



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2026

Appeal Ref: APP/N1730/X/24/3346097

Pond House, Church Lane, Dogmersfield, Hook, Hampshire RG27 8TA

- 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 Gary Martin against the decision of Hart District Council.
 - The application ref 24/00100/LDC, dated 11 January 2024, was refused by notice dated 1 May 2024.
 - 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 'use of land as garden associated with Pond House, Church Lane, Dogmersfield, Hook, Hampshire, RG27 8TA.'
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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 use which is found to be lawful.

Preliminary Matter

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the relevant date for determining whether the existing development is lawful, is the date of the application, and the parties have submitted sufficient evidence to understand the nature of the site given the dispute.

Main Issue

3. The main issue is whether the Council's refusal to issue an LDC was well-founded.

Reasons

Background and Statutory Framework

4. Planning permission was conditionally granted in 2011 for the change of use of a garage building at Ormersfield House to a dwelling, now known as Pond House. The approved plans have a red edge showing the residential planning unit created as a result of the change of use to only encompass the building and some land to the south. Accordingly, since planning permission was granted for the residential use of the broadly southern part of the appeal site, it is not necessary for me to consider this further.
5. Section 191(2) of the 1990 Act states that uses are lawful at any time if 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, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. Whilst it is necessary for the use to be existing on the date the application is made, as established by the court in the case of *Panton and Farmer v SSETR and Vale of White Horse DC [1999] JPL 461*, a use which was merely dormant or inactive could still be 'existing', so long as it had not been extinguished by evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use.
7. However, an unauthorised use must continue throughout, in this case, the ten-year period¹ before it can achieve lawfulness, although some minor interruption will not normally be 'fatal' provided it is not significant.

The appellant's evidence

8. In addition to those submissions made in respect of appeal reference APP/N1730/X/21/3288009, the appellant submitted statements of truth and statutory declarations from themselves, the previous owner of Ormersfield House and their daughter, the occupant of Ormersfield Lodge and a legal submission.
9. In his first statement of truth the previous owner of Ormersfield House stated that the land to the north of Pond House was used, kept and enjoyed by him and his family as part of Ormersfield House's garden grounds for over four decades and was never used for any other purpose.
10. In his statement of truth dated 4 September 2021 he set out in reasonable detail how he installed drains on the land, planted tulips and alliums, and used a ride on mower to cut the rough grass. He detailed how the land was accessed and explained how he mowed a path making a pleasant walk around the perimeter of the property. He stated that it was important to them to maintain the land in a way that was visually pleasing as when driving down the lane to their house the first sight of it was this land.
11. The previous owner sold Ormersfield House in February 2013 but retained the former garages, now Pond House, and the land subject of the appeal. In his statutory declaration the previous owner stated that between September 2013 and September 2016 he would attend the property regularly and continued to mow the lawn.
12. The appellant in his statutory declaration stated that from September 2016 he continued to tend the garden (appeal site) including during the development of Pond House, regularly mowing the grass.
13. In the statutory declaration made by the previous owner's daughter, it is stated that she grew up in Ormersfield House from 1976 to 2002, with periods of occupation in around 2005/2006, but continued to visit her parents with her own family. She stated that she can remember the land being used as garden for all the time she lived at Ormersfield House. She recalled playing on the land and memories of the pond where her mother would plant flowers and shrubs.
14. She also recalled pond dipping and playing around the pond at all times of the year, having informal family picnics around the pond and riding her bike on the land, which she was allowed to do as it was fenced off from the main driveway and safer for her to play in. It is also stated that she played on the land with her children including having treasure hunts and informal picnics.

