



Appeal Decision

Site visit made on 12 May 2026

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 July 2026

Appeal Ref: APP/F2415/X/24/3355160

Midsummer Cottage, Hallaton Road, Horninghold, Leicestershire LE16 8DH

- 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 Mrs Sharon Paul against the decision of Harborough District Council.
 - The application ref 24/00621/CLU, dated 22 May 2024, was refused by notice dated 17 July 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 or development is sought is the use of the land as residential garden.
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Decision

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

Preliminary Matters

2. The description of the existing use on the application form is long winded and goes into great detail describing the activities that the appellant contends have taken place on the land. On their appeal form the appellant describes the use as “*garden land*”. The Council describes the application as being for “*the continued and on-going use of the paddock as residential space*”.
3. The Planning Practice Guidance is clear that precision in terms of any certificate is vital so that there is no room for doubt about what was lawful at a particular date. The Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) allows the local planning authority to modify the description of the existing use, and I may exercise this power on appeal to issue a lawful development certificate for any use that is shown to be lawful. It is clear from the evidence provided that the appellant seeks a certificate in respect of the use of the land as residential garden. I have therefore modified the description accordingly.
4. The Council have referred to “*residential curtilage*” in its delegated report. However, this is not what the appellant has applied for. In any event, residential curtilage is not a use of land. Section 191(1)(a) of the 1990 Act concerns “*any existing use of buildings or other land*”. It is therefore not open to me to certify that the use of land is curtilage.
5. Furthermore, residential garden, which is a use of land, is not necessarily residential curtilage. In many situations, such as a dwelling on a modern housing estate, they are the same but, in some situations, such as where a large residential garden extends out into a countryside area, they may not be. Residential curtilage is, in all cases, a matter of fact and degree.

6. In some circumstances, such as when determining whether a development is permitted under Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), it is necessary to establish whether the land is within the curtilage of the dwelling house. That is not the case here, where I am required to determine whether the use of the land as residential garden is lawful, based on the facts and evidence. I have determined the appeal on this basis.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development (LDC) was well founded.

Reasons

8. Section 191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful; or (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful – they may make an application for the purpose to the Local Planning Authority, specifying the land and describing the use, operations or other matter.
9. In an LDC, the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the “balance of probabilities”. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
10. The appeal site comprises a detached two storey dwelling and a substantial plot of land which is associated with it. The appellant owns the dwelling, Midsummer Cottage, together with the land around it. The appeal essentially relates to a large lawned area which is raised above the driveway and is bound by fencing and mature vegetation. The land appeared well maintained at the time of my visit, with a small number of domestic style outbuildings present including timber sheds and a greenhouse. There was no physical separation between this land and the dwelling.
11. The main thrust of the appellant's case is that the land has been used as residential garden since at least 2008. The appeal will therefore turn on whether the appellant can show, on the balance of probability, that the use of the land as residential garden began on or before 22 May 2014 and continued for a period of at least 10 years without significant interruption thereafter.
12. The appellant has owned the appeal site since September 2013 and therefore has first-hand knowledge of the site and its use for more than ten years prior to the date of the LDC application. In support of her position, the appellant Sharon Paul (SP) has provided a variety of documentary evidence including three statutory declarations (SD) made by herself. The first two of those, both dated 29 September 2022, relate to visits to the appeal site in 2011 and 2012 when SP was considering purchasing the property.
13. The third SD, dated 4 November 2024, reiterates those previous visits as well as describing how the land has been used since the appellant's purchase of the property in September 2013. In particular, SP sets out that:

“Subsequent to my purchase in September 2013 there has been no fencing separating the garden and the land.”

“From the date of my purchase in September 2013 to the date of this declaration the land has been utilised as garden land for the enjoyment of myself family and friends and cultivated by ourselves as garden land.”

“Therefore to my own personal knowledge and belief the area showed edged red on the plan called “SP2” annexed hereto has been garden land ancillary to the main dwelling for a period of 11 years by myself and family.”

14. An affidavit or SD are of equivalent status to giving oral evidence on oath, and anyone who wilfully makes a statement which they know to be false, or does not believe to be true, shall be guilty of perjury as set out in the Perjury Act 1911. There are indeed serious implications for any person who makes a false statement, including in a SD, in a judicial proceeding, which includes having to pay significant fines or being sentenced to time in prison. Given the potential sanctions, I attribute significant weight to the evidence of SP.
15. The appellant's position is further supported by photographic evidence including a photo dated 20 May 2008 from sales particulars, imagery from 2013 sales particulars, and aerial imagery from 2019 and 2021. In all of the images the land appears as a well maintained lawned area, with no physical separation visible between the dwelling and/or swimming pool and the remainder of the land. Furthermore, in the 2008 photograph a bench and ornamental statue are present on the land, and in the 2021 aerial imagery a small golf green is visible.
16. The Council's case in respect of the evidence produced by SP is that the maintenance of the grassed area is not a clear indication of a material change of use of the land from agricultural to residential, and that in the various aerial imagery provided there is a lack of residential paraphernalia on the land. However, particularly given the significant size of the plot, I do not find the absence of domestic paraphernalia to be determinative.
17. While people and/or animals are not visible on the land in the photographs provided, the well-maintained appearance of the land is consistent with the appellant's suggestion that the land is *“cultivated by ourselves as garden land”*. Although non-residential land also has to be maintained, the appellant's gardening activities and overall maintenance of the land are likely to have been carried out in connection with the residential use of the land.
18. As already described above, I observed timber sheds and a greenhouse on the site in close proximity to the boundary. The photographic evidence also shows a small golf green and a bench being present on the land at various times in the past. Garden land may vary considerably in appearance, ranging from formal and intensively managed spaces to more informal or wild areas. What is relevant is the use of the land. In addition to the appellant's SD, Jayne Francis who occupied the property between 2005 and 2008 has also provided a SD setting out that the land was used as garden long before the current appellant's ownership.
19. Having regard to my site observations and the submitted evidence, including the appellant's SD to which I attached significant weight, I find on the balance of probabilities that the appeal land has been in continuous use as residential garden for a period exceeding 10 years prior to the date of the application. There is no

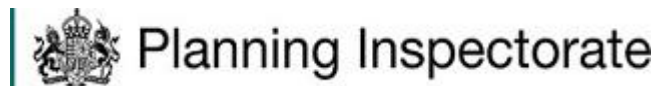
substantive evidence to the contrary. I consider that the evidence is sufficiently precise and unambiguous in these circumstances to show that the use is lawful and immune from enforcement action.

Conclusion

20. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for the use of the land as residential garden 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.

David Jones

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 22 May 2024 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence presented indicates, on the balance of probabilities, that the land has been used as residential garden for a period of at least ten years, without significant interruption, and was therefore immune from enforcement action at the date of the application.

Signed

David Jones

Inspector

Date: 1 July 2026

Reference: APP/F2415/X/24/3355160

First Schedule

Use of the land as residential garden

Second Schedule

Land at Midsummer Cottage, Hallaton Road, Horninghold, Leicestershire LE16 8DH

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 use described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 1 July 2026

by David Jones BSc (Hons) MPlan MRTPI

Land at: Midsummer Cottage, Hallaton Road, Horninghold, Leicestershire LE16 8DH

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Scale: Not to Scale

