



Appeal Decision

Site visit made on 11 May 2026

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date 21 May 2026

Appeal Ref: APP/B1740/X/25/3369784

Little Nutley, Ringwood Road, Sopley BH23 7BB

- 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.
- The appeal is made by Mrs Katrina West against the decision of New Forest District Council.
- The application ref 25/10297, dated 25 March 2025, was refused by notice dated 22 May 2025.
- The application was made under section 191(1)(a) of the Act.
- The use for which a certificate of lawful use or development is sought was described as 'a cottage garden'.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. The description in the banner heading above is taken from the application form. The decision notice contained 'use of land as residential garden' as did the appeal form so I have used this.
2. The Council suggested new evidence submitted with the appeal is barred, appearing to rely on paragraph 9.5.2.4 of the 'Planning Inspectorate procedural guide: planning appeals – England'¹. However, because of paragraph 1.2 it does not apply to lawful development certificate (LDC) appeals.
3. Paragraph 3.3.1 of the 'Planning Inspectorate certificate of lawful use or development appeals: procedural guide'², requires an appellant to give reasons why the development is considered to be lawful. This usually includes a response to the Council's reasoning and there is no apparent reason why parties cannot include additional evidence not before the Council at the time of its decision. Paragraph 3.3.2 then confirms that the appellant should not withhold information at an early stage (i.e. in the appeal statement) and then only that additional evidence (i.e. than already in the appeal statement) should not be introduced at a later stage.
4. I have therefore taken the appellant's additional evidence into account and the Council had an opportunity to consider it. That is, with the exception of evidence reliant on a hyperlink to the Council's website. Relevant guidance³ explains hyperlinks should not be used. The link may no longer be live or show what is claimed and not all parties may be able to view the evidence.
5. I have determined the appeal on the basis set out above without prejudice or injustice to any party.

¹ For appeals relating to applications dated on or before 31 March 2026, last updated 18 May 2026

² Updated 26 February 2026

³ Appealing to the Planning Inspectorate: communicating electronically with us, updated 26 February 2026 – paragraph 3.9

Main Issue

6. The main issue is whether the Council's refusal to grant a certificate of lawfulness was well founded.

Reasons

7. The application is to ascertain whether existing use of the land, edged red in the application plan, as residential garden was lawful at the time it was made to the Council on 25 March 2025 (the relevant date). For the appeal to succeed, the onus is on the appellant to demonstrate, on the balance of probabilities, that this material change of use was begun 10 years before the relevant date (i.e. by 25 March 2015) and has continued without significant interruption.
8. Similar statutory declarations by the appellant and her husband include that they have lived at Little Nutley since 1986. This property has an original garden to the north of this house, set down below the land which is next to it on the west and north sides. The land was owned by previous occupants of nearby Chiltley House. The appellant claims the land was always known as 'Cottage Garden' and, in essence, interested party letters set out that the land has always been used as part of the domestic garden of Chiltley House or Little Nutley.
9. However, there is little objective evidence to substantiate that the land was used by the previous occupants of Chiltley House as a 'formal garden with a play area for the three sons, flower beds and a greenhouse, lawn etc.'. Nor that it was always maintained as garden for 'many years', including specific dates. Despite scale and resolution, when zoomed in, there is little to suggest that the aerial images before me show such use or activity on the land before 2009. This is the approximate year when the appellant says the land was first used by her and her family as part of the garden of Little Nutley, with the agreement of a previous owner of Chiltley House.
10. Even if prior to 2009 the land was part of the garden of Chiltley House, there is evidence it 'became overgrown solely because of neglect'. The period of this decline is not clear but could have restricted or prevented continuity of active use of the land as residential garden. The evidence indicates the land and boundaries were 'maintained', including by the appellant or her husband (though not when), because previous elderly occupants of Chiltley House were no longer able to. In the absence of clear evidence to the contrary, I take this to mean to arrest or prevent further neglect, not restore the land to active residential garden use.
11. There is then little objective evidence (such as specific activity or events, dates and photographs beyond the few that have been submitted) to substantiate the appellant's claimed use of the land as residential garden over some 10 years between 2009 and by the time the appellant purchased the land from a previous owner of Chiltley House in 2019.
12. The appellant suggests that a laurel hedge along the boundary separating the original garden from the land was removed in 'around 2012' and 'certainly more than 10 years ago' (as at the date of the application). The former alignment of this hedge was identified at my site visit. However, the aerial images before me show this hedge in situ in January 2012, April 2014 and May 2017 to varying degree by natural growth or state of maintenance.

