



Appeal Decision

Site visit made on 28 April 2026

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2026

Appeal Ref: APP/U1105/X/25/3368421

Bridewell Cottage, adjoining Bridewell Farm, Hawkchurch EX13 5XL

- 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 John Sidhu against the decision of East Devon District Council.
 - The application ref 25/0649/CPL, dated 19 March 2025, was refused by notice dated 23 May 2025.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is repairs to cottage as already approved per undertaking given in 1972 and since in detailed communications, then resumption of occupation of the cottage.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operations which are found to be lawful.

Preliminary Matters

2. Various works to the building have been undertaken during the appeal process. Those works can have little bearing on my decision, as it is the application date which is relevant for determining whether the proposed operations described in the application would be lawful.
3. Whether an LDC should be issued is strictly a matter of fact and law; planning merits considerations cannot form part of my deliberations.

Main Issue

4. The main issue is whether the Council's refusal to grant an LDC in respect of the proposal is well-founded. This turns on whether it has been shown that the proposal would not involve development as defined in s55(1) of the Act.

Reasons

5. The burden of proving that the appeal should succeed rests firmly with the appellant, the relevant test of the evidence being on the balance of probability.
6. The appeal property contains a single storey, equal pitched roof building, formerly used as a dwelling. The building occupies a remote, countryside location.
7. Photographic images show the building as being in a dilapidated condition around the time of the application. About a third of the external wall surfaces, consisting of rendered brickwork, were standing, along with two brick-built chimneys. Profile metal sheeting covered the roof structure apart from a rear lean-to, which was unroofed. The timber frame uprights were exposed on substantial parts of three

elevations, corresponding with where fibre cement sheeting used for most of the external wall surfaces had largely been removed. Frames of some partitions were evident internally, with the floor surface being largely covered with debris including broken timber and sheeting, as well as vegetation.

8. According to the appellant's summary, the proposed works would mainly involve reinforcing the building's foundations, repairing, reinforcing and replacing sections of the timber frame, replacing the external wall sheets with new concrete fibre board and replacing the roof sheets with new profile metal sheeting. Also, insulation would be fitted to the floor, walls and roof, electric wiring and fixtures installed, new doors and windows and new WC and kitchen facilities fitted and damp proofing provided.
9. The property history is set out in the appellant's Statutory Declaration. The building originated as a farmworker's cottage prior to 1 July 1948 and was in residential occupation until no later than the early 1970s. In January 1972, the former owner (DL) provided a written undertaking to Axminster Rural District Council (ARDC) that the building would not be used for human habitation until the latter was satisfied that it had been '*rendered fit for that purpose*'.¹ This was in response to ARDC notifying DL under s16 of the Housing Act 1957 of the intention to make an order to require demolition of the building. ARDC's reasons for intending to make such an order are unclear. The appellant surmised that difficulty in maintaining a fresh water supply, a lack of insulation and the presence of asbestos in the building may have been contributing factors.
10. In December 1983, East Devon District Council (the Council) refused to grant an application for planning permission made by DL for '*re-building of existing residential bungalow*' and a subsequent appeal was dismissed.² This followed applications for Building Regulations consent to rebuild the building, made in 1974 and 1978. After DL's unexpected death in September 1986, ownership of the property passed to their children. The property was sold by them during 2021, before being acquired by the appellant in August 2023.
11. In July 2024, the Council's Building Control service accepted an Initial Notice submitted under the Building Regulations for undertaking works at the property. Following exchanges of correspondence with the appellant, the Council's Local Land Charges team confirmed that on the issuing of a Final Notice for the works described in the Building Regulations submission, arrangements would be made to remove DL's undertaking from the register of land charges.
12. There is no dispute that historically, the residential use of the building was lawful. In *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461, the Court held that lawful use rights can only be lost by: (i) abandonment; (ii) the formation of a new planning unit; or (iii) being superseded by a further change of use. There is little to suggest that either (ii) or (iii) apply in this instance. However, the Council consider that the residential use has been abandoned. A matter to which I now turn.
13. In *Hartley v MHLG* [1970] 2 WLR 1, the Court held that a building or land may have been abandoned if it remains unused for a considerable time, in such circumstances that a reasonable person might conclude that the previous use had

¹ Ref UTAK/002/HAWK

² Council Ref: 83/P1748

- been abandoned. In *Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40 the Court identified four criteria to be considered when determining whether a use has been abandoned. These are the physical condition of the land or building, the period of non-use, whether there has been any intervening use and the owner's intention as to whether to suspend the use or cease it permanently.
14. In *Hughes v SSETR* [2000] JPL 826, subsequently affirmed in *Bramall v SSCLG* [2011] EWHC 1531 (Admin), the Court of Appeal held that the test of the owner's intentions should be objective, the view to be taken by a reasonable person with knowledge of all the relevant circumstances. The owner's intention shall not however be elevated to a paramount status or conversely subordinate to other relevant considerations. The weight to be attached to each of the four criteria when determining abandonment is a matter for the decision maker.
 15. Firstly, turning to the physical condition of the building, it was clearly uninhabitable on the application date. The building could not afford the facilities required for day-to-day private domestic existence, this being the distinctive characteristic of a dwellinghouse identified in *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142. It is highly likely that the building had been in a similar state of disrepair for several decades; in the officer report for the 1983 planning application the building is described as '*a totally derelict bungalow*' and '*in a state of partial collapse*'. The report went on to state that [the] '*undertaking adds weight to the argument that the bungalow has been abandoned.*'
 16. Nevertheless, the quote for the proposed works prepared by the appellant's contractor describes the structural elements of the building, including the foundations, brick walls, suspended timber floor joists, timber frame and roof structure as being generally sound. The quote was prepared following a detailed inspection of the building. Whilst it is unclear whether a structural engineer was involved, I am given to understand that the quote is from a firm which specialises in timber framed buildings. There is little in the quote which would put the feasibility of repairing the building, including renewing services, in any serious doubt.
 17. Furthermore, there is little from the condition of the structure as described in the quote to suggest that the building would require substantial reconstruction. The principal structural elements are not in such a poor condition that wholesale removal and replacement would obviously be necessary. Whilst limited standing external wall sheeting remained in situ at the time of the application, that is non-structural. Therefore, based on the available evidence, and as a matter of fact and degree, the building, at the time of the application, had not deteriorated physically to the extent that the proposed works would inevitably involve its complete or substantial reconstruction. There is little before me which might suggest otherwise.
 18. In addition, the Valuation Office (VO) assessed the building as being capable of repair, in the process giving it a Band D rating for Council Tax purposes. A derelict building on the other hand, i.e., requiring major structural works to make it wind and watertight, would generally be exempt from the liability to pay Council Tax. The likelihood therefore is that the VO regard substantial reconstruction of the building as being unnecessary. I inevitably afford the VO assessment moderate weight, given that this was most likely carried out by a suitably qualified and experienced professional and followed a visit to the property.

