against the Appellant. This is the subject of a separate decision.

Procedural Matters

3. Save for where the parties set out their arguments in respect of the planning unit, all the evidence I heard was given under oath.
4. The description of the use on the application form was different than that on the decision notice. The parties agreed in the Inquiry that either might be used and, as I find it is clearer and more succinct, I use that from the latter document on the attached certificate.

Main Issue

5. The main issue is whether the decision by the SDNPA to refuse to issue a certificate was well-founded.

Reasons

6. S191(1)(a) provides the process by which an application can be made to a planning authority by any person who wishes to ascertain whether any existing use of buildings or other land is lawful. Where such an application is refused, s195 provides the route for an appeal to be made to the Secretary of State. The onus is

on the appellant to make their case on the balance of probabilities. Where a planning authority does not have any evidence of its own to counter the claims made by an appellant, the latter's evidence has to be sufficiently precise and unambiguous.

Appeal Site and Planning Unit

7. Coloured Ponds lies in the open countryside, in a location that feels quite remote. Access from the public highway is via a track that leads to a parking area for customers using the fishing ponds that give the site its name. From there, the track passes through a secured gate, to run alongside the ponds to reach the building in which the flat has been formed. Planning permission was granted for the erection of the building by a decision by the SDNPA in 2012¹.
8. As the appeal relates to the use of land, it is firstly necessary to identify the planning unit. The importance in identifying the correct planning unit lies in the differing periods for which the Appellant would need to demonstrate continuous use at the date of the application. If the building were held to be in two separate uses, ancillary to the fishing lakes and as a dwelling, the period would be four years. Were it be found that the building was in a mixed-use of the two, then the period would be ten years.
9. The parties agreed that defining the planning unit should follow the terms of the judgement in *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207. This held that the concept of physical and functional separation is key, and that there are three broad categories of planning unit: a single unit with one primary use where any other uses are ancillary or incidental; a single planning unit that is in a mixed use where there are two or more activities that cannot be held to be ancillary or incidental to one another; and a unit of occupation that comprises two or more physically separate areas which are used for different and unrelated purposes, where each area should be counted as a separate planning unit.
10. The track leads to a parking area at what I shall call the front elevation of the building, which is fairly large with walls and a roof clad in profiled steel. This elevation has a pedestrian door and window in it. In front of this, adjacent to the parking area is an area of mown grass, in which a small fishpond has been created, and next to which were a table and chairs. The side elevation facing the lakes does not have any openings, whilst there is a timber balcony at first floor level on the other side elevation. There is a parking and storage area at the rear of the building; that elevation has a large roller door set into it.
11. The building is divided internally by a uPVC wall. The greater part of the building is open to the roof and is used for the storage of equipment and vehicles used in the management of the fishing lakes and surrounding land. Access to this area comes from two points. The larger, primary access is through the roller shutter door, whilst a pedestrian door in the uPVC wall provides a link to and from the remaining, smaller part of the building.
12. The interior of the smaller part of the building, which is also accessed via the door on the front elevation, has two floors. At ground level is a toilet and shower room and an open area. In the latter I saw that a lot of fishing equipment was kept, along with, amongst other domestic items, a games table. A flight of stairs leads to an

¹ RG/12/00189/FULNP

open-plan kitchen-lounge area, a bathroom and a bedroom. A door set into the uPVC wall at first floor level gives access to a raised mezzanine area, open to the large storage area, which is used for domestic purposes. This raised area gives access to the external balcony on the side elevation. The smaller area of the building is clearly a dwelling, providing the facilities required for day-to-day private domestic existence.

