



Appeal Decisions

Hearing held on 20 January 2026

Site visit made on 21 January 2026

by R Merrett BSc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2026

Appeal A Ref: APP/R1038/X/25/3371960

Marsh Green Hall, Marsh Green Lane, Ashover, Chesterfield S45 0DR

- 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 Daren Atkinson against the decision of North East Derbyshire District Council.
- The application ref 24/00828/LDC, dated 22 October 2024, was refused by notice dated 10 April 2025.
- 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 for domestic garden, drives and yarding and for any purpose incidental to the enjoyment of the dwellinghouse.

Summary of Decision: The appeal is allowed (in relation to part of the land) and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Appeal B Ref: APP/R1038/W/25/3371958

Marsh Green Hall, Marsh Green Lane, Ashover, Chesterfield S45 0DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Daren Atkinson against the decision of North East Derbyshire District Council.
- The application Ref is 25/00072/FL.
- The development proposed is The retention of garage and store/workshop and provision of hipped roof.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Application for costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary Matters

2. With regard to Appeal B, the appellant submitted amended drawings showing minor amendments to the proposed garage and store / workshop. I am satisfied the Council has had the opportunity to consider the amended drawings and that my decision may therefore be based on these drawings without resulting in injustice.

Appeal A

Background

3. Marsh Green Hall comprises a large, detached country house, in extensive grounds, to the west of the settlement of Ashover. As set out in the statement of common ground, the land immediately surrounding the house, is subdivided into several distinct areas, separated by various boundary treatments, to provide formal and informal gardens, recreational areas and utility / service areas. There are several detached buildings, clustered around the main dwelling that are either presently or historically connected to the use of the dwelling.
4. The appeal site itself comprises a relatively narrow, level, east / west orientated strip of land, currently used for parking and small scale storage. The site adjoins the northern boundary wall containing the aforementioned arrangement of buildings and garden spaces. There are gates at various points along the wall which facilitate access between this area and the appeal site. The northern boundary of the appeal site adjoins a grassed field which slopes upwards to the north.

Principles of establishing lawful use

5. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development or require planning permission or because they have become immune from enforcement due to the passage of time (s191(2)). In this case, the appellant seeks to rely on the period of time over which the use has continued. However, uses may also be lawful on the basis they were subsisting at 1 July 1948 (the so call Appointed Day). The appellant also seeks to rely on this principle as part of their case.
6. Accordingly, it is necessary to consider whether, on the balance of probability, the use of the land for domestic garden, drives and yarding or for any purpose incidental to the enjoyment of the dwellinghouse, was taking place on the Appointed Day, or has continued for a period of ten years or more prior to the date of the application, therefore from or before 22 October 2014, so as to be immune from enforcement. It must be shown that there has not been any significant interruption in the use, in order to demonstrate the necessary continuity.
7. In accordance with s171B(3) the immunity period begins with the date of the breach. Therefore any 10-year period of continuous use before the LDC application date would potentially be sufficient to accrue lawfulness. The onus of proof rests with the appellant to demonstrate the use has been continuous over this period, with the exception of any non-material breaks in activity. The standard of proof required is 'the balance of probability'.
8. In cases where there is a dispute as to whether a material change of use has occurred it is necessary to ascertain the correct planning unit, as it is the planning unit against which the question of a material change of use would need to be judged. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and occupied for different and unrelated purposes; the concept of physical and functional separation is key.

