



Appeal Decision

Site visit made on 29 November 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 18th December 2025

Appeal Ref: APP/D0840/X/23/3324825

Land West of Kestle Mill Farmhouse, Kestle Mill, Newquay TR8 4PJ

- The appeal is made under section (s) 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 Brian Cave against the decision of Cornwall Council.
- The application Ref PA22/05076, dated 30 May 2022, was refused by notice dated 19 April 2023.
- The application was made under s191(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
- The use for which a certificate of lawful use or development is sought is described in the application form as follows: Use incidental to the residential use of the associated dwelling house.
- An application for costs is made by the appellant against the Council. That is the subject of a separate Decision.

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 found to be lawful.

Reasons

2. In this appeal, the onus of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence 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, provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability.
3. The nub of the appellant's argument is a simple one, namely, the area outlined in red on the LDC application site plan¹, which I refer to hereinafter as "the LDC site," has, at the date of the application, been in an incidental use linked to the residential use of the main dwellinghouse. The claim is that the incidental residential use of the LDC site is immune from enforcement action because the change was instituted on or before the relevant date, which is 30 May 2012 and that use continued thereafter without significant interruption. They rely on the operation of s171B sub (3)². The argument is that the existing use of the LDC site for residential purposes incidental to the residential use of the dwellinghouse is lawful, which has a specific meaning in law³. For convenient shorthand, I will refer to this as the "incidental residential use".

¹ Outlined in red on the site location plan reference CAV LP 22 05 11 A.

² This explains that in this type of case, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

³ Section 191(2) of the Act explains that development is lawful at any time if - (a) no enforcement action may then be taken in respect of it, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force.

4. On the other hand, the Council essentially argues the evidence failed to demonstrate that the LDC site's incidental residential use began on or before the relevant date and continued thereafter for a period of *more than* 10 years before the date of this application. My emphasis above highlights an error because any 10-year period can count towards immunity and, in any event, I consider that the approach taken by both parties is fundamentally flawed.
5. As the Court found in *O'Flynn*⁴, there are two alternative routes by which it is possible to establish that an incidental residential use of a site was lawful (assuming that a claimant was able to establish that an incidental residential use was in existence at the relevant time). The first route was to establish that, at the date of the application, no enforcement action could be taken in respect of an existing incidental residential use within the curtilage of the dwelling house because, by virtue of the exception in s55(2)(d) of the 1990 Act, it did not constitute "development". The second route was to establish that no enforcement action could be taken in respect of an existing incidental residential use because the 10-year time limit for enforcement action had expired.
6. As I have said elsewhere, the appellant relies on the operation of the time limit to prove lawfulness, but both parties refer to the LDC site as curtilage – therein lies the confusion. The first lesson to take is that the concepts of the curtilage and planning unit are distinct and separate; they should not be confused. The planning unit is a concept evolved as a means of determining the most appropriate physical area against which to assess the materiality of change in the use of land. The mere fact that the appeal site physically adjoins the curtilage, and is in the same ownership, does not automatically mean that it is/not curtilage land. Curtilage defines an area of land in relation to a building and not a use of land.
7. The leading authority on planning unit is the case of *Burdle*⁵. Starting with the unit of occupation, the assessment turns on the concept of physical and functional separation. In *Burdle*, Bridge J (as he then was) suggested three broad tests for determining the appropriate planning unit. The assessment is a matter of fact and degree, and as a useful working rule, it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.
8. Applying those principles to Kestle Mill Farmhouse, it is a detached dwellinghouse that sits in a spacious and landscaped plot. The full extent is illustrated in drawing ref: Cav LP 22 05 11 A and includes the LDC site. The latter is located roughly to the west of the house. Although the appellant's land includes different parcels separated by landscaped features, it is reasonable to treat all the land under the same ownership as a single planning unit.
9. However, given the evidence about the land's past use, it is incorrect to ascribe a residential use to the whole planning unit because the LDC site had a different purpose and was agricultural in appearance and quality albeit the land probably had a nil use when the appellant purchased the property in about 2009. My analysis is that when the appellant acquired Kestle Mill Farmhouse, the unit of occupation comprises a mixed residential and agricultural use. That approach is broadly consistent with the third situation identified in *Burdle*. The change in use of the LDC site from agricultural or nil

⁴ *O'Flynn v SSCLG & Warwick DC* [2016] EWHC 2984 (Admin).

