



Appeal Decision

Site visit made on 12 May 2026

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 May 2026

Appeal Ref: APP/F4410/X/25/3368544

59 Adwick Lane, Toll Bar, Doncaster DN5 0QZ

- 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 Mrs Ognizlata Yeletenko against the decision of City of Doncaster Council.
 - The application ref 25/00922/CPL, dated 28 April 2025, was refused by notice dated 11 June 2025.
 - The application was made under section 192(1)(a) of the Act.
 - The use for which an LDC is sought is: The existing use of the property as a residential dwelling is lawful, and the proposed home-based massage service will operate within permitted development rights, using an existing room without structural alterations.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the extent of the proposed use which is found to be lawful.

Preliminary Matters

2. The description of the proposed use set out above is from the application form. The Council’s decision gave an alternative description of the operation of a home-based massage service from an existing room within the dwelling. This describes the proposed use more clearly and I shall determine the appeal on that basis.
3. The application made to the Council included operating hours of 0900 to 1800 Monday to Friday and 0900 to 1400 on Saturdays, a total of 50 hours per week. This was reduced to 19.5 hours per week, specifically 1000 to 1630 Monday, Tuesday and Thursday on the appeal form.
4. The terms of an LDC being sought may be changed by agreement in appropriate cases.¹ Having sought the views of the parties, I shall consider the proposed use as a massage service in one room of the premises, operated by a member of the resident household 1000 to 1630 on Monday, Tuesday and Thursday only.

Main Issue

5. The main issue is whether the Council’s refusal to issue an LDC was well founded. This will turn on whether the operation of a massage service by one member of the resident household in one room 1000 to 1630 on Monday, Tuesday and Thursday only would have been lawful if it had begun on the application date.

¹ *R v Thanet DC ex parte Tapp & Another* [2001] EWCA Civ 559.

Reasons

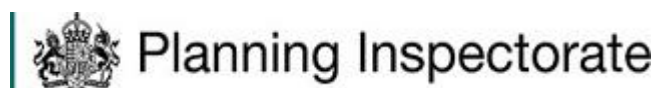
6. Under section 191(2) of the Act a use may be found lawful if no enforcement action may be taken in respect of it and it does not contravene any requirement of an enforcement notice then in force. There was no relevant enforcement notice in force when the application was made, so it only needs to be determined whether enforcement action could have been taken if the proposed home-based massage service had begun then.
7. Enforcement action may be taken against development that has been carried out without planning permission. The definition of development at section 55(1) of the Act includes “the making of any *material* change in the use of any buildings or other land” (my emphasis).
8. It follows that making a change of use that is not material is not development requiring planning permission, meaning that enforcement action cannot be taken against it. For a material change of use to occur, there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.
9. The appeal premises are an end of terrace house near the edge of the village. While there is a bus stop and recreation ground opposite, this part of the village is quiet and predominantly residential in character.
10. The massage service would be carried out in one room and by one member of the resident household. As originally proposed, it would have operated for 50 hours each week, on all days except Sunday. Operating for such a large proportion of the week, it would have involved significant comings and goings over 6 days. This would have made a substantial change in the character of the use of the property from the existing solely residential use.
11. As now proposed, limited to 19.5 hours per week, across 3 days with no weekend working, the likely number of comings and goings would be restricted. The change in the character of activity would not be significant, and the premises would remain essentially domestic. Accordingly, and as a matter of fact and degree, the change of use would not be material.

Conclusion

12. For the reasons given above, I conclude, on the evidence now available, that a refusal to grant an LDC for the use of one room for a home-based massage service operated by one member of the resident household (1000 to 1630 Monday, Tuesday and Thursday only) would not be well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the Act.

Mark Harbottle

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 28 April 2025 the use 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:

The use of one room for a home-based massage service operated by one member of the resident household 1000 to 1630 Monday, Tuesday and Thursday only would not result in a significant change in the definable character of the use of the premises and the change of use of the premises would not be material.

Signed

Mark Harbottle

Inspector

Date: 27 May 2026

Reference: APP/F4410/X/25/3368544

First Schedule

The use of one room for a home-based massage service operated by one member of the resident household 1000 to 1630 Monday, Tuesday and Thursday only.

Second Schedule

Land at 59 Adwick Lane, Toll Bar, Doncaster DN5 0QZ

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: 27 May 2026

by Mark Harbottle

Land at: 59 Adwick Lane, Toll Bar, Doncaster DN5 0QZ

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Scale: Not to Scale

