



Appeal Decision

Site visit made on 1 July 2026

by **D Hartley BA(Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 July 2026

Appeal Ref: APP/J1915/X/25/3359515

1 Vine Cottages, Hare Street, Hertfordshire, SG9 0EG

- 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 Richard White against the decision of East Hertfordshire District Council.
 - The application ref 3/24/1861/CLXU, dated 30 September 2024, was refused by notice dated 2 December 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 land as residential garden land.
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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 Matter

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether the evidence demonstrates, on the balance of probability, that on the date of the LDC application the land had been continuously used as a residential garden for a period of at least ten years and hence was immune from enforcement action and lawful.

Reasons

4. The evidence is that the appellant purchased No. 1 Vine Cottages, along with the land to which the LDC relates, in November 2012. He makes the claim, via a statutory declaration, that the appeal land has been continuously used as a residential garden from November 2012 until the date of the LDC application, i.e., 30 September 2024. He states that as this use has occurred for a continuous period of more than ten years it is therefore immune from enforcement action and hence lawful.
5. The appellant's evidence also includes a statutory declaration from the neighbouring occupier of No. 1 Stores Cottages. This resident says that *'the land*

that has been used by the Whites as their exclusive domestic garden land since November 2012'. While the occupier of No. 1 Stores Cottages does not provide specific details relating to the actual use of the land, this is perhaps not surprising. Most people tend to understand what is deemed to be a residential garden particularly when they are aware of who is using it and what they have witnessed going on within it for a period of time.

6. I afford the above statutory declaration significant weight in decision making terms, particularly when it is considered alongside the further submitted evidence as outlined below. The occupier of the neighbouring property is well placed to have a good understanding of how the land has been used from November 2012. The claim made by the occupier of No. 1 Stores Cottages is also corroborated by the occupier of No. 44 Ash Meadow, Much Hadham. She states that *'I have witnessed that the Whites have enjoyed continued and uninterrupted use of the Garden at the rear of their property for use as a domestic garden since November 2012'.*
7. The evidence of use of the land as a residential garden also includes a letter from Mr Atkins of A&E Gardens who maintained the land for several years from November 2012 and *'spent a considerable amount of time working on the larger garden cutting back the overgrown trees and shrubs whilst cutting the lawn on a weekly basis', and 'we arranged for a tree surgeon to come in and maintain the trees to create more light as requested'.* This indeed reflects the evidence of Mr Rudd of Trees, Hedges and Shrubs who comments in his letter that *'I have been working at I Vine Cottages since January 2020 with the brief of maintaining and enhancing the garden. It is a large mature garden of just under two acres with a nice balance of hard landscaping, lawns, flower beds and a collection of specimen trees and large evergreen shrubs. The garden slopes uphill along its entirety and has a closely mowed lawn covering approximately 70% of the area'.*
8. In my judgement, the collective evidence above does sufficiently demonstrate, on the balance of probability, that the land as a whole has been used as a residential garden since November 2012. I accept that the evidence demonstrates that buildings have not been confined to the whole of the land and that some trees have been felled in recent years as can be seen in respect of the Council's aerial photographs dated 2015 and 2019. However, the removal of trees and/or planting of new trees does not in itself determine residential garden use. Land can include many trees and still be a residential garden. Moreover, it is important to emphasise that some residential gardens are open, some are enclosed, some are informal in character, some are formal in character, some include domestic paraphernalia such as trampolines or footballs nets, and some are simply 'used' for visual or decorative purposes only and with an absence of domestic paraphernalia.
9. In this case, the land is in the ownership of the appellant. It is experienced as one open space. No part of it is severed from any other another part by some form of means of enclosure. The land is physically separate from the smaller enclosed outside amenity space immediately to the rear of the property but can nonetheless be seen from the rear of the appeal property as essentially one uninterrupted space. It is enclosed from land which is outside the ownership of the appellant by vegetation and other means of enclosure.
10. The evidence is that the land has been maintained by the owners since 2012. On the evidence that is before me, I can see no reason why the land would be maintained in the manner outlined other than with the express purpose of it being

presented or used for residential garden purposes. There is certainly nothing in the evidence to suggest that since 2012 the land has been used for any other use such as agriculture or as a non-residential use. Indeed, the statutory declaration comments are quite clear about the use of the land.

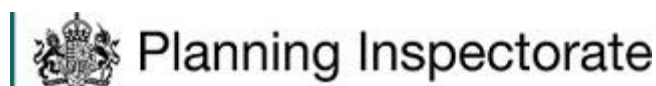
11. There is evidence that works to trees on the land has taken place. I could see evidence of tree stumps as part of my site visit. Many of the trees on the land are non-native species and of some age as outlined in the appellant's arboricultural report evidence. The inclusion of several non-native and mature trees on the land does, in my judgement, lend support to the claim that the land has been used as a residential garden for more than ten years. It suggests to me the planting of non-native trees with the express purpose of them being enjoyed for residential garden use purposes. The evidence does not suggest that the land has been used, for example, as some sort of separate amenity space with several self-seeded trees.
12. The evidence indicates that a large part of the land has been mowed. It is noteworthy that the appellant purchased a ride on lawnmower in 2012. I noted that the whole of the land had been mowed on my site visit and evidence of compost heaps at the top of the land. Overall, there is sufficient support to demonstrate that the land, which is large, has been mown/maintained for more than ten years prior to the date of the LDC application. Even if part of the land does not/has not included a building(s), or indeed specific domestic paraphernalia, I find that the weight of the collective evidence that is before me is that, on the balance of probability, the land as a whole has been used as a residential garden for a continuous period of ten years. Consequently, such a use is immune from enforcement action and hence lawful.

Conclusion

13. 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 use of land as residential garden land 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).

D Hartley

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 September 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown within the red edge 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:

On the balance of probability, the land has been used continuously as a residential garden for more than ten years and hence is immune from enforcement action and lawful.

Signed

D Hartley

Inspector

Date: 6 July 2026

Reference: APP/J1915/X/25/3359515

First Schedule

Use of land as residential garden land

Second Schedule

Land at 1 Vine Cottages, Hertfordshire, SG9 0EG

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 /operations 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 /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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 6 July 2026

by D Hartley BA (Hons) MTP MBA MRTPI

Land at: 1 Vine Cottages, Hare Street, Hertfordshire, SG9 0EG

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Scale: Not to Scale

