



Appeal Decisions

Site Visit made on 17 February 2026

by **J Whitfield BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7th May 2026

Appeal A Ref: APP/D0840/X/24/3350109

Ash Farm, Carnkie, Wendron, Cornwall TR13 0DN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Martin Pudner against the decision of Cornwall Council (the LPA).
 - The application ref PA23/04425, dated 30 May 2023, was refused by notice dated 10 August 2023.
 - The application was made under section 191(1)(a) & section 191(1)(b) 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 purposes incidental to the enjoyment of Ash Farm and the development for which a certificate of lawful use of development is sought is the construction of a building for domestic storage.
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Appeal B Ref: APP/D0840/W/24/3350112

Ash Farm, Carnkie, Wendron, Helston, Cornwall, TR13 0DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Mr Martin Pudner against the decision of Cornwall Council.
 - The application Ref is PA24/01752.
 - The development proposed is construction of dwelling.
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DECISIONS

Appeal A

1. The appeal is dismissed in so far as it relates to the use of land for domestic purposes incidental to the enjoyment of Ash Farm. The appeal is allowed in so far as it relates to the construction of a building and attached to this decision is a certificate of lawful use or development describing the proposed operations which are found to be lawful.

Appeal B

2. The appeal is dismissed.

APPEAL A

Preliminary Matters

3. The description of proposed development in the heading above is taken from the LPA's decision notice and the appeal form, which I find most succinctly covers the proposals for which an LDC was sought.

Main Issue

4. The main issue is whether the LPA's decision to refuse the application for an LDC was well-founded.

Reasons

5. Section 191(2)(a) of the Act states that uses are lawful at any time if – (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
6. The relevant time limit for taking enforcement action in this instance is 10 years under S171B(3) of the Act in respect of the use of the land. It is necessary, therefore, for the appellant to demonstrate, on the balance of probabilities, that the use of the land for domestic purposes incidental to the enjoyment of Ash Farm commenced on or before 30 May 2013 and continued for 10 years thereafter.
7. The land in question is located to the north-west of the dwellinghouse of Ash Farm and immediately to the north of other dwellings in Carnkie, including those known as Escallonia and Changi. The appellant has provided a signed and dated Statutory Declaration. Within it, he declares that he has own the land since 2001 and has used it as an extension to the garden of Ash Farm since he purchased and moved into Ash Farm at the same time. He goes on to state that the land was used by himself and his children as a garden, where his children would play and camp out, whilst he regularly sits in and undertakes recreational activities on the land. He also declares that the grass has been cut on a regular basis and has been kept and maintained as private garden space for use by his family in association with their occupation of Ash Farm.
8. Satellite imagery of the land is provided. In the image from January 2001, the land appears to be bound by trees and hedgerows, but seems to be largely unutilised, with little grass or any domestic paraphernalia present. In May 2009, the imagery shows the land laid to grass. Mowing lines are readily apparent in the grass. Whilst the image is not particularly clear, it appears to show a polytunnel of some description has been erected in the corner of the land, whilst other items are also apparent, albeit one is unable to tell what they are given the lower resolution.
9. There is then a significant gap in the timeline of the imagery. The next image is dated May 2017. The land appears to have changed little in character. The grass appears mown and the polytunnel is in the same location. There remains no domestic paraphernalia readily apparent on the image. The same is true of the images dated March 2019 and July 2020, albeit in the latter the storage building subject of this appeal is apparent. Likewise, subsequent images from July 2021 and October 2022 show the land largely in the same condition, with trees and planting in the same locations, with no domestic paraphernalia readily apparent.
10. To that end, there is little evidence which supports the appellant's declaration that the land has been used for play by his children. There are certainly no satellite images or photography which depicts play equipment or the likes which would have facilitated such use. Nor indeed, is there any such imagery or photography of paraphernalia which would have supported his use of the land for sitting out or other domestic recreational activity. One would expect to see evidence of items such as tables and chairs to support such use.