¹ Section 171(b)(3) of The Town and Country Planning Act 1990

15. In the statutory declaration from the occupant of Ormersfield Lodge, which is located on the lane leading to Ormersfield House, it is stated they have lived there since 1984 and walked past the land with dogs on an almost daily basis. They recalled the land being kept and used as garden which was well maintained. They also stated that the land was regularly used by the family of the previous owners and continued when the appellant and his wife developed Pond House. It is asserted that to their knowledge the land has never been used for anything other than as a residential garden first associated with Ormersfield House and then Pond House.
16. The Google images show that the land is separated from adjacent agricultural land by established trees/shrubs and hedging and has been since at least 1999 – the boundary appearing well established at that time. They also show the land to have a similar appearance, to that of the garden area immediately surrounding Ormersfield House, being closely mown grass.
17. That the land may not have been actively used for agriculture nor that it may have been historically linked to Ormersfield Farm, are not determinative to the actual use. It seems probable that the installation of drains, the mowing of grass and planting of flowers were carried out to keep a visually pleasing appearance, in the same way that one might expect a homeowner to maintain their garden. Moreover, based on the submissions it seems the land was kept available for use by the previous owners of Ormersfield House and their family, at all times during their ownership for their domestic enjoyment, and there is no evidence of any other use.
18. I acknowledge the extent of the land associated with Ormersfield House, including that there is another pond in the garden, and the physical separation created by the track and fence, is likely to have meant that the use of the land for recreational purposes may have been infrequent. Nevertheless, as was found by the court in *O'Flynn v SSCLG & Warwick DC [2016] EWHC 2984 (Admin)* “if the Inspector accepted that the land was being used for these incidental residential activities for some of the time, the mere fact that the Claimant was not in his garden at a particular hour did not mean that the land ceased to be in use for incidental residential purposes for that hour.”
19. Based on the statements of truth and information therein, together with the statutory declarations, it seems more likely than not that the land was used as garden to Ormersfield House between 1969 and 2013.
20. The statements of truth and the statutory declarations were properly made, and those who made them have properly attested to the truthfulness of their evidence. Those accounts are sufficiently precise and unambiguous and should therefore be afforded significant weight, unless there is evidence that might indicate otherwise.
21. There was evidently a period of non-use between the sale of Ormersfield House and the completion of Pond House however, there is no evidence that the land had been put to any other use during this time.
22. In the Council's photographs taken in around December 2016 the land, although in winter, does not look overgrown or unkempt and there is no evidence to demonstrate that a reasonable onlooker would consider the use of the land as garden had been abandoned or ceased permanently.

23. Whether infrequently, and only in the form of a rough mow, the previous owner of Ormersfield House continued to maintain the land and it seems probable that this was with the intention of it being sold and used in association with the development of what is now Pond House.
24. I acknowledge the discrepancy regarding the date of the Option Agreement - stated to be September 2016, where in fact it appears that was completed in January 2017, and there is no explanation what happened to the land for the approximately six months between the sale of Ormersfield House in around February 2013 and September 2013. However, in the absence of contrary evidence, these do not seriously undermine the appellant's submissions.
25. I acknowledge the email from the Council's Planning Officer to the appellant in December 2016 where it is stated that they did not consider the land north of Pond House could be described as garden to Pond House. However, it does not confirm that the land was not considered to be in garden use, simply observing that it did not form part of the planning unit with Pond House.
26. The discrepancies in dates noted by the Council in two of the statements of truths/statutory declarations regarding the date of purchase of Pond House do not undermine the appellant's case, since there is no reason to consider that those making those statements would have intimate knowledge of such matters.
27. That applications have been made for the use of the land as garden is not determinative to the actual use nor to suggest that the use did not exist. The appellant's agent explained that they were unsure of the classification of the land and advised the appellant that an application should be lodged for reasons of certainty and clarification, and in order to avoid the possibility of enforcement action being taken by the Council. In my experience it is not unusual for applications to be made where there is uncertainty, and this is a plausible explanation.
28. There is reference by the current owners of Ormersfield House to sales particulars referring to the land as a potential development site, and their own viewing of Ormersfield House in 2012, as well as reference to the address being registered as 'Raftra Farm' at Companies House from 2004 to 2009. However, none of these matters are determinative to the actual use of the land and are therefore of little weight.
29. Having established that the land was lawfully garden to Ormersfield House and that use was not abandoned, it is necessary to determine whether its use in association with Pond House, as described, constitutes a material change of use. For there to be a material change of use, there needs to be some significant difference in the character of the activities taking place from what has gone on previously.
30. The land was formerly part of a single planning unit with Ormersfield House and its sale and use together with Pond House has resulted in the subdivision of the planning unit. However, the land is garden land and remains in such use. There is no evidence to demonstrate, nor do I see any reason to consider, that its use in association with Pond House would have resulted in a definable change in its character.
31. Therefore, as a matter of fact and degree, the evidence presented indicates on the balance of probabilities, that the land has been used as garden for a continuous period of more than ten years before the application date. Its use in association

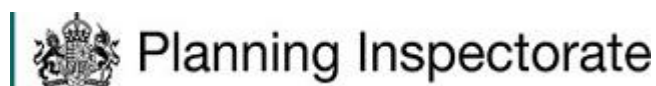
with Pond House does not constitute a material change of use and there is no development. There is little evidence which contradicts or makes the appellant's version of events less than probable.

Conclusion

32. 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 the use of the land as garden in association with Pond House 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).

Felicity Thompson

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 11 January 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 evidence presented indicates on the balance of probabilities, that the land has been used as garden for a continuous period of more than ten years before the application date. Its use in association with Pond House does not constitute a material change of use and there is no development.

Signed

Felicity Thompson

Inspector

Date: 05 January 2026

Reference: APP/N1730/X/24/3346097

First Schedule

Use of land as garden associated with Pond House

Second Schedule

Land at Pond House, Church Lane, Dogmersfield, Hook, Hampshire RG27 8TA

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: 05 January 2026

by Felicity Thompson

Land at: Pond House, Church Lane, Dogmersfield, Hook, Hampshire RG27 8TA

Reference: APP/N1730/X/24/3346097

Scale: Not to Scale