⁵ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

use to incidental residential use would constitute development unless the latter falls within the curtilage to the dwellinghouse.

10. The second lesson is to focus on what is applied for and not to be distracted by arguments about the residential curtilage. In this case, the evidence needs to show the incidental residential use of the LDC site commenced on or before the relevant date and continued thereafter for a period of 10 years. When assessing an incidental residential use, it is important to consider the nature and type of activities or uses of the land on a case-by-case basis.
11. The Council refers to past aerial images of Kestle Mill Farmhouse complex covering 2005, 2009 and the period between 2017 and July 2022. It also supplied Google Streetview images for July 2009, October 2010 and June 2019. The nub of the argument is that none of this evidence appears to show use of the LDC site for residential purposes. The Council refers to a gap in the hedgerow permitting access to the LDC site but disagree with the appellant's version of the events and state that the existence of a single picnic table does not constitute nor establish an incidental residential use of the LDC site.
12. I have reviewed and carefully considered the written submissions and bundle of evidence. Although a snapshot in time, on balance, I attach limited weight to the photographic exhibits tendered in evidence to contradict the appellant's version of the events. The images are an incomplete record of the area and street scene. In any event, this type of information does not necessarily contradict the claim that the LDC site was occupied and used for residential purposes by the family. It seems to me that the images support the appellant's claims that, since at least 2009, the LDC site has been regularly mowed and maintained as an extended garden, which is acknowledged by the Council. I too observed that the texture, strength and overall quality of the grass seem to indicate regular maintenance.
13. To my mind, the quantum of the evidence presented supports the claim that the LDC site's use was linked to the occupation of the main dwellinghouse since the appellant acquired the land. The bundle includes properly drafted and executed statutory declarations. I find the sworn testimony to be accurate and complete and attach greater weight to it. It clearly states that since 31 December 2009 the nature and type of activities carried out includes use by family and friends for social gatherings like the holding of barbeques, sitting out on or just simply enjoyment and relaxing, and outdoor recreation including exercising dogs. Activities include regular maintenance and planting of ornamental flowering bushes and several fruit trees and privet hedges.
14. My analysis and assessment of the evidence presented reveals no contradictions and I find that the quantum of documentary information meets with the balance of probabilities test. I am not persuaded by the arguments regarding the perceived inaccuracies with the description of the existing use in terms of nature or scale. The Council has not required the evidence to be subjected to cross-examination. In my judgment, the sworn testimony is consistent and is conclusive about the version of the events and the Council has no evidence of its own to cast doubt over the veracity of the incidental residential use of the LDC site.
15. The particular facts of this case are that the LDC site's existing incidental residential use is lawful at the date of the LDC application, due to the passage of time. As I have said

elsewhere and applying the judgment in *O'Flynn*, the appellant's case is made out because the character of the LDC site's use changed from previous agricultural to incidental residential use on or before the relevant date and it has been continuously used as such throughout the relevant period. Strictly speaking, the argument that, at the date of the application, no enforcement action could be taken in respect of an existing incidental residential use within the curtilage of the dwelling house because, by virtue of the exception in s55(2)(d) of the 1990 Act, it did not constitute "development" is irrelevant. That said, even if an alternative view prevails, I am not persuaded by the evidence presented that the LDC site falls within the curtilage to Kestle Mill Farmhouse.

16. There is no all-encompassing, authoritative definition of the term 'curtilage'. It derives from conveyancing law where it was and remains a term of art. The Permitted Development Rights for Householders: Technical Guidance (2019) defines 'curtilage' for Part 1 purposes as land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with extensive grounds, it may be a large or smaller area. There is considerable case law on the interpretation and application of the term, and the appeal parties refer to some of these relevant authorities. There is no need for me to repeat or summarise these judgments, because the appeal parties are aware of the leading cases.
17. That said, the earlier case law goes back to *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195 and *Methuen-Campbell v Walters* [1979] 1 QB 525. The line of judgments thereafter, and the findings therein, serve to illustrate that determining the curtilage is a matter of fact and degree based on the circumstances and evidence presented in each case⁶. To my mind, there is a common thread and that is that for land to fall within curtilage, the claimed curtilage land must be so intimately associated with the building, that it forms part and parcel of the building.
18. The use of land incidental to the enjoyment of a dwellinghouse is not determinative of land falling within curtilage: the LDC site may well be used as residential garden without being part of the curtilage to Kestle Mill Farmhouse. Curtilage does not need to be confined to a small area. Nevertheless, the use of more land for garden related purposes, than may previously have been the case, does not automatically mean that additional land falls within curtilage. In terms of the considerations of layout and function, proportionality may be relevant.
19. The dwelling is a detached building, but the LDC site extends over an extensive area and is set some distance from the area, and the area immediately around and about the building has an intimate association. When considered in the context of the dwelling, all the LDC site is not physically proximate to the dwelling – the further one protrudes into the western or northern parts of the LDC application site, the less intimate it appears. The land has been used as garden or for an incidental purpose linked to the residential use, but I consider that it lies some way off the dwellinghouse, and it is visually disconnected and separate.

