



Appeal Decision

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an Inspector appointed by the Secretary of State

Decision date: 11 February 2026

Appeal Ref: APP/W1525/X/24/3356087

Land rear of Marigolds, Main Road, Bicknacre, Chelmsford, Essex CM3 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 Gary Denham against the decision of Chelmsford City Council.
 - The application ref 23/01197/CLEUD, dated 20 July 2023, was refused by notice dated 24 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 an LDC is sought is use of garage as dwelling and use of surroundings as residential curtilage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.

Reasons

3. Marigolds is a detached dwelling on a residential plot and is the former home of the Appellant. The plot formerly included land to the rear on which the 'garage' that is the subject of the appeal is located. Planning permission 17/00399/FUL was granted on 27 April 2017 for 'replacement of existing garage/outbuilding with oak framed garage/cart lodge'. The planning permission was implemented in late 2018 but, as claimed by the Appellant, the building created was a dwelling with residential occupation commencing in January 2019. The building is known as 'Old Bakery Barn'.
4. For the dwelling to be immune from enforcement action and thus lawful residential use must have commenced more than four years before the date of the application. 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 use of the building as a dwelling subsisted continuously through the four year period prior to the date of the application, i.e. from 20 July 2019.
5. Marigolds was the home of the Appellant and his then wife but as a consequence of a change in their relationship the house needed to be sold. This decision came after the Appellant was financially committed to the construction of the permitted replacement garage. The Appellant claims in his statement (not a Statutory Declaration) that "When the barn complex was complete...I had no choice other than to move into it as I had to carry out major works on Marigolds to be in a position to sell".

6. The chronology of events leading up to the claimed first occupation of Old Bakery Barn is confused. The Appellant claims that “When the barn complex was complete...” he had no choice other than to move into it. But the barn complex cannot have been complete in accordance with the planning permission because that complex was a part open/part closed structure with no sub-divisions or sanitary facilities. So the decision to make it habitable must have been made before it was complete.

7. An invoice dated 18 December 2018 details the installation of plumbing works for a shower room and for the diversion of a mains supply from Marigolds to Old Bakery Barn. Though addressed to the Appellant at Marigolds it is probable that the invoice is for the installation of sanitary facilities in the intended dwelling. Other invoices submitted in evidence relate to the erection of the permitted structure or for works not specific to Old Bakery Barn. In any event, the invoices are not evidence of residential use of the building in the four year period prior to the date of the application.

8. The Appellant has submitted what is claimed to be a ‘Building Regulations sign off’. The document is titled ‘Notice of Acceptance of Initial Notice’, is dated 13 July 2017 and relates to a Garage Complex at Marigolds. The document is not a ‘Building Regulations sign off’ but a notice accepting the application for Building Regulations approval received on 7 July 2017. The Appellant has not provided any evidence of site visits by Building Control Officers or any other documentation regarding compliance with the Building Regulations. The Council has referred to a ‘final certificate’ by PWC Building Control Services Ltd dated 2 September 2019, though they have not submitted the document in evidence and it apparently refers to “...minor work and does not concern a new dwelling”. It is likely that the certificate, given its date, relates to the completion of the originally intended garage structure.

9. The Appellant has submitted in evidence a letter from the Postman for the area from 2018 to 2021. In his letter Mr Bendall states that he “...was delivering post to Mr Gary Denham at Marigolds during that time” and “When Mr Denham moved out of Marigolds and into the premises at the rear known as Old Bakery Barn in January 2019 I also delivered post there, as there was a post box at the entrance to Old Bakery Barn premises”. Mr Bendall’s evidence is inconclusive on where the Appellant was living in the period 2019 to 2021. An NHS letter submitted in evidence is dated 23 May 2022 and is not evidence of residential occupation of Old Bakery Barn during the four year period prior to the date of the application.

10. The sale of Marigolds to Ms C Bennett was completed in June 2021, though she had been interested in the property since 2018. In a Statutory Declaration, Ms Bennett states that “I visited the site late 2018...” and “At the time of my...visit the building...was substantially complete. By January 2019 I can confirm that Mr Denham had moved out of the house known as Marigolds and was living in the garage outbuilding, now known as Old Bakery Barn, to enable renovations of the main house to be made ready for sale”. She also states, in her Declaration, that “I can attest to the fact that Mr Denham has occupied this building as his permanent home since...January 2019 and is still living there on a continuous basis since I have owned Marigolds”.