13. Notwithstanding its connecting door, which the SDNPA described as giving a degree of “interconnectivity” and “permeability”, I find that the uPVC wall provides a significant degree of physical separation between the two areas of the barn. Although the mezzanine area is open to the storage area, it is a few metres above the latter’s floor level and has no physical connection with it.
14. The evidence shows that the Appellant’s son is not employed by the fishing lake business. He has worked full-time for 9 years, including as an apprentice, as a JCB mechanic; work which takes him to jobs in Hampshire, Sussex, Kent and London. However, both the Appellant and her son stated that he provides periodic, unpaid assistance to her business on an “as and when” basis. This included such jobs as sawing and clearing fallen trees. Both agreed that his presence on the site at night provides a degree of security for the business.
15. The flat is in the Appellant’s ownership, though no rent is charged. Both she and her son have keys to the two doors that give access to the flat. In addition, both keep their extensive collection of fishing equipment in the ground floor area of the flat. This is, at times, used by customers of the business but both said the equipment belonged to them personally. It is not unusual for the owner of a tenanted property to have a key to that property, nor is it unusual for a mother to have a key to a son’s home. That she keeps her fishing equipment in this part of the building makes it less surprising that she has a key. I find that neither her having a key, nor the periodic use of personal fishing equipment by the lakes’ customers, equate to the building being in a mixed use. I find that the two elements of the building are functionally separate.
16. The SDNPA had no evidence of its own to counter what had been said, and its position on the planning unit was equivocal. It agreed, in the Statement of Common Ground, that the flat was a separate planning unit. However, Mr Price’s oral evidence was that the building might be read as being in a mixed use. When I asked him to specify the SDNPA’s position, he told me that it “had no definite position on a mixed use”.
17. Given the above, my finding is that the building is not in a mixed use. The dwelling is a planning unit in its own right, separate from the use of the remainder of the building and land at Coloured Ponds.

18. Prior to his occupation, the fishing lakes business was run by the Appellant and her father. He had used the smaller area of the barn for purposes ancillary to the business. At times, he had stayed overnight in this area but the Appellant made no claim that this had amounted to a residential use separate to the business use. Soon her father's departure from the business in early February 2020, the Appellant's claim is that her son moved in.

Use of the flat

19. Given my finding on the planning unit, it follows, using the time limits in section 171B of the Act, that it is necessary for the Appellant to demonstrate that the flat has been continuously used for a period of four years ('the relevant period'). As her application was dated 1 April 2025, it follows that the relevant period would have to have commenced by 1 April 2021.
20. In the hierarchy of evidence, it is generally accepted that evidence that is given orally under oath by a witness, and tested by cross-examination, carries substantial weight. Below this, though still carrying great weight, is the submission of a statutory declaration ('SD'). Less weight will be attributable to unsworn letters. Here, the Appellant's son made a SD in support of the Appellant's certificate application. Both he and the Appellant spoke to the SD at the Inquiry.
21. Within the SD, the Appellant's son says that "For more than 4 years and until the present-day [the document was dated 17 March 2025] independent dwelling accommodation within the building as confirmed by the evidence within this statement has been continuously occupied by myself as a self-contained dwelling without any intervening uses".
22. Whilst it acknowledged that corroborative evidence is not necessarily required to prove a claimed use, in its Closing Submissions the SDNPA referred to an excerpt from the case of *Mumtaz Properties Ltd* [2011] EWCA Civ 610. Although I was not presented with a copy of the whole judgement, the Judge's comments on the importance of contemporaneous written documentation and, for that matter, its absence when it is shown to have existed, is readily understandable.
23. However, save for being told that it related to the liability of a company's officers, I am unaware of the details of the case. I know nothing of the complexity of the arguments in that case nor the length of time that the evidence covered. To my mind, where the issues are complex and the evidence covers a considerable period of time, the importance of contemporaneous written evidence increases as memories can often become diminished or mistaken. Here, however, the substance of the case is a single, straightforward matter and the relevant period is quite short and was quite recent.
24. In the light of the approach in *Mumtaz*, I can understand how the SDNPA found the evidence to be imprecise and ambiguous at the application stage. However, although no new documentary evidence was brought forward, the evidence of the SD was expanded upon in the oral submissions.
25. After giving their Evidence in Chief, the Appellant and her son were subject to detailed and rigorous, though entirely fair, cross-examination (x-x). Their responses were delivered openly, clearly and precisely and without undue hesitation. There were times when one or other did not know an answer and admitted this. They also conceded points put to them in x-x, such as where the

Appellant's son agreed that phone and bank records might have been provided, a position that was in contrast to what he said in his SD. Those concessions were not fatal to the Appellant's case, and I found them both to be credible witnesses.

