



Appeal Decision

Site visit made on 5 January 2026

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2026

Appeal Ref: APP/A0665/X/25/3358344

Outbuilding to the west of Dones View Farm, Northwich Road, Dutton WA4 4HD

- 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 Barry Devine against the decision of Cheshire West and Chester Council.
 - The application ref 24/00756/LDC, dated 4 April 2023, was refused by notice dated 2 October 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which an LDC is sought is existing use of a dwelling at Dones View Farm Barns.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Reasons

2. The outbuilding is a dwelling with three rooms; a kitchen/dining room, a living room and an en-suite bedroom. The Appellant is seeking to establish the lawfulness of the residential use of the outbuilding by demonstrating that the use has subsisted continuously for in excess of four years and is thus immune from enforcement action. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the outbuilding has been continuously occupied for residential purposes for the four year period prior to the date of the application.
3. Four sworn, signed and dated Statutory Declarations, by the Appellant, his son, his nephew and a neighbour, have been submitted in support of the appeal; they were not in evidence at application stage. The history of residential use of the outbuilding is consistent through the four declarations; it was occupied by the Appellant's son between 2000 and about 2010 and since then it has been occupied by the Appellant. The sworn declarations are afforded significant weight.
4. The Appellant has owned a dwelling in nearby Lymm since April 2020. The Council maintains the Appellant has lived in this dwelling during the four year period and, in this regard, have referred to a newspaper article. The article is not in evidence but, in any event, could not be relied upon. The Appellant has provided evidence that the property was initially undergoing refurbishment before being let. The Appellant's ownership of the dwelling in Lymm is not relevant to determination of the appeal.
5. The Council, in fact and despite referring to Council Officer site visits and to photographs, amongst other things, have not provided any documentary evidence. The Planning Practice Guidance states that if the planning authority have no evidence itself, nor from any others, to contradict or otherwise make the applicant's version of events

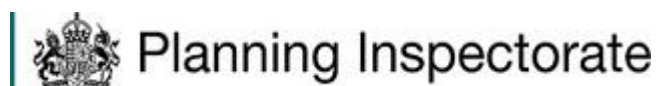
less than probable there is no good reason to refuse the application. The same principle applies at appeal stage.

6. Notwithstanding the lack of documentary evidence, the four Statutory Declarations are compelling evidence in themselves. The Council has not provided evidence themselves or from others to contradict the Appellant's version of events, as set out in his Statutory Declaration, that is corroborated by the other three Declarations. The Declarations are precise and unambiguous evidence that justifies a conclusion, on the balance of probability, that the outbuilding has been continuously occupied for residential purposes for the four year period prior to the date of the application.

7. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for existing use of a dwelling at Outbuilding to the west of Dones View Farm, Northwich Road, Dutton was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

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 4 April 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-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:

The residential use of the outbuilding has subsisted continuously for the four year period prior to the date of the application and is immune from enforcement action

Signed

John Braithwaite

Inspector

Date: 12 January 2026

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First Schedule

Existing use of a dwelling

Second Schedule

Outbuilding to the west of Dones View Farm, Dutton WA4 4HD

IMPORTANT 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 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 use 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: 12 January 2026

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Scale: Not to Scale

