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# Appeal Decision

Site visit made on 16 June 2026

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 24<sup>th</sup> July 2026

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## Appeal Ref: APP/Y2620/X/24/3351409

### Fenview, 3 Fenside Cottages, Fenside, Catfield, Great Yarmouth NR29 5DD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Joseph Amos against the decision of North Norfolk District Council.
- The application ref CL/24/1249, dated 13 June 2024, was refused by a notice dated 9 August 2024.
- The application was made under section 191(1)(a) of the 1990 Act.
- The use for which a certificate of lawful use or development is sought is use as a residential garden.

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The description of the existing use, in the banner heading above, is taken from the application form but I have deleted the wording *'the case for the certificate is that the garden has been used as a garden at Fenside for at least 10 years without interruption or intervening'* given that it is superfluous and relates to the reason for the application.

### Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

### Reasons

4. The burden of proof is with the appellant, and the appropriate test of the evidence is the balance of probabilities. The onus is firmly on the appellant to show that the use of the appeal site as residential garden was lawful at the time the application was made. A use is lawful under the provisions of section 191(2)(a) of the 1990 Act if no enforcement action may be taken in respect of it whether because it did not involve development or require planning permission or because the time for enforcement action has expired.
5. Paragraph 006<sup>1</sup> of the Lawful Development Certificates section of the Planning Practice Guidance (PPG) advises in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
6. Fenview is an end of terrace cottage, and it appears to have a garden area and informal access drive adjacent to it. The land that is the subject of the appeal is

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<sup>1</sup> Reference ID: 17c-006-20140306

adjacent to 1 Fenside Cottages, a cottage that is at the opposite end of the terrace to the appellant's cottage. At the time of my site visit there was a building on the appeal site, a vehicle parked close to that building and there was an informal access drive into the appeal site.

7. The appellant's case is that the use as a residential garden began 10 years before the date of the LDC application, being 13 June 2024. Section 171B(3) of the 1990 Act states that *'in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach'*. There is no evidence before me to indicate that the appellant considers that the use as a residential garden did not involve development or that it did not require planning permission.
8. The evidence submitted by the appellant, before me, includes statutory declarations (SDs) from the appellant and 4 other individuals and 4 photographs. Only one of the SDs before me is signed, completed and witnessed. However, there is no evidence within the Council's Planning Officer's Report to indicate that the SDs submitted with the LDC application had not been signed, completed and witnessed. As such, I have treated the SDs as if they had been signed, completed and witnessed. In the SDs from the appellant and Wendy Amos, it is stated that they bought Fenview and moved in on 13 December 2013. They go on to state that when they purchased the cottage, the appeal site had been in use as a garden by the previous owner and that they have continued to use the garden for over ten years, holding events such as parties on the garden and growing some vegetables.
9. The SD from an adjacent farm owner states that they have known the garden at Fenview for over 55 years. It goes on to state that *'My mother was a previous owner of Fenview and when she owned the property the last use of the garden was for growing raspberries. Since my mother owned Fenview, successive owners have used the garden as a garden.'* The other 2 SDs are from the occupiers of 1 Fenside and they state that they have lived at that address for more than 10 years, that the appeal site has been used as a garden by Mr and Mrs Amos for more than 10 years and that it is mainly laid to lawn but that there are some fruit trees on the land as well.
10. Whilst the statements in the SDs have significant weight, they are generalised assertions with little detail attached to them. I acknowledge that due to the length of time that has lapsed that it may be unrealistic to expect absolute precision and a complete absence of any ambiguity with regard to the frequency and dates of the parties. Yet there is little supporting evidence to describe what the parties were celebrating. Those types of details I consider would be relatively easy to recollect given that they are likely to have been family birthdays, anniversaries or other specific events. Moreover, there is no detail on when or the frequency of the site being used for other recreational activities such as tending and growing fruit and vegetables by the appellant or past owners. There is also no additional evidence from the other statement submitted in support of the application with regard to the frequency and dates of the parties, gatherings and barbecues they attended.
11. In addition, no evidence has been provided by the appellant of what family members moved into the dwelling in December 2013 and whether there were children in the household, pets that needed exercise or other animals such as pigs or chickens. No examples of the type of family leisure activities that have taken place on a regular basis on the appeal site have been provided. There is no

supporting explanation as to how this relatively large, grassed area was utilised by the members of the household on a typical day.

12. The photographs submitted with the application are undated and one shows a site with bare earth and the other three indicate that a gathering or gatherings where guests camped on the site has/have been held in the past. Nonetheless, even if there was no ambiguity in relation to their dates, the photographs only indicate that the site has been used at least once for a gathering/party. They are therefore not determinative in relation to the frequency and continuity of the use of the appeal site as a residential garden.
13. Moreover, the Council's Planning Officer's Report states that 8 letters of objection have been received consistently stating that the land was used for agricultural purposes including rearing of animals and crop production for trading. Responses to this appeal include two from the owners of the adjoining woodland, for well over 20 years, which state that the land in question has always had a Defra field number and has been used agriculturally to rear livestock for sale. One of those goes onto state that *'there is no question that over the last ten years the appellant has been bringing on a variety of conventional farm stock for sale. For example, I personally sold him some lambs for this purpose.'*
14. Another respondent has stated that they have lived in the village for 50 years and that the land has not been used as a garden over the last 10 years but as somewhere to keep farm animals such as sheep, ducks, geese and chickens for commercial reasons. Another neighbouring occupier has stated that in the 17 years that they have lived at their property the range of activities carried out on the land have been of an agricultural nature including grazing animals and growing crops within polytunnels.
15. I acknowledge that animals such as pigs, ducks, geese and chickens can be kept within a residential garden. Furthermore, some generous sized gardens may contain a polytunnel/s to grow fruit and vegetables. However, there is no evidence before me to show how the keeping of those animals and the growing of fruit and vegetables has been incidental to the residential use of Fenview rather than an agricultural use of the land.
16. The applicant/appellant is responsible for providing sufficient information to support an application. In this case the evidence from the third parties appears to contradict the appellant's evidence. Additionally, the appellant's evidence alone is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. Taking all submitted evidence into account, the appellant has failed to show on the balance of probabilities that the appeal site has been used continuously for ten years or more as a residential garden.

## Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use as a residential garden is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

*D Boffin*

INSPECTOR