26. Thus, I disagree with the SDNPA position in its Closing Submissions that, as it lacked supporting documentary evidence, "the oral evidence is not credible and should not be given any real weight".
27. Mr Price delivered his evidence in the same clear, open manner. However, as he agreed, he had no evidence to contradict what was being claimed by the Appellant.
28. From the totality of the evidence presented to me, I find, on the balance of probability, the manner in which the building has been used to be as follows. Until 3 February 2020, the Appellant and her father ran the fishing lake business. At that time, as evidenced in a text message, her father left the site and business and played no further role in either. Save for odd occasions when her father stayed overnight, there was no claim of a residential use on the site before that date.
29. The Appellant told the Inquiry that soon after her father had left, her son moved to the fishing lake. He, too, said this. At that time, there was a shower room and toilet downstairs, with the upstairs described as a "shell", within which there was a toilet and a kitchen that had an oven, fridge, sink and cupboards. Her son vividly recalled decluttering and cleaning both floors when he moved in. In particular, he said that the downstairs area, where his grandfather had kept a fox, required "chemical cleaning". Initially, he slept on a mattress on the floor and used the facilities as they were at that time.
30. In his x-x, Mr Price agreed that this accommodation was more than might be found in a mess room related to the lakes. I find that at that time the flat had the facilities required for day-to-day private domestic existence and, thus, was a dwelling throughout the relevant period.
31. Over time, her son made improvements to the accommodation including decorating it, providing additional shelving in the kitchen and installing a bath upstairs. The latter he clearly recalled was because his girlfriend wanted one and he found having a bath to be beneficial after playing rugby. A photo shows that, by December 2021, a bed that he had made from recycled materials was in the flat's bedroom.
32. Neither that photograph, nor the others in the SD, show that the residential use was carried out continuously for four years. It is the same with the BT bill dating from February 2020, which is the most up-to-date piece of documentary evidence, and the undated taxi receipt. I give them little weight in my assessment. None of this evidence of itself takes the Appellant's case forward to any meaningful degree. Similarly, I give little weight to the letter from a neighbour, who did not attend the Inquiry, which states that the flat has been occupied as a separate self-contained dwelling for more than four years. My reason for this is that he admits to have only been into the dwelling "occasionally" and "from time to time".
33. An appeal decision² from a site in Essex and a planning officer's report into an application for a certificate of lawfulness in Surrey have some similarities with the

² APP/X1545/X/11/2147310 – Stitches Farm Chelmsford

case before me. However, what they mostly demonstrate is that each proposal will differ and decisions will turn on case specific circumstances. Therefore, I attribute little weight to these.

34. The Appellant acknowledged that evidence from sources such as council tax receipts, utility bills and electoral roll records might have furthered her case. However, in the circumstances of this appeal I do not find that their absence weighs heavily against it. Similarly, although I agree with the SDNPA that there must be third parties that might have attended the Inquiry to support the Appellant's case, again this should not weigh against her position. The requirement, as set out in the Government's Planning Practice Guidance³, is that the Appellant's evidence has to be sufficiently precise and unambiguous.
35. The evidence given by the Appellant and her son under oath was compelling. I found it to be sufficiently precise and unambiguous. Taken holistically, I find that the Appellant's case reached the required threshold.

Conclusion

36. 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 in respect of the use of part of the barn as a separate self-contained dwelling 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.

R Curnow

INSPECTOR

³ Paragraph: 006 Reference ID: 17c-006-20140306. Revision date: 06 03 2014

APPEARANCES

For SDNPA:

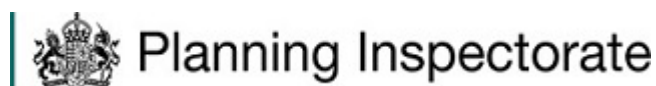
Harley Ronan	Barrister, Landmark Chambers (Instructed by SDNPA)
Derek Price	Principal Planning Officer SDNPA
Marie Kent	Planning Officer SDNPA (Observer)
Mike Coates-Evans	Chichester District Council (Observer)

For the Appellant:

Phil Rowe	Agent/Advocate
Mrs Kendra Whittock	Appellant
Karter Whittock	Witness

DOCUMENTS

SDNPA - Opening and Closing Statements
Application form, decision notice and plans for application RG/12/00189/FULNP



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 29 April 2025 the use of part of the barn as a separate self-contained dwelling described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black 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 demonstrated on the balance of probability, using evidence that is sufficiently precise and unambiguous, that the use described in Schedule 1, below, had been carried out continuously for a period of four years when the application was made to the South Downs National Park Authority.

Signed

R Curnow

Inspector

Date: 26 November 2025

Reference: APP/Y9507/X/25/3368430

First Schedule

Use of part of the barn as a separate self-contained dwelling

Second Schedule

Land at Coloured Ponds, Rogate, Petersfield GU31 5DL

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: 26 November 2025

by R Curnow

Land at: Coloured Ponds, Rogate, Petersfield GU31 5DL

Reference: APP/Y9507/X/25/3368430

Scale: Not to Scale