11. The aerial imagery indicates that grass has been cut on a regular basis since at least 2009. However, the fact that the land was maintained does not necessarily demonstrate actual use as a garden. Clearly, one could choose to maintain any land in their ownership in a manner they see fit without using it as a garden.
12. Moreover, the photographs provided of the items being stored in the building shown mainly equipment and tools that would be required to maintain the land, such as a ride on lawnmower, cement mixer and power tools. There are chairs apparent and what looks like a barbecue, however, there is nothing to suggest they were used on the land itself. They could equally have been used on the garden of Ash Farm and stored in the building accordingly.
13. Likewise, the presence of the polytunnel on the satellite imagery supports the appellant's declaration that he has grown vegetables and fruit on the land for his and his family's consumption, however, that does not in itself point towards garden use. Land can be used for the growing of produce, even if only for domestic consumption, without meaning the land is being used as a domestic garden. Indeed, allotments are obvious examples of such circumstances.
14. To that end, whilst the LPA has not provided evidence which contradicts the appellant's, I find the appellant's evidence is insufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the use of the land for domestic purposes incidental to the enjoyment of Ash Farm commenced on or before 30 May 2013 and continued for 10 years thereafter. As a result, I find that at the date of the LDC application, the use was not lawful within the meaning of S191(2)(a) of the Act.
15. The relevant time limit for taking enforcement action in this instance is 4 years under S171B(1) of the Act in respect of the construction of a building for domestic storage. It is necessary, therefore, for the appellant demonstrate, on the balance of probabilities, that the building was substantially completed on or before 30 May 2019.
16. In September 2023, the appellant submitted a separate LDC application to the LPA for the construction and subsequent use of a building for storage of tools and equipment associated with the maintenance of the land at Ash Farm¹. The LDC was granted on 24 November 2023. The LPA concluded that it had been demonstrated, on the balance of probabilities, that the building was substantially completed more than 4 years prior to the date of the LDC application and was therefore lawful.
17. The building for which the LDC was granted is the same building which is subject of this appeal. S191(6) provides that the lawfulness of any use, operation or failure to comply with condition for which an LDC is in force under s191 'shall be conclusively presumed'. Thus, the operation described in the LDC is shown to have been protected from enforcement action on the date of the application, and it will remain so unless and until there is a material change in circumstances. There is no evidence of any material change in circumstances before me.
18. The LDC before me is for the building in question but for domestic storage, as opposed to its specific use for the storage of tools and equipment associated with the maintenance of the land. Clearly, for the reasons set out above, I have found

¹ LPA Ref: PA23/07894

that the domestic use of the land on which the building sits has not been demonstrated to be lawful. Nonetheless, the building operations themselves are lawful and thus I can grant a certificate in that respect.

Conclusions

19. For the reasons given above I conclude, on the evidence now available, that (a) the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a building is not well-founded and the appeal should succeed for that part of the development only; and (b) the Council's refusal to grant a certificate of lawful use or development in respect of use of land for domestic purposes incidental to the enjoyment of Ash Farm is well-founded and the appeal for that part of the development should fail. I will exercise the powers transferred to me under section 195(2) and 195(3) of the 1990 Act as amended.

APPEAL B

Procedural Matters

20. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these 2 stages.
21. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted². All other matters are considered as part of a subsequent Technical Details Consent application if permission in principle is granted. I have determined the appeal accordingly.

Main Issues

22. The main issue is whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development.

Reasons

23. The appeal site comprises part of a field to the north and west of the settlement of Carnkie. In parts the field is open to the rural land surrounding it but also in parts contains hedgerows which delineate the site from the adjacent fields and gardens.
24. Policy 2 of the Cornwall Local Plan Strategic Policies 2010-2030 (2016) (the LP) sets out the LPA's spatial strategy for delivering growth, including the approach to the spatial pattern of delivery of new housing. Policy 3 of the LP states that, other than in the main towns identified therein, housing growth will be delivered through, inter alia, the rounding off of settlements and development of previously developed land within or immediately adjoining that settlement of a scale appropriate to its size and role.
25. Paragraph 1.68 of the supporting text to the LP provides guidance on the phrase "rounding off" contained within Policy 3. It states that it applies to development on land that is substantially enclosed but outside of the urban form of a settlement

² PPG Paragraph: 012 Reference ID: 58-012-20180615

and where its edge is clearly defined by physical features that also act as a barrier to further growth (such as a road). It should not visually extend building into the open countryside.

26. Whilst not part of the development plan, the LPA issued a Chief Planning Officer's note in December 2017 to aid interpretation of Policy 3. It states that, in consideration of what constitutes a settlement for the purposes of the policy, that smaller villages should have a form and shape and clearly definable boundaries, reflecting the wording of paragraph 1.68 of the LP. The note goes on to state, in respect of "rounding off" that it should provide a symmetry or completion to a settlement boundary and that it is not intended to facilitate continued incremental growth.
27. Carnkie is a largely linear settlement comprising predominately housing on the north side of the C0162 road. I was able to see from my site visit that it is limited in its depth with most housing fronting the road. Where there is housing behind that frontage, it rarely exceeds two houses in depth, with only the odd sporadic house located beyond the established line of the northern edge of the settlement. Beyond that housing, the landscape is characterised by fields and dispersed farmsteads and agricultural buildings.
28. From my own observations and the evidence of the parties, it seems to me that the appeal site would not be substantially enclosed. I was able to see from my site visit that the surrounding landscape is apparent in some views on approach to Carnkie from the west. Moreover, whilst there are a sporadic hedgerows which bound the site, they are not so clearly defined or of such degree of permanence that they would be a barrier to further growth. As a result, I find the development of the site for a single dwelling would visually extend the settlement into the open countryside and would not, therefore, constitute rounding off of the settlement.
29. The National Planning Policy Framework (the Framework) defines previously developed land (PDL) as: *"land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed."*
30. Excluded from the definition is land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.
31. The site contains a timber storage building, which I have found in respect of Appeal A to be lawful. The appellant argues that the site constitutes PDL on the basis that it is land which is occupied by a permanent structure which has been lawfully developed and that it was not last occupied by agricultural or forestry buildings.
32. However, in my decision on Appeal A I have granted an LDC solely for the building, not for its domestic use as I am not satisfied it has been demonstrated,

on the balance of probabilities, that the land was lawfully used as residential garden on the date of the LDC application. Likewise, the LPA's earlier grant of an LDC for the building was for storage of tools and equipment associated with the maintenance of the land at Ash Farm. The storage of tools and equipment associated with the maintenance of the land does not establish the use of that land. Thus, whilst the building operations themselves have been determined to be lawful, neither LDC establishes the lawful use of the land on which it sits.