13. There is also little to counter that the aerial images to May 2017 show the land as parcels of rough grass, in some places more parched or bare earth and elsewhere with more vegetated ground cover. There is no apparent domestic use or activity including any domestic paraphernalia or structures and no mown lawn. Instead it retains the appearance of maintained land.
14. In the July 2018 aerial image this boundary hedge has been removed bar a short stub (if the hedge was partly or even completely removed earlier, such as between April 2014 and May 2017, there is little evidence to substantiate precisely when and this period straddles 25 March 2015). There is a more pronounced patch of managed or mown grass to the west of little Nutley, beyond the original garden, with a raised deck and steps (I saw still in situ) down to this part of the land which has a more apparent domestic purpose. While there are also some structures elsewhere on the land, their purpose has not been explained and most of the land remains in much the same condition as in May 2017. Circumstances in May 2017 and July 2018 are anyway after 25 March 2015.
15. The land has always been (and still is) divided by fences or hedgerow from a large field to the west and some smaller parcels of land to the north (both also owned by the previous occupants of Chiltley House). But mere visual or physical separation from any agricultural or rural use and activity on this other land does not mean the land was residential garden. This is so even if the land was not in agricultural use, was within the curtilage of Chiltley House or was on occasions used for public or community events by the Parish Council.
16. The position and direction of view in the appellant's photographs were identified at my site visit. Summer 2016 includes a corner of the land as rough grassland and no apparent residential use or activity, including any domestic paraphernalia. Summer 2017 includes the appellant's husband eating and drinking on part of the land, west of the original garden, and some moveable non-permanent domestic paraphernalia, such as chair and table. P1 shows a shed, a chair and possibly a log-store on part of the land but is from 2019. In P2 from 2016 there is little to differentiate the appellant's husband's alleged 'gardening' activity from maintenance or management of the land and given that this part of it has the appearance of rough grassland. P3 from May 2017 shows the land to be rough grassland, also with little to suggest gardening as opposed to maintaining it.
17. In any event, these photographs do not portray what was occurring on the land by 25 March 2015. Furthermore, photographs P1 (July 1995) show residential use and activity within the original garden, with rough grassland on the land beyond.
18. Letters from two of the appellant's now adult children describe foray onto parts of the land for play. As identified at my site visit, this was with opportunistic access via a narrow, corner gap in the low wall defining the end of the original garden. Albeit for many hours at a time, I have not been informed over what years this activity started or ended. It is also on the face of it unsurprising that children would believe the land to be part of the garden at the time and as they recollect now.
19. It was put to me that another LDC for 'residential garden' was granted by the Council after it accepted just two sworn statements from the applicants and an agent's cover letter⁴. While the appellant provided some details of this application and decision, the Council's officer report was not provided, nor was the certificate

⁴ 23/10188

a complete copy. Given that the Council's explanation leading to reasons for its decision is not before me I cannot be sure it was a 'comparable' case. Nor that this current appeal application was, or is, 'accompanied by significantly more supporting evidence', which is anyway not a determining factor.

20. With regard to relevant caselaw, I accept that the appellant's statutory declarations are supported by other independent evidence. But the weight given to this evidence is reduced because it is not sufficiently precise or unambiguous to make the appellant's version of events more, rather than less likely. I also accept that the Council has little direct evidence of its own. But the aerial images it relies on are relevant to my decision in much the same way as the similar aerial images are for the appellant. The Council's impression of this evidence contradicts the appellant's version of events so renders it less, rather than more likely.
21. I do not doubt that the appellant sincerely intended to use the land as residential garden, even before 2009. However, in planning terms residential garden use is distinctly different to maintaining or managing the land for its own intrinsic sake or in the interim. As a matter of fact and degree, there is evidence residential garden use evolved over time, initially occasional or sporadic and not in a meaningful or sustained way until much later. The land was formally incorporated as an extension of the original garden and established as residential garden sometime after April 2014 and by May 2017 or July 2018. But it is not clear when in relation to 25 March 2015 or the extent of residential garden then, including domestic use and activity.
22. The appellant has not, therefore, demonstrated on the balance of probabilities that a material change of use of the land to residential garden was begun 10 years before the relevant date (i.e. by 25 March 2015) and has continued without significant interruption.

Other Matters

23. The appellant is aggrieved that the Council did not provide opportunity for further evidence to be submitted at application stage, but this is not within my remit. I appreciate that the question of residential garden use of the land arose in connection with proposals for a vehicular access and off-street parking at Little Nutley, which would be a significant benefit to the appellant and her husband because of his health condition. The appellant may make a further LDC application to the Council for residential garden land with new evidence or a planning application can be considered on its planning merits.

Conclusion

24. For the reasons given above, and on the evidence now available, I am satisfied that the Council's decision to refuse to grant a lawful development certificate for 'use of land as residential garden' was well-founded. Accordingly, the appeal does not succeed and I will exercise the powers transferred to me under section 195(3) of the Act.

Formal Decision

25. The appeal is dismissed.

Robin Buchanan
INSPECTOR