19. Overall, therefore, as the available evidence indicates that the proposed works would be unlikely to result in destruction of the building, there would be no 'demolition' as meant in *Shimizu (UK) Ltd v Westminster City Council* [1997] 1 WLR 168. Besides, an LDC granted for repairs could no longer be relied on in the event that the building in question is demolished.
20. Secondly, with regard to any period of non-use I recognise that over half a century is a substantial period in which no residential use has been made of the building. Even so, mere cessation of a use is not conclusive of abandonment having occurred. Furthermore, there is scant evidence of the building being put to any other use in the intervening period, the third criteria. Therefore, there has been little since the building was last used for residential purposes which might point to the opening of a new chapter in the planning history of the property.
21. The final criteria is the owner's intention. Given the likely substantial costs involved in making the building fit for human habitation and the limited finances available to many farm workers, it would not be surprising if a lack of sufficient funds had played a significant role in preventing DL from complying with the undertaking in the medium term. In addition to making applications for Building Regulations consent, DL later tried to obtain planning permission for a replacement bungalow and went as far as making an appeal, although that was ultimately unsuccessful. The series of applications, made over several years, points towards a sustained intention on DL's part to resume the residential use.
22. DL's sudden death a few years after the planning application and subsequent appeal, along with the likely uncertainties involved in settling their estate, could in part account for little or no steps being taken by their children, as successors in title, towards resuming the residential use of the property in the following years. That inactivity then extended to several decades. However, simple neglect is not in itself an indication of a lack of intent. I understand that DL's children undertook 'basic maintenance' to the building, although it is unclear what that entailed. Moreover, if there had been no intention to resume the residential use it might not be unreasonable to have expected the owners to perhaps demolish the building or allow it to collapse. Therefore, although not decisive in itself, and again as a matter of fact and degree, when looked at objectively in the light of all the relevant facts and circumstances, there is little to suggest that the owners intended to do other than resume the residential use.
23. Drawing the above matters together, given the evidence indicating that the building would not require substantial reconstruction, the lack of any intervening different use and the absence of an intention on the part of the owners to do other than resume the residential use, the lengthy period of non-use notwithstanding it is reasonable to conclude that, on the balance of probability, the residential use of the property has not been abandoned. Accordingly, resumption of that use would not involve a material change of use.
24. Set in the above context, based on the available evidence and as a matter of fact and degree, the works proposed are highly likely to fall within the scope of maintenance, improvement or alterations and would not materially affect the external appearance of the building. The description of the proposed works is sufficiently clear and precise. The carrying out of works for the maintenance, improvement or other alteration of any building which affect only its interior or do

not materially affect its external appearance are taken to not fall within the definition of development, having regard to s55(2)(a) of the Act.

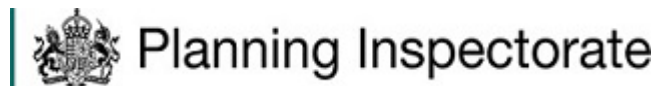
25. The Council also considered that the proposed works would not be permitted by Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Nevertheless, permitted development rights are of little relevance as there would be no development in the first place.
26. Given my findings set out above, the other matters raised by the appellant do not warrant further consideration.
27. Therefore, on the basis of the available evidence, on the balance of probability and in the very particular circumstances of this case, the appellant has demonstrated that the proposal would fall outside of the definition of development and would not require planning permission. It follows that the proposal would be lawful for planning purposes.

Conclusion

28. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for repairs to cottage as already approved per undertaking given in 1972 and since in detailed communications, then resumption of occupation of the cottage, is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Stephen Hawkins

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 19 March 2025 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, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Based on the available evidence and on the balance of probability, the proposal would not involve development as defined in s55(1) of the Act and therefore would not require planning permission.

Signed

Stephen Hawkins

Inspector

Date: 13 May 2026

Reference: APP/U1105/X/25/3368421

First Schedule

Repairs to cottage as already approved per undertaking given in 1972 and since in detailed communications, then resumption of occupation of the cottage

Second Schedule

Bridewell Cottage, adjoining Bridewell Farm, Hawkchurch EX13 5XL

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 13 May 2026

by **Stephen Hawkins**

Land at: Bridewell Cottage, adjoining Bridewell Farm, Hawkchurch EX13 5XL

Reference: APP/U1105/X/25/3368421

Scale: Not to Scale

