



Appeal Decision

by Jean Russell MA FRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2026

Appeal Ref: APP/R0660/X/25/3373317

52 Woodlands Road, Handforth, Cheshire East, SK9 3AU

- The appeal is made by Mr Mark Bowker under section 195 of the Town and Country Planning Act 1990 (as amended) against the decision of Cheshire East Council to refuse to grant a certificate of lawful use or development (LDC).
- The LDC application (ref: 24/4340/CLEUD) was dated 14 October 2024 and refused by notice dated 6 June 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990. The existing use for which an LDC is sought is described as ‘...use of the land belonging to the Applicant at the property as garden land ancillary to their dwelling’.

DECISION

1. The appeal is dismissed.

PRELIMINARY MATTERS

The Appeal Site and the Use Subject to the Appeal

2. Woodlands Road is lined with detached dwellinghouses served by front and rear gardens. Properties on the southeastern side of the road, including no. 52, are shown on the location plan as backing onto woodland which slopes down to a lake. The appellant owns the house and original garden at no. 52 plus the co-terminus area of woodland.
3. The appeal is made to establish the lawfulness of the existing use of part of the woodland, the inset area edged in red, as (an extension to the) garden serving no. 52. In this decision letter, references to the ‘site’ mean the red edged area. The ‘original property’ or ‘original garden’ mean the land at no. 52 up to the northeastern site boundary, while the ‘appellant’s land’ means the whole area edged blue.
4. For ease of reading this decision letter, I shall summarise the use subject to the appeal as ‘use as a domestic garden incidental to the use of the dwellinghouse at 52 Woodlands Road’ or ‘use as a domestic garden’ for short. The word ‘incidental’ is synonymous with ‘ancillary’ as discussed below.
5. The parties have alluded in the evidence to whether the site is within the ‘curtilage’ of no. 52, but that term does not denote any use of land. It means, in essence, an area of land which has an intimate association with a building. Land may have a lawful domestic garden use but be outside of the curtilage of the relevant house.
6. Thus, my decision on the lawfulness of the use of the site as a domestic garden does not amount to a determination, and is without prejudice to such in the future, of the extent of the curtilage of the appeal house. My decision is also without



prejudice to the enforcement investigation which the Council opened, I understand, in relation to decking and supporting gabion baskets installed on the land.

Notes on the Evidence

7. In any LDC appeal, the onus is on the appellant to make their case for lawfulness on the balance of probabilities. The appellant has submitted three statutory declarations, all signed in front of a solicitor in September 2024, which were made by a local gardener I refer to as 'DJ'; a builder 'MP'; and the appellant himself. The declarations amount to sworn evidence which carries significant weight.
8. The Council has provided copies of a statement dated 22 December 2024 which was made jointly by the daughter and son-in-law of the previous owners of the appellant's land. I shall refer to 'the family statement' for short and to the previous owners as 'Mr and Mrs W'. The family statement was signed by its two authors but not in front of a solicitor. It carries less weight than the sworn declarations.
9. However, this appeal could not succeed simply on the basis that the appellant alone has submitted sworn evidence. And the appeal could not fail just because there are some inconsequential factual errors in the declarations. As the appellant himself has noted, for an LDC to be granted, his evidence must be sufficiently precise and unambiguous to make his case. It should be accepted if there is nothing to contradict his version of events or make it less than probable.
10. The Council referred to the family statement and a representation from a neighbour in their report on the LDC application. However, they did not submit copies until I requested that they do so, not least in order that the appellant could have proper opportunity to comment. I have taken all evidence into account, but I cannot adjudicate on matters of land ownership or on the merits of the appeal use.
11. The only matter before me is whether the use of the appeal site as a domestic garden incidental to the use of the dwellinghouse at 52 Woodlands Road is lawful in the terms described below. That being the case, I did not need to visit the site, and I have decided this appeal on the papers.

MAIN ISSUE

12. Under s191(2) of the Town and Country Planning Act 1990 (TCPA90), uses are lawful at any time if no enforcement action may be taken in respect of them, perhaps because the time for enforcement action has expired¹. S171B(3) of the TCPA90 provides that no enforcement action may be taken after the period of ten years in respect of a material change in the use of land.
13. The main issue in this appeal is whether the use of the appeal site as a domestic garden incidental to the use of the dwellinghouse at 52 Woodlands Road is lawful because it had taken place without significant interruption for any ten year period by 14 October 2024, the date of the LDC application.