33. To that end, neither LDC establishes that the appeal site was not in agricultural use at the time of the applications. Likewise, my conclusions on Appeal A in respect of the use of the land simply determine that it has not been demonstrated that the lawful use of the land at the time of the LDC application was residential garden. They do not conclude either way on whether or not the land was in use for agriculture.
34. Ultimately, it has not been established whether or not the land is or was last occupied by agricultural or forestry buildings. In the absence of sufficient evidence to reach such a conclusion, I cannot conclude that the site meets the definition of PDL within the Framework because of the exceptions contained therein. As a result, regardless of whether or not the appeal site is "immediately adjoining" the settlement, it would not constitute the development of previously developed land within or immediately adjoining that settlement of a scale appropriate to its size and role. Consequently, the development would be in conflict with Policies 2 and Policy 3 of the LP.
35. Policy 7 of the LP states that new homes in the open countryside will only be permitted where there are special circumstances. As set out above, I have found that the appeal site does not fall within the settlement of Carnkie. To that end, the development of the site for housing would fall to be considered under Policy 7 of the LP as housing in the countryside. There are a number of circumstances in which such dwellings would be allowed. There is no substantive evidence before me that suggests the proposed development would meet any of those exceptions. The development would, therefore, conflict with Policy 7 of the LP.
36. The surrounding landscape rises to the north. There is a steep incline from the road to the appeal site. As set out above, Carnkie has a tightly knit settlement pattern, contained close to the C0162 road. Whilst I note there are agricultural buildings contained in the field to the north, these sit somewhat apart from the residential character of the settlement and are typical of the dispersed rural character of built form in the landscape. In contrast, the provision of a residential dwelling in this location would be readily apparent on approach to the village from the west through gaps in hedgerows. Whilst I note the details of the design and layout of the dwelling are not before me, this would likely have the effect of extending the envelope of the settlement of Carnkie into the surrounding countryside to the north. Indeed, the siting of any dwelling on the northern part of the wider field, instead of closer to the rear of the dwellings to the south, would exacerbate this sense of extension and intrusion into the surrounding landscape.
37. The development of the site for residential purposes would, therefore, have a harmful effect on that character and appearance of the area, and thus would conflict with Policy 23 of the LP which states that development should be of an appropriate, scale, mass and design that recognises and respects landscape character of both designated and un-designated landscapes.

38. I conclude, therefore, that the appeal site would not be a suitable for residential development, having regard to its location, the proposed land use and the amount of development. As a consequence, residential development of the site would conflict with LP Policies 2, 3, 7, and 23. There would also be conflict with LP Policies 1, 12, 21 which set out the presumption in favour of sustainable development, that the Council is committed to achieve high quality design, and seek to make the best use of land and existing buildings. There would also be conflict with Policy C1 of the Cornwall Council Climate Emergency Development Plan Document 2023 which seeks to use and reuse land efficiently, and conserve and enhance the natural environment through high quality design. There would also be conflict with the relevant policies of the Framework.

Other Matters

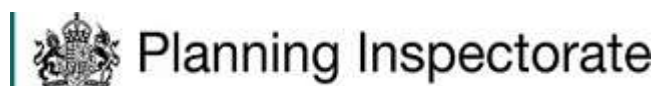
39. I note the development would make a small but nevertheless important contribution towards the supply of housing in Cornwall. It would also provide some small but again important benefits for employment during the construction phases and thereafter in terms of spending within the local economy from future occupiers.
40. However, I find that the benefits of the proposal would be limited given the scope and scale of the development. Those benefits neither individually or collectively outweigh the harm identified above nor lead me to a conclusion other than in accordance with the development plan.

Conclusion

41. For the reasons given above, I find the development would conflict with the development plan taken as a whole. There are no material considerations which indicate that a decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

J Whitfield

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 30 May 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building was substantially completed on or before 30 May 2019 and therefore, no enforcement action may then be taken in respect of it because the time for enforcement action has expired; and, it does not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

J Whitfield

Inspector

Date: 7th May 2026

Reference: APP/D0840/X/24/3350109

First Schedule

Construction of a building (edged black on the plan attached to this certificate).

Second Schedule

Land at Ash Farm, Carnkie, Wendron, Cornwall TR13 0DN

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation 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: 7th May 2026

by J Whitfield BA(Hons) DipTP MRTPI

Land at: Ash Farm, Carnkie, Wendron, Cornwall TR13 0DN

Reference: APP/D0840/X/24/3350109

Scale: Not to Scale

