Planning Inspectorate

Appeal Decision

Site visit made on 18 June 2026

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2026

Appeal Ref: APP/F9498/X/24/3340785
Adj to Archer House, The Steep, Dunster, Minehead, Somerset TA24 6FD

- 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 Mr Steven Palmer against the decision of Exmoor National Park Authority.
- The application ref 6/10/23/015 dated 17 August 2023 was refused by notice dated 21 February 2024.
- 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 is the use of land as a garden.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Park Authority (NPA) within their officer report which led to their decision states: "*The assertion is that the land to the Northeast of Archer House, as identified in the submission, is within the property's domestic curtilage and qualifies as residential land (garden).*" That is incorrect as the application form clearly in its description states "Use of land as garden." A curtilage is not a use of land and what may be described as a garden may not be within a curtilage of a building.

3. There is no definition of what a garden is in planning law however. A garden can mean various things from small domestic situations, large areas of landscaped grounds around country houses or communal areas for a number of properties. The appellant has referred to a non-planning legal authority which has not been provided to me. A quotation is given from it which states: "*the relationship between the owner and the land, and the history and character of the land and space. That intention (for use), as found as fact, should be a significant deciding factor*." This seems to be a common-sense approach. The context of this appeal indicates to me therefore that what is being sought here is confirmation of whether or not it is lawful to use the appeal site for recreational domestic enjoyment as a garden by the occupants of one or potentially more than one of the nearby residential properties. The parameters of what was applied for do not necessitate the consideration of whether the land also forms the curtilage of a building.

Main Issue

4. The main issue is whether the NPA's decision to refuse the LDC was well founded. The onus is upon the appellant to prove their case on the balance of probabilities and planning merits are not relevant. However, a principle established in case law is that 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.

5. As part of this main issue, it is necessary for me to consider whether what the appellant applied for was lawful on the date of the application, 14 August 2023. Section 191(2) of the Act states that uses and operations are lawful at any time if: (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no suggestion that an enforcement notice is in force on the site in relation to these matters and therefore s191(2)(a) is relevant here.

6. The time limits for taking enforcement action are set out in s171B of the Act. The relevant sub-section applicable for a use is specifies a 10 year period. In considering the main issue, it is necessary therefore to consider whether the use as applied for has taken place and then if it has, whether it was occurring at the date of the application and whether it has been continuous for at least 10 years prior to that date. The material date is therefore 14 August 2013.

Reasons

7. The appeal site is demarcated on the submitted plan with the LDC application by a red-line which defines an area which adjoins the vehicular parking area and other land around the complex of buildings. The land is described as being adjacent to Archer House. The complex of buildings actually includes a number of dwellings, one a detached dwellinghouse and another building has been converted into flats.

8. The NPA's position when refusing the LDC relies heavily upon what the previous owner of the land said in planning application documents in 2019. That application related to the substantial stone building that I saw close to the parking area. The application site boundary for that submission was defined by a red-line which is shown around an access to the north of Archer House with a partly grassed track and around that building. The track provides a line through the site. Alongside that access is a former tennis court on lower land than some other structures including a small greenhouse which in turn is a little down-hill from the stone building. The site is partly divided into different areas primarily by larger trees and shrubs.

9. The land is extensive and separated from the parking area for the residential buildings by robust gates, some fencing and planting. The tennis court clearly shows its previous function being levelled earth with grass and some fence-posts still evident around its perimeter. There are various areas within the appeal site which have different characteristics such as the well-manicured lawns, ornamental flower beds, areas where grasses and flowers are allowed to grow or 're-wild' furthest away from the residential properties. The site is occupied by the appellant who lives in the nearby dwelling. I am satisfied that at the moment, this is all one planning unit which is used for what can be referred to as garden or more precisely an area of land used for domestic recreation for the residents of a nearby dwelling.

10. In 2005 the land was the subject of a planning application for the erection of a glass and aluminium greenhouse "in garden". There seems to be no dispute that this is the greenhouse that I saw on the top-level of the garden, close to the parking area. The NPA refer to an area to the southwest of the former tennis court being a garden area which had formerly been used as a kitchen garden to Archer House.

The NPA also refers to the tennis court being overgrown which I assume is a description at the time of their report in 2023, the appellant's photographs from the sale particulars prepared in 2019 show the tennis courts as a mown area.