REASONS

14. In order to decide whether the site has been used as a domestic garden for ten years, it is necessary to consider when the use began or, to put it another way,

¹ It is also necessary that the uses do not constitute a contravention of any of the requirements of any enforcement notice in force, but that is not relevant here.

when there was a material change in the use of the land from woodland to use as a domestic garden. For there to be a material change of use, there needs to be some significant difference in the character of the activities taking place within the 'planning unit' as a matter of fact and degree. The planning unit is normally the land occupied for one or more primary uses, unless a smaller area can be identified which is physically and functionally separate and distinct.

15. Since no meaning of 'garden' is given in planning legislation, I understand why the appellant referred me to a definition used for tax purposes: 'a piece of ground, usually partly grassed and adjoining a private house, used for growing flowers, fruit or vegetables, and as a place of recreation'. However, gardens are not always grassed or planted, while green or recreational space, even when it adjoins a house and is in the same private ownership, is not always a domestic garden.
16. I would define a garden as land associated with a dwellinghouse which is used for purposes incidental to the residential use of the dwellinghouse. An incidental (or ancillary) use is one that takes place within the same planning unit as the primary use, and which is functionally related to the primary use in some normal way. Gardening, like exercise, play, drying laundry, sitting out, keeping pets, storage and parking, is capable of being carried out in a garden incidentally to the primary use of the associated dwelling. However, it is also true that non-residential land may be planted and maintained at the behest of the landowner.
17. It follows that whether the site has been used for ten years as a domestic garden depends upon when it started to be used for purposes incidental to the use of the dwellinghouse at no. 52. There is no dispute that the site had an existing use as a domestic garden on the date of the LDC application. However, the appellant could not have personally carried out that use for a ten year period because he and his partner only purchased their land in October 2021.
18. I must focus on evidence regarding the relationship between the site and original garden before the land was sold to the appellant. The previous owners, Mr and Mrs W, acquired the site and woodland beyond in 1976 or thereabouts, following the sales to local residents of the "lower strip of land along all the houses [that had been] owned by Handforth Hall", as described in the family's statement.

Physical Connections between the Site and Original Garden

19. MP gave the clearest description of the appellant's land as left by Mrs W in his sworn declaration. He visited the property in November 2021 to give the appellant a quote for the building works later carried out, and he saw three or four discrete areas of land at the back of the house at no.52:
 - The "main garden", which had a lawn and greenhouse and was at the same level as the house.
 - Two small garden areas on relatively flat lower tiers. They were separated by a small dry stone wall and there was another such wall at the lowest garden area. Stone steps on the left hand side led down from the top lawn to the tiers².
 - The garden then "fell quite steeply...down to the lake".

² The gabion baskets installed by the appellant replaced the stone walls and mean that the decking brings the site up to the level of the "main garden".

20. MP, DJ and the appellant all referred in their declarations to an annotated copy of an aerial photograph probably taken in 2016. It was marked up to show the original garden and site edged in yellow, and the rest of the appellant's land in blue. Regrettably, there are no annotations to show the positions of features such as the walls or steps, or where the original garden ended and the site began.
21. I shall assume that the site covers both of the former flat lower tiers. I interpret the "lower tiered garden" described by DJ as a reference to (part of) the site and not the land sloping down to the lake. One advantage of making this assumption is that nothing now hangs on whether there were two retaining walls or just one as claimed in the family's statement³.
22. The 2016 and other pre-2022 aerial photographs, to the extent that they are clear, show that the site, when owned by Mrs W, was not lawned or planted in the same way as the original garden. It appears more thickly covered, if not overgrown, consistent with the family statement as described below and the undisputed presence of at least one apple tree.
23. I understand that gardens take different forms and it is not unusual for gardeners to support the environment through naturalistic planting. However, the appellant has not shown that Mrs W probably took that approach, and it does not matter anyway in this case whether the site was left to grow wild or carefully tended to look so. The result either way is that the aerial photographs show the site looking more akin to the woodland than to the original garden.
24. My assessment is that, until October 2021, on the balance of probabilities, the site was physically separate and distinct from the original garden at no. 52 by reason of its topography and appearance. I take the appellant's point that the site could only be accessed via no. 52, and steps were provided for connection, and there was no fence or other means of enclosure between the site and original garden. However, there was also no physical barrier to the area of woodland in the same ownership and that was indisputably not used as a domestic garden.



