



Appeal Decision

Site visit made on 10 March 2026

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th March 2026

Appeal Ref: APP/J1860/X/24/3351562

3 Malvern Road, Powick, Worcester, WR2 4SF

- 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 (LDC).
- The appeal is made by Ms Caroline McKain against the decision of Malvern Hills District Council.
- The application ref M/23/00959/CLE, dated 17 August 2023, was refused by notice dated 28 June 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 is sought is use of land and building for home retail purposes, storage of goods and car parking.

Decision

1. The appeal is dismissed.

Procedural Matters

2. An application made under s191(1)(a) of the Act enables an applicant to establish whether or not 'development', as defined in s55 of the Act, has become lawful. Section 191(2) clarifies that uses or operations are lawful at any time if no enforcement action may be taken against it on the date of the application - whether because it did not involve development or require planning permission or because the time for enforcement has expired, or for any other reason. Section 171B of the Act sets out the time limits for enforcement for any breach of planning control. A recent amendment to the Act¹ did not change the applicable 10-year time limit as set out in s171B(3).
3. The burden of proof in satisfying the requirement of s191(2) falls to the appellant to establish that the claimed use of the land for retail and storage commenced at least 10 years before the date of the application and continued without any significant interruption thereafter. The appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not. As the date of the application was confirmed by the appellant as 17 August 2023, the date on or before the use must have commenced is 17 August 2013.
4. The Planning Practice Guidance (Paragraph: 006 Reference ID: 17c-006-20140306) reflects prior Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no

¹ Introduced by the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024

good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.

Main Issue

5. The main issue is whether the Council's decision to refuse the LDC was well founded.

Reasons

6. The appeal relates to a site including a detached dwelling, a detached garage, two domestic-scale timber sheds and associated enclosed gardens and areas of hardstanding. The appellant's application stated that 'The applicant has used the proposed [sic] building, which is subject to this application for Certificate of Lawfulness, a previous garage building adjacent to her home, as a part-time retail premises as a basis for her home business. No conversion works or alterations to the external fabric of the property have been required, save for the installation of a partial suspended ceiling into the property, in works undertaken in 2007.' In essence, the appellant's case is that a material change of use to include retail and storage took place shortly after her acquisition of the site in 2006.
7. The Council does not dispute that the garage has probably been used in conjunction with a business run from home by the appellant for in excess of ten years. However, it contends that no material change of use occurred until recently, and within the relevant period since 17 August 2017.
8. In consideration of material changes of use, Bridge J in *Burdle*² highlighted three broad categories of distinction in considering the relevant planning unit (PU). These are:
 - 1) a single PU where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;
 - 2) a single PU that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and
 - 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes.
9. Bridge J went on to state that 'It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally'.
10. In cases of working from home, it is a matter of fact and degree as to when a material change of use occurs such that, here, the site's primary use changes from a residential use with incidental uses (scenario 1 in *Burdle*) to a mixed use of residential and retail (scenario 2). That will depend on matters such as the degree or intensity of on-site activities and potential off-site planning effects. This may include whether the change of use necessitated material alterations to the appearance of the site and/or gives rise to materially different neighbour or traffic effects, for example.

² *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

11. In addition to the application form, the appellant's evidence consists primarily of a signed statement describing the uses of the site, an accountant's letter and an invoice of a clothing business registered at the address (Nov.2012). The appellant refers to an antiques/collectables business morphing to a greater extent to the sale of garden ornaments, furniture and features, particularly from 2020 onwards due to the effects of the Covid-19 pandemic encouraging more garden/outside activity. The evidence indicates that much of the business activity takes place away from the site, however, it also includes painting and repair workshops by appointment. The appellant states that the business has naturally developed, including on-line sales necessitating visitors to come to the premises to view and/or collect items.
12. While it is entirely plausible that businesses in one form or another have existed and been registered to the site since acquiring it, there is little detail across the relevant period as to the extent of activity taking place in conjunction with them. The evidence falls short on demonstrating when any frequency or intensity of activity on the site caused a material change to the character of its use such that a second primary use could be said to have occurred there (distinct from any off-site activity). The Council's report notably identifies that financial details were largely absent. While it was open to the appellant to provide such detail to support the appeal; this has not been provided in evidence.
13. At the time of my site visit, the garage was set out for the display for sale of various items such as ornaments, baskets, benches, clothes, mirrors, paint, coins, books and collectables. The rear garden was largely used for the display of items, as were some edge areas in front of the garage and house. This degree of non-residential use of the site, and the activity described by third parties because of it, is clearly indicative of a material change of use having occurred.
14. However, the Council highlight findings from Facebook accounts including reference to a 'new' outside area associated with the business and a television programme aired in September 2020 showing the garden area substantially free of items. According to the Council, Rightmove sales particulars for the property around that time also show little use of the land about the garage in conjunction with the business/es. This suggests more limited activity prior to 2021 than that expressed by neighbours signifying a considerable increase in activity from that time forward. Although the appellant advises that storage requirements seasonally fluctuate, those matters are not otherwise contested by the appellant.
15. In the substantial absence of any other precise and unambiguous evidence to demonstrate the scale of the business activities through its development, I find that the appellant has failed to discharge the burden of evidence to demonstrate that business activity at the site has continuously occurred as a primary use alongside the residential use of the land for sufficient time to become lawful.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for home retail purposes, storage of goods and car parking is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

R Hitchcock INSPECTOR