⁶ For example, *Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council* [1983] 46 P&CR 399, *Dyer v Dorset CC* [1988] 3 WLR 213, *McAlpine v SSE* [1995] 159 L.G. Rev. 429, *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin), *Challenge Fencing Ltd v SSHCLG* [2019] EWHC 553 (Admin), *Skerritts of Nottingham Ltd v SSETR (No. 1)* [2000] EWCA Civ 60, *Lowe v First Secretary of State* [2003] EWHC 537 (Admin), and *Burford v SSCLG* [2017] J.P.L. 1300, and *Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd* [2020] EWHC 959 (Admin), [2021] EWCA 398, [2020] JPL 1359, and *Hiley v Secretary of State* [2022] (Admin) EWHC 1289.

20. In addition, the LDC site, especially the land to the north and west, appear as self-contained parcel. On the ground hedgerows and bushes form limited physical barriers demarking curtilage from other land under the appellant's ownership. Nonetheless, the extent of the area to the west described in the LDC site plan cannot be reasonably described as forming one enclosure with land attached to or immediately around and about the dwellinghouse. I find that the LDC site lacks a degree of association given the spatial and visual separation of the area from the building.
21. Curtilage may change over time. In this case, the identified characteristics weakens the actual and perceived relationship between the LDC site and land immediately around and about the dwellinghouse. It is reasonable to conclude that the size of the original curtilage was proportionate to the needs and function of this property. Conversely, taken together, the LDC site forms an expansive area. I am not persuaded that the size of the LDC site and its useful function in relation to the dwelling is proportionate to the size and function of that property. There is not an association between what is essentially an additional piece of garden and the dwelling. In terms of past and present ownership and use or function, there is a degree of connection between the LDC site and the dwelling.
22. I have taken into consideration the bundle of evidence including appeal decisions submitted in support by the agent, but, as I have already indicated elsewhere, each application must be considered on its individual merits. In my judgment and fatally for the agent's line of argument, the LDC site's association is not of such a close relationship or at such an intimate level that all the LDC site form part and parcel of the dwelling. In the circumstances and evidence presented, I find that *O'Flynn's* first route is not met.

Conclusion

23. As the notes attached to the LDC explain, the certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule. 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.
24. Ultimately, I have disagreed with the approach adopted by both appeal parties. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of existing use of incidental to the residential use of the associated dwelling house was not well-founded and that the appeal should succeed.
25. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

A U Ghafoor

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 30 May 2022 the matter described in the First Schedule hereto, constituting an existing use of incidental to the residential use of the associated dwelling house in respect of the land specified in the Second Schedule hereto and edged on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action may then be taken in respect of the use because the time for enforcement action has expired, and the use does not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

A U Ghafoor

INSPECTOR

Date: 18th December 2025

Reference: APP/D0840/X/23/3324825

First Schedule

Use incidental to the residential use of the associated dwelling house.

Second Schedule

Land edged as shown on the plan attached to this certificate and identified as Land west of Kestle Mill Farmhouse, Kestle Mill, Newquay TR8 4PJ

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 existing use 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.

This certificate applies only to the extent of the existing use as 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 referred to in the Lawful Development Certificate dated: 18th December 2025

by A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr

Land west of Kestle Mill Farmhouse, Kestle Mill, Newquay TR8 4PJ

Reference: APP/D0840/X/23/3324825

Scale: Not to Scale

LOCATION PLAN

Project: Use of land as garden
Location: Land west of Kestle Mill Farmhouse
Kestle Mill TR8 4PJ
Applicant: Brian Cave
Drawing no: Cav LP 22 05 11 A
Scale: 1:1250 @ A4
Produced by: Planix.UK Planning Consultants Ltd

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