Reasons

9. In support of their case the appellant has submitted a series of historic maps of the dwelling and surrounding land, the earliest of which covers the period 1882 – 1892¹. The mapping chronology appears to show that by 1915 -1923 a substantial portion of the western part of the appeal site had become enclosed, and the map legend indicates that this area was planted with various native trees, including orchard specimens across the eastern flank².
10. The Council suggests that the aforementioned line of trees was potentially associated with a 'shelter belt' for the dwelling and, in their view, fruit trees in particular with the agricultural use of the wider Marsh Green estate, rather than with the residential use of the dwelling itself. It says the northern boundary wall to the gardens would have formed a strong physical barrier demarcating the limit of the residential planning unit.
11. By contrast the appellant's case is that because of the limited scale of the orchard and its proximity to the house, the fruit grown there would most likely have been for personal consumption by the residential occupiers, rather than for commercial production. The orchard would therefore have represented an extension of the residential garden(s) use of Marsh Green Hall, beyond the aforementioned wall.
12. I have not been provided with evidence to suggest either the appeal site or the adjoining land to the north were historically used for commercial food production purposes. Indeed, the wider field has in the past been referred to as a paddock or meadow³. Due to their limited coverage, and proximity and apparent connectivity to the dwelling via pathways and gates in the garden wall, on the balance of probability I favour the explanation that the orchard trees were utilised for the domestic scale production of fruit, for consumption by occupants of the dwelling.
13. I am also mindful that this area appears to have been separated from the adjoining field to the north by a form of enclosure. There is a lack of evidence to persuade me that the orchard would have been functionally connected with the wider field, forming a single planning unit within the wider definition of agriculture, as opposed to being connected with the residential use of the dwelling. Accordingly, when used as a domestic orchard, I find the land in question would have had a close physical and functional association with the dwelling. It would have been incidental to the residential use of the land, and thus part of the residential planning unit of Marsh Green Hall.
14. By 1955 – 1956⁴, the mapping shows trees to have been present on the site, albeit the detailed notation is somewhat less distinct, and thus there is uncertainty from this source alone that the trees in question were orchard varieties. However further supporting information has been provided by the appellant in the form of various statutory declarations. These include sworn evidence from a nearby occupier who was resident between 1949 and 2009, who clearly recalls picking pears on the appeal site land; also from a previous occupier of Marsh Green Hall, between 1965 and 2007, who recalls the same. These specific representations are not challenged by the Council.

¹ Derbyshire Historic County Series Epoch 1.

² Derbyshire Historic County Series Epoch 3.

³ Appendix 2 of representations from Council's Principal Conservation Officer.

⁴ Historical National Grid.

15. The above evidence leads me to conclude, on the balance of probability, that the orchard resulted in part of the appeal site being in lawful residential use on the Appointed Day. I am not persuaded the orchard, and therefore residential use associated with this, would have extended as far as the eastern and western extremities of the appeal site, having regard to the notation on the mapping. However, it seems to me reasonable to conclude, when also having regard to the mapping detail, that the area between the pedestrian access gates in the north wall would have been associated with the use of the orchard together with the circulation of residents in connection with it.
16. Use rights could only be lost through abandonment, a subsequent material change of use, implementation of a planning permission that required the lawful use to cease, or by condition. There is no evidence to persuade me that Use rights have been lost, as a result of any of these factors coming into play. This includes the consideration brought to my attention that it appears an agricultural track was recently constructed to adjoin the western boundary of the appeal site. A lawful development certificate should therefore be granted, at least reflecting the terms set out above.
17. The appellant has submitted various further information, including mapping and sworn evidence, with a view to demonstrating the continuity of the residential use of the appeal site in more recent times. Reference has been made to residents using this area, and the field to the north, for recreational purposes, including motorcycling and equestrian activities; also latterly the use of the appeal site itself for domestic related parking and storage.
18. However, even if such activities were incidental residential uses, it would still be necessary to demonstrate that they had continued for the requisite period, as set out above, in order to show lawfulness on the balance of probability.
19. I am mindful that planning practice guidance states *“In the case of applications for 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 evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”*
20. Whilst the sworn evidence given from more than one person has referred to motorcycling and equestrian activities taking place on the land, the detail as to how often the appeal site was utilised for such purposes is somewhat vague. Similarly, it is the appellant’s evidence, as supplemented at the Hearing, that the appeal site has been used for domestic related storage of items and the parking of vans continuously ever since his occupation of the dwelling commenced in 2007. However, this information is also lacking in detail and precision. Collectively the information is insufficient to enable me to conclude, on the balance of probability, such uses continued without any significant breaks in activity over the requisite period.
21. I have found part of the appeal site land to be lawful for residential purposes, due to the presence of the orchard on the Appointed Day, on the balance of probability. However, aside from this and for the reasons given above, I consider as a matter of fact and degree, that despite a lack of significant contradictory evidence, the appellant’s evidence regarding continuity of use is not sufficiently precise and

unambiguous to justify the grant of a certificate, on the balance of probability, on that specific basis in relation to the site as a whole.

Conclusion

22. I am mindful that s193(4) of the 1990 Act allows for a certificate to be issued for the whole or part of the land specified in the application.
23. Therefore for the reasons given above, and having considered all of the documentation provided by the appellant, I conclude that the Council's refusal to grant a certificate of lawful use or development in relation to the appeal site area as a whole for "Use of land for domestic garden, drives and yarding and for any purpose incidental to the enjoyment of the dwellinghouse" was well-founded.
24. However, I conclude that the Council's refusal to grant a certificate of lawful use or development in relation to part of the appeal site only for "Use of land for domestic garden, drives and yarding and for any purpose incidental to the enjoyment of the dwellinghouse" was not well-founded. The appeal succeeds to that extent. I will exercise, accordingly, the powers transferred to me under section 195(2) of the 1990 Act as amended, and grant a certificate relating to that part.