11. Noticeable also in the sales photographs is a shed at the northern end of the former tennis court which seems to be similar to the one I saw in a similar position, at my site visit. The sales particulars also show the wider land which appears to be in a similar condition as when I visited. The stone building in the details had domestic items around it such as tables, chairs a parasol and a basketball hoop attached which was present when I visited. There are within those photographs areas which are overgrown but in visual terms, it looks generally very similar to what I saw.

12. The submitted Land Registry title plan is also separated into numbered plots. Plot '4' is the area around the greenhouse with '3' also closely related to that physically on the ground, although '3' also includes the former tennis court. Parcel '3' is also interlinked with area '2' where the re-wilding has happened. The Council has also provided aerial images from 2017, 2018 and 2019. These show the distinct areas although not precisely as divided on the Land Registry plan. There are differing surface textures on each of these areas on the aerial images which are apparent in each of the 3 years. I have no expert aerial image interpretative evidence to assist my consideration of these so I will have to consider what they show for myself.

13. The appellant has provided signed letters from people who live in the flats and who have had knowledge of the land for many years. These are not sworn statutory declarations. The statements nevertheless have a degree of weight but may not carry the weight of statements which have been signed before a legal representative who has explained the penalties under the provisions of the Perjury Act 1911. Reliance can be given to these however where they are sufficiently detailed and consistent. This is established by longstanding case law.

14. In each case, the people writing the letters have known the site for around or more than 10 years including during ownership prior to the appellant. One of these statements describes how the large lawn, a vegetable plot, an orchard and an old tennis court were used for socialising. They also refer to beekeeping and that animals, such as donkeys were kept as pets which were grazed on the parcel of land nearest to the A39 to the north which I have taken to include plot 1 on the Land Registry map. I am satisfied that much of this could constitute use of the land for what has been applied for but the evidence is generalised and lacks precision about the areas of land being referred to and what activities were taking place, particularly towards the northern end of the site. Section 226 of the Act includes within the definition of "agriculture" the use of land as "grazing land" and so if that is why the donkeys were on site, that would seem to fall within that definition.

15. Apart from aerial images, the NPA's evidence is largely based upon things that have been written in the past on previous planning application and appeal documents dating back to 1955. I am not provided with most of those documents. I am told that an application form from that time referred to the land as "garden" although I have no plan of what they were referring to. An appeal inspector is also quoted as saying that the site is an "allotment" garden. Another document refers to the land being vacant and unused, another as rough unused agricultural land. Some of this is not very helpful in demonstrating one thing nor the other but it indicates that there may have been different levels of use over the years or possibly different uses taking place.

16. In the Officer's report for the application submitted in 2019 for the use of the stone building for beekeeping, they refer to the building being within agricultural land currently used for the grazing of animals in separate land ownership to that of Archer House. Whilst ownership may not be critical to what the use of the land is or was at that time, this is a contemporaneous note from a professional which conflicts with the basic level of detail being provided on the letters on behalf of the appellant. At the time of that application, there were also several references within the information submitted by the then applicant by their agent which indicated an intention for agricultural use. However, keeping bees and processing honey is an agricultural activity, although could have been on a small scale which could also be considered as ancillary to the use of the land as a garden. The supporting statement for the application does however state in the introduction "the land in which the application building sits is agricultural land beyond the garden of the appellant's property and is currently used for grazing their animals." This on its face seems to be a description of what that person saw and therefore a reasonable interpretation of the character of the site and activities taking place.

17. The aerial image from 2017 seems to show the areas of the site around the stone building, the track and former tennis courts as well as the greenhouse of similar character to what I saw. The land to the north of them however clearly has a rougher grassed surface on the image with some surface-scaring which in common sense terms appears to be what I would expect when land is grazed by animals with the inevitable uneven wear. This is consistent with there being some agricultural activities by the grazing of animals within that part of the site.

18. Planning documents from the 1950s I am told do add weight to there having been a wider use as garden but I have very limited information about those matters or how continuous they were. By definition within s55(2)(e) carrying out of agriculture in buildings and on land is not "development". Planning permission would not have been required therefore to change the use from garden to agricultural use for the grazing of animals. However, based upon what is before me, that the agricultural use of some of the appeal site which has had an effect on the physical characteristics of the land, may have been in a primary use for agriculture for some of the material period prior to the application. The appellant's evidence is insufficiently precise and unambiguous to indicate that any agricultural activity was merely incidental or ancillary to the enjoyment of a dwelling.

Conclusion

19. On the basis of the evidence provided and on the balance of probabilities, the use of the land within the application site as a garden does not appear to have continued for a period of 10 years prior to the application date. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the "the use of land as a garden", was well founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Andy Harwood

INSPECTOR