Use of the Site by the Previous Owners

25. The appellant's evidence as to how Mr and Mrs W used the site starts from July 2012. From then until August 2021, DJ worked as a gardener for Mrs W "every few weeks between the end of winter and autumn each year". He said that Mrs W and her husband "took great pleasure in extending their garden to the area marked out in yellow as soon as they had purchased the extra land".
26. DJ's first job for Mrs W was "to help repair" the wall at the "base" or "edge" of the garden along the yellow line. He put plants out from her greenhouse into the "lower tiered garden" next to an apple tree "that was really a very young sapling at the time". He "pretty much always worked on the garden and lower garden for nearly ten years consistently".
27. The family statement confirms that Mrs W employed a gardener, but only after she was widowed in November 2013, and then it is flatly denied that the gardeners

³ The family say the wall was roughly where the existing decking begins, which I take to be where the site starts, although the Council did not provide the annotated image referred to in the family statement.

included DJ. It is also said in the family statement that, after daffodil bulbs and two apple trees were planted in the 1970s, “the lower garden was left to grow wild in keeping with the bluebell woods that it merged into”.

28. I have noted that DJ’s evidence was sworn while the family’s statement was not. It might be expected that the family had better knowledge of Mrs W’s activities, but I do not need to speculate as to how close they actually were or which evidence I prefer. Even if I set the family’s statement aside, I am struck by omissions from and inconsistencies between the sworn declarations when it comes to use of the site.
29. MP swore, from his visit in November 2021, that “there was a drop of several feet between the different tiers” such that a structural engineer was later instructed to advise on the works to raise and level the site. He noted that the steps down from the main garden were overgrown with nettles and brambles, as well as being steep and precarious with some loose and wobbly stones. The appellant was clear that concern for his children’s safety was his reason for carrying out works later, yet DJ did not mention the steps or any constraints to reaching or working on the site.
30. MP swore there were “what looked like vegetables and flowering plants throughout the lower areas of the tiered gardens” in November 2021. The appellant said much the same, but DJ made no mention of vegetables. I find that surprising because vegetables require harvesting and careful maintenance, and they were apparently planted on the least accessible parts of what was considered the garden.
31. However, the most significant omission from DJ’s declaration is any account of Mrs W or any other member of her family carrying out any activities on the site. DJ described that, when he started work for her in 2012, Mrs W was “a very keen gardener...[who] needed some help with heavier jobs”. But DJ does not recount Mrs W entering the site, even to look at her flowers, or expressing frustration at being unable to do so perhaps because of her age and/or the unstable steps.
32. All I can take from DJ’s sworn first hand evidence is that Mrs W paid him to maintain the lower tiers, including by repairing the retaining walls and putting out plants. She described the site as part of her garden, but then she also told DJ she had “bought the land all the way down to the fishing lake...with her husband as they loved to garden”. DJ does not show that there was probably a material change in the character of the activities taking place, prior to October 2021, such that the use of the site was functionally connected or incidental to the dwellinghouse.

Conclusion

33. I do not dispute that the appellant was advised on his purchase of 52 Woodlands Road that the site formed part of the garden and was considered to be such by Mr and Mrs W. However, it has not been shown that the information provided through the conveyancing process was a decisive or reliable guide to the lawful use of the site in planning terms.
34. The Council provided no evidence of their own, but the appellant’s evidence is insufficiently precise and unambiguous to make his case. Even if I set aside the contradictory family statement and the inconsistencies between DJ’s and the other sworn declarations, planting and maintenance were the only evidenced activities on the site before October 2021.

35. The appellant has not demonstrated that the site and original garden were physically and functionally connected, as a matter of fact and degree, such that they were in the same planning unit prior to October 2021. At that time, despite the existence of the steps and the lack of any enclosure, I find that the site, together with the woodland in the same ownership, was probably a physically separate and distinct area that was occupied for a substantially different and unrelated purpose to the original garden. If the site was thus in a different planning unit, it could not have been used for purposes incidental to the use of the dwellinghouse.
36. As indicated above, open land that is owned alongside a dwellinghouse may have a different lawful use. It is not unusual for a person to own a plot of (managed) woodland or a (maintained) field or paddock next to their home and their domestic garden. The appellant has not demonstrated that the material change of use of the site took place at such a time that its use as a domestic garden incidental to the use of the dwellinghouse at 52 Woodlands Road had taken place, on the balance of probabilities, for a continuous ten year period by 14 October 2024, such that the time for taking enforcement action had by then expired.
37. The appellant does not argue that the use might be lawful on any other basis, I conclude that, on the date of the LDC application, enforcement action could have been taken for the purposes of s191(2) of the TCPA90. The Council's decision to refuse to grant a certificate of lawful use in respect of the use of the site as a domestic garden incidental to the use of the dwellinghouse at 52 Woodlands Road was well-founded. I will exercise the powers transferred to me in s195(3) of the Town and Country Planning Act 1990 to dismiss the appeal.

Jean Russell

INSPECTOR