Appeal B

Main Issues

25. The main issues are i) whether the development is acceptable in principle; ii) the effect of the development on the character and appearance of the landscape and iii) the effect of the development on the Marsh Green Hall property as a heritage asset.

Reasons

Principle of development

26. The Council's refusal reasons refer to the proposed development failing to meet the provisions of Policy SS9 of the North East Derbyshire District Local Plan 2021 (LP) and Policy AP2 of the Ashover Parish Neighbourhood Plan 2023 (NP). Policy SS9 states that development in the countryside will be approved where certain criteria are met. These include limited infilling of previously developed land which would not have a greater impact on the character of the countryside than existing development. Policy AP2 states that development in the countryside will be carefully controlled and limited to certain circumstances, including where it supports the rural economy and needs to be in the countryside.
27. However Policy LC5 of the LP specifically allows for outbuildings that are ancillary to the main residential use, subject to criteria which include avoiding harm to the design of the existing property and the character of the surrounding landscape.
28. I have concluded above that part of the land subject to the LDC application is located within the residential planning unit of Marsh Green Hall. The use of this land for purposes ancillary to that residential use would therefore be lawful. It is undisputed that the proposed outbuilding is situated within the area I have found to be lawful for residential purposes, albeit that the hardstanding area facilitating access to the building would be outside this area.

29. Notwithstanding this, as a matter of fact and degree, the proposed use of the outbuilding for purposes ancillary to the main residential use would not result in a material change of use of the land. I conclude for this reason that the proposed garage and store / workshop is acceptable in principle, in accordance with Policy LC5. Whether it is acceptable in its proposed form, depends on the detailed design matters considered below.

Character and Appearance

30. In accordance with the Landscape Character of Derbyshire character assessment 2014, the appeal site is situated within the Peak Fringe and Lower Derwent character area, and specifically within the Wooded Slopes and Valleys Landscape Type. Some of the key characteristics of this area are described as undulating ground, rising to moorland; densely scattered small to medium ancient woodlands and secondary woodland on steeper slopes and along streams; widespread dry-stone walls and dispersed sandstone farmsteads with stone slate roofs.
31. The proposed building is situated on levelled hardstanding and would not cause the loss of any of the aforementioned, character defining, landscape features. The building would be constructed in sandstone and slate, which is consistent with the aforementioned character of the area. Though the buff colouring of the facing stone appears somewhat more vivid than the older buildings on the estate, there is nothing to persuade me that this material would not appear better integrated over time, as the surface of the stone becomes weathered. I conclude the development would not result in harm to the landscape.
32. In terms of visibility, the structure may be viewed at relatively close range from the byway open to all traffic (BOAT) 157, which passes to the north and north-east of the appeal site. From there the building is visible in the foreground, with the other buildings on the estate, including the main dwelling, seen at lower ground level in the background. The structure remains screened by boundary vegetation for much of this route. Gaps in the hedge allow for some clear intermittent views of the appeal site and what would be a relatively large ancillary building.
33. However, its visual impact would be mitigated by the existing cluster of buildings nestled behind, against which it would appear as an addition to the group rather than divorced and randomly placed. Despite the difference in ground levels, the single storey height of the appeal building would not appear to exceed the height of the three storey main dwelling. Furthermore, the rising wooded landform in the distance beyond, would help to assimilate the structure, ensuring it does not appear obtrusive against the skyline.
34. It was evident from my visit that it is possible to see the appeal site from more distant, markedly higher ground along the valley side, to the north-east. However, from this perspective, the eye will not tend to be drawn, due to distance, the filtering or screening effect of mature trees and the squat position of the site in the landscape.
35. From public rights of way to the south, the appeal site and building would, to all intents and purposes, be screened by existing buildings and structures on the Marsh Green Hall estate, together with tall and dense vegetation.
36. I have taken into consideration that the site is classed by the Council as falling within an area of primary landscape sensitivity, in the context of the Areas of

Multiple Environmental Sensitivity (AMES) study, and part of a 'valued' landscape. I have also considered guidance for the identification of valued landscapes⁵. However, for the aforementioned reasons, I find the proposed building would not result in landscape or visual harm. I therefore conclude that the development would not be in conflict with Policies LC5, SS9, SDC3 and SDC12 of the LP; with Policies AP11 and AP13 of the NP or with National Planning Policy Framework (the Framework) insofar as they seek to protect the form, scale and character of the landscape.

Heritage Assets

37. The Marsh Green Hall dwelling and surrounding gardens and former parkland, are recorded within the Derbyshire Historic Environment Record. The effect of this is to make these features 'non-designated' heritage assets. The relevant record describes the dwelling as a country house, dating from the 1600s. Reference is made to it being a very austere house, almost devoid of ornament. There is also reference to a sun dial and two fountains present within the grounds of the hall.
38. The plan accompanying the relevant record, includes the immediate formal gardens and the parkland sloping away from the front of the house to the south. The northern boundary of the recorded site is formed by the existing stone wall, which adjoins the appeal building, and marks the edge of the enclosed and more formal, subdivided, garden spaces with less formal and more open space beyond. Accordingly, the appeal site itself, though not part of the recorded historic site, falls within its immediate setting to the north.
39. It seems to me, having regard to the collective historic records, that the significance of these heritage assets includes the position and orientation of the country house in relation to its immediate garden areas and the more informal parkland to the south. This significance is appreciated in views across the open parkland landscape towards the front elevation of the dwelling, from the south. The appeal site is very substantially screened from such views, and so will not harm the significance of the heritage assets from this perspective.
40. As set out above the appeal site is visible from the public right of way to the north and north-east (BOAT 157). Without the proposed building in place, it would be possible to view the long north boundary wall to the formal gardens of the property, which are acknowledged as forming part of the assets. I therefore consider the setting of the dwelling and its grounds, viewed from this perspective, contributes to the significance of the heritage assets.
41. Given its proximity, the proposed building would result in change to the setting of Marsh Green Hall and its immediate surroundings, when viewed from BOAT 157. The change, from this perspective, would place the appeal building in the foreground, obstructing views of a significant length of the long northern boundary wall of the formal gardens.
42. However, this wall in itself is not specially identified in the record as a significant feature, and it would not be a case of the change of view resulting in the gardens no longer being visible when once they were visible. Furthermore, the development would not be so large as to remove visibility of the northern boundary

⁵ 'Guidelines for Landscape and Visual Impact Assessment – Third Edition' – Landscape Institute and Institute of Environmental Management and Assessment.

wall in its entirety, or the sense of the adjoining gardens being present beyond. I therefore consider the significance of the heritage assets will not be harmed from this perspective.

43. The footprint of the garage and store / workshop forms a compressed L-shape. I acknowledge the building is relatively large, and would obscure some visibility of the existing building group, from BOAT 157. However, considering the height of the main dwelling and the expanse of buildings and structures in its immediate surroundings, also the elements that contribute to the significance of the heritage assets, as set out above, I do not accept it would dominate key views of the rear of the property.
44. I acknowledge that the scale, single storey height and arrangement of apertures serve to give the building horizontal emphasis, viewed from the north. However, rather than an alien characteristic, I find this to be consistent with the orientation of the converted Stables building, and the north boundary wall, viewed from this perspective.
45. In terms of detailed design, the proposed hipped roof and arches above the doorways and one of the windows would not reflect predominant design characteristics on the estate. However, neither would they be alien features, with hipped roofs present on other Marsh Green Hall buildings, notably the main dwelling itself, and arched windows found in the adjacent Stables building.
46. The eaves height of the building would exceed that of the immediately adjacent boundary wall. However, any appreciation of this mismatch in height would essentially be limited to private views from the formal garden to the rear of the dwelling and from the area to the west of the appeal building. Furthermore, I noted during my visit that an existing adjacent outbuilding has a similar relationship with the boundary wall behind and, as set out above, I am not persuaded the north boundary wall is of such significance, that the heritage asset would be harmed.
47. The facing material used for the building is sandstone, which is consistent in broad terms with that used on the wider estate and is acknowledged, in the aforementioned character assessment, to be a typical building material in the area. Whilst the Council has expressed concern about the specific variety and surface finishing of the stone used, notably being out of keeping with the gritstone of the main dwelling, and about other matters of detailed design, I am not persuaded that such features are so strongly uniform across the estate, as to render the chosen material, finish and design inappropriate.
48. Drawing the above considerations together, I do not consider the building to be at odds with or competing for attention with the qualities that contribute to the significance of the main dwelling and its surroundings as heritage assets. I conclude the building would not result in harm to the non-designated heritage assets, rather that the impact on them would be neutral. Accordingly, the development would not be in conflict with Policy SDC9 of the LP, or with the Framework, insofar as they seek to protect such assets.

Conditions

49. I have had regard to the suggested conditions in the statement of common ground, in the event the appeal is allowed. A condition identifying the appropriate plans is required in the interests of clarity. A condition is required prohibiting further

construction until details are agreed regarding the use of remaining materials; the relationship between the eaves of the building and the top of the adjacent historic wall and surface water drainage arrangements, in order to protect the character and appearance of the landscape and the non-designated heritage assets.

50. I also agree that a condition should be imposed restricting the use of the building for incidental residential purposes, in order to protect the character and appearance of the landscape. I consider the use of the word 'incidental' to be important as it connotes a use which is functionally related to the primary residential use. However, I consider that a requirement for the appellant to precisely identify the intended 'ancillary' residential uses would be overly prescriptive, as it should become clear if at any time the building is being used for a purpose that is not reasonably incidental to the existing residential use of the site.

Conclusion

51. For the reasons given above I conclude that the proposed development accords with the development plan when read as a whole. The appeal should therefore be allowed.
52. Part of the appellant's case is that the appeal building would fall within the curtilage of the dwelling. Thus they argue, it would be possible for an albeit smaller building to be constructed there with the benefit of permitted development rights granted by Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Such development would be free from the need for express planning permission, and in relation to which the detailed design, including materials would not be subject to control. This, they say, could result in a significantly less well-designed building being placed on the site, and which is therefore a fall-back position that gives significant weight to the proposed development in this case.
53. However, because I have found the proposed development to be acceptable on its own merits, the possibility of an alternative building of inferior design being developed there instead, falls away. Accordingly, there is no need for me to go on to consider the extent of the dwelling's curtilage, and whether the proposed building would be situated within that curtilage area.

Formal Decision

54. The appeal is allowed and planning permission is granted for The retention of garage and store / workshop and provision of hipped roof at Marsh Green Hall, Marsh Green Lane, Ashover, Chesterfield S45 0DR in accordance with the terms of the application, Ref 25/00072/FL, subject to the conditions in the schedule below.

R Merrett

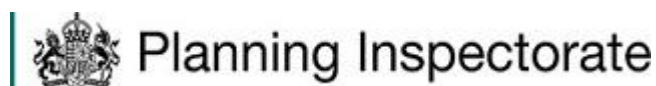
INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan and Dwg. 25 983 4 – Plans and Elevations.
- 2) Notwithstanding the approved plans in Condition 1, no further development shall be undertaken until the following details have been submitted to and approved in writing by the Local Planning Authority:
 - i) Detailed specifications for the materials to be used for the remainder of the construction of the building hereby permitted, including details for corner quoins and finishes and details for roofing materials, windows, doors, rainwater goods and internal finishes;
 - ii) Details for how the roof is to be supported and how the area between the top of the historic garden wall and eaves of the building is to be treated;
 - iii) Surface water drainage details including details and positioning of rainwater goods on the building;
 - iv) Elevations, Floor Plan, Sections and Roof Plan to demonstrate the relationship with the existing stone/brick wall.

Development shall then be carried out in accordance with the details as approved.
- 3) The building shall be for uses incidental to the residential use of Marsh Green Hall only, and for no other purpose including any other purpose in Class B8 of Schedule 1 and Class E of Schedule 2 to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

END OF SCHEDULE OF CONDITIONS



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 22 October 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto 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:

On the balance of probability, part of the appeal site was in lawful residential use on the 'Appointed Day', and such use rights have not subsequently been lost.

Signed

R Merrett

Inspector

Date: 18 February 2026

Reference: APP/R1038/X/25/3371960

First Schedule

Use of land for domestic garden, drives and yarding and for any purpose incidental to the enjoyment of the dwellinghouse.

Second Schedule

Land at Marsh Green Hall, Marsh Green Lane, Ashover, Chesterfield S45 0DR

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 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: 18 February 2026

by R Merrett BSc(Hons), DipTP, MRTPI

Land at: Marsh Green Hall, Marsh Green Lane, Ashover, Chesterfield S45 0DR

Reference: APP/R1038/X/25/3371960

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

James Willey	Planning Consultant
Dave Pinnock	Heritage Consultant
Andrew Cook	Landscape Consultant
Daren Atkinson	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Susan Wraith	Planning Consultant
Steven Wigglesworth	Senior Planning Officer
Julian Hawley	Planning Enforcement Officer