11. A neighbouring property to Marigolds is Bridleway Cottage, the long time home of Mr and Mrs Slater. Mrs Slater has made a Statutory Declaration (there is no reason to doubt that it is her Declaration though it has been amended from being by her husband) in which she states that “My husband and I can confirm that Mr Denham has lived in the garage building since January 2019 and has lived there on a permanent and consistent basis since that date” (Mr Slater did not sign the Declaration so “My husband

and...” can be discounted). As its name suggests Mr and Mrs Slater’s property adjoins a bridleway which is the access to Old Bakery Barn and to their property.

12. There is another Statutory Declaration in evidence; by Mr F Medcalf. Mr Medcalf is a former Bank Manager and has been a friend of the Appellant and his family from before they moved into Marigolds. Mr Medcalf states that the Appellant’s former wife received “...all the net sale proceeds of Marigolds”, after its sale to Ms Bennett in June 2021, partly “...because of Old Bakery Barn being in Gary Denham’s name being the property that he had resided in since the end of 2018”.

13. The Appellant is reliant on the Statutory Declarations of Ms Bennett, Mrs Slater and Mr Medcalf. Mr Medcalf states that he was introduced to the Appellant over 20 years ago and that “In that time I have visited all his “homes”. In Ingrave, Brook Hill Wickford, South Woodham Ferrers and Marigolds, Bicknacre”. Mr Medcalf does not mention visiting the Appellant at Old Bakery Barn and does not claim that the Appellant has lived there, only that “This meant that Gary could live in Old Bakery Barn...” (emphasis added). Mr Medcalf’s Statutory Declaration is inconclusive.

14. Bridleway Cottage adjoins land around Old Bakery Barn and the access to the Appellant’s property. Mrs Slater is best placed, of anyone, to notice comings and goings to and from Old Bakery Barn. But comings and goings by pedestrians and vehicles may suggest a use of Old Bakery Barn but it is not, in itself, an indication of residential use. Furthermore, Mrs Slater has not indicated that she has ever visited Old Bakery Barn so it is unclear how she can state “...that Mr Denham has lived in the garage building since January 2019 and has lived there on a permanent and consistent basis since that date”. Mrs Slater’s Statutory Declaration is also inconclusive.

15. Ms Bennett, in her Statutory Declaration, has stated that “I can attest to the fact that Mr Denham has occupied this building as his permanent home since...January 2019 and is still living there on a continuous basis since I have owned Marigolds”. But Ms Bennett moved into Marigolds in June 2021 and she has not given any indication where she was living beforehand or how she can attest to the Appellant’s permanent residential use of Old Bakery Barn. The Statutory Declaration of Ms Bennett is inconclusive but, like the other two Declarations, is afforded moderate weight.

16. The Planning Practice Guidance states that, with regard to an application for an LDC for an existing use, “...if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s version of events is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability”. There is no good reason to refuse the appeal, therefore, provided the Appellant’s version of events is sufficiently precise and unambiguous to justify the grant of an LDC on the balance of probability.

17. The three Statutory Declarations are afforded only moderate weight principally because they are not conclusive about the residential use of Old Granary Barn. In these circumstances there must be other evidence to justify a conclusion that residential use of Old Granary Barn subsisted uninterrupted for the four year period prior to the date of the application.

18. Old Bakery Barn was not registered for the payment of Council Tax during the four year period. The property may now be registered but this does not indicate residential use for that four year period. Furthermore, the Appellant paid Council Tax on Marigolds until 11 June 2021 and did not provide a forwarding address. There is no evidence of

payments for utility or communication services. The Appellant, as a resident of Marigolds, was on the Electoral Register until September 2021 and since then he has not been registered through his residency elsewhere. The documentation relating to building works and compliance with Building Regulations, and letters from the Postman and the NHS, do not show that Old Granary Barn has been in use for residential purposes throughout the four year period prior to the date of the application.

19. There is no other evidence to justify a conclusion that residential use of Old Granary Barn subsisted uninterrupted for the four year period prior to the date of the application. Notwithstanding the Statutory Declarations, and his own statement, the Appellant's version of events is not sufficiently precise and unambiguous to justify, on the balance of probability, the grant of an LDC for use of garage as dwelling.

20. Residential curtilage is not a use of land. Furthermore, residential garden, which is a use of land, is not necessarily residential curtilage. In many situations, such as a dwelling on a modern housing estate, they are the same but in some situations, such as Marigolds where a large residential garden extends out into a countryside area, they may not be. Residential curtilage is, in all cases, a matter of fact and degree. In any event, residential curtilage must be related to the lawful use of a dwelling and this has not been established in this decision for Old Granary Barn. For these reasons, an LDC cannot be granted for use of surroundings as residential curtilage.

21. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for use of garage as dwelling and use of surroundings as residential curtilage at land rear of Marigolds, Main Road, Bicknacre, Chelmsford, Essex was well-founded and the appeal fails. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector