



Appeal Decision

Site visit made on 18 August 2026

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 01 October 2026

Appeal Ref: APP/H1840/X/25/3375201

Old School House, Rushock, Cutnall Green, Droitwich Spa WR9 0NF

- 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 Lyndon against the decision of Wychavon District Council.
 - The application ref W/25/00938/CLE, dated 2 May 2025, was refused by notice dated 22 October 2025.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The use for which a certificate of lawful use or development is sought is described as: The land in question has been used continuously and exclusively as part of the residential garden serving the dwellinghouse at The Old School House, Cutnall Green, Worcestershire, WR9 0NF for a period in excess of 10 years.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant raised concerns regarding the Council's reason for refusal and aspects of its subsequent submissions. However, an appeal under section 195 of the Act falls to be determined based on all the evidence before me, including material submitted during the appeal proceedings. The principal issue is whether, on the balance of probabilities, the use described in the application is lawful and, consequently, whether the refusal of the certificate was well-founded. In undertaking that assessment, I am concerned with the lawfulness of the matter applied for rather than the adequacy of the Council's reasoning. Accordingly, even where shortcomings are identified, it remains necessary to determine whether the available evidence demonstrates that the claimed use is lawful. I have assessed the appeal on that basis.
3. For the avoidance of doubt, a certificate is not a planning permission. The planning merits of the use are not relevant, and they are not for me to consider in the context of an appeal under section 195 of the Act. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

Main Issue

4. The main issue is whether the council's refusal to issue an LDC was well-founded. This turns on whether, on the balance of probabilities, the land has been used as part of the garden of the residential property known as Old School House for a period in excess of 10 years without material interruption so as to be immune from enforcement action.

Reasons

5. Section 191(2) of the Act provides that a use is lawful if no enforcement action may be taken in respect of it. I have not been provided with any evidence of an extant enforcement notice affecting the land. It is therefore necessary to consider whether, on the balance of probabilities, the land has been used as residential garden land for a continuous period of at least ten years before the date of the application to meet the immunity period from enforcement action under section 171B(3).
6. The responsibility for establishing the lawfulness of the claimed use rests with the appellant. To succeed, the evidence must demonstrate, on the balance of probabilities, that a material change of use of the land to residential garden land occurred more than ten years before the application was made and that the use continued without material interruption throughout the relevant period. While the appellant's evidence need not be corroborated by independent sources, it must be sufficiently precise and unambiguous to justify the grant of a certificate.
7. The appeal property is a detached dwellinghouse occupying a substantial plot. The appeal land lies beyond the established domestic garden and comprises an area of former paddock extending some 60m beyond the dwelling. A low stone wall separates the appeal land from the established garden area, although there is an opening allowing vehicular access to one end. The appeal land is enclosed on either side by mature hedgerows and trees, and remains predominantly open grassland. There is no physical boundary to demarcate it from the remaining paddock beyond.
8. During my site visit, I observed a moveable set of garden furniture, a portable barbeque, an 'egg' chair and a swing suspended from a tree. I also noted that the grass had been cut and that a quantity of building materials and pallets was stored near the stone wall. Notwithstanding those items, the land remained largely open in character and contained no permanent garden structures, ornamental planting, landscaping or other significant domestic features.
9. In support of their case, the appellant has submitted aerial imagery, independent witness accounts and photographs showing various activities on the land. The photographs are not date stamped but are filed against years in which the events are said to have occurred.
10. The aerial imagery shows a snapshot in time during 2004 and 2023. While annotations have been added to identify features such as seating and paths and a dog exercise area, the images do not enable firm conclusions to be drawn regarding the planning use of the land. Moreover, the appearance of the appeal land shown within the aerial imagery bears a closer resemblance to the adjoining paddock land than to the established domestic garden surrounding the dwelling. In this respect, the aerial images provide limited assistance in supporting the appellant's claim.
11. The witness accounts from three individuals who have known the appellant and his family for many years generally support the contention that the land has been used in association with the dwellinghouse over a significant period. However, much of that evidence is expressed in broad terms and provides limited detail regarding the nature, frequency and continuity of the activities undertaken. Consequently, while the statements lend support to the appellant's case, they do

not demonstrate, either individually or collectively, that a material change of use to residential garden land occurred and continued throughout the relevant period.

12. The photographs indicates that activities including children's play, family gatherings, relaxation, dog walking, camping and bonfires have taken place on the land at various times. They also show that the grass has been cut using a ride-on mower and maintenance has taken place, and that items such as a trampoline and swing have been present on occasions. I have no reason to doubt that the land has been used from time to time for activities associated with the enjoyment of the dwellinghouse.
13. Nevertheless, the evidence before me provides limited information regarding the frequency, duration and extent of those activities. While the photographs demonstrate domestic use on occasions, they are less persuasive in establishing the extent to which such activities represented the principal use of the land on a continuous basis throughout the relevant ten-year period. Furthermore, the material does not clearly demonstrate whether the activities relied upon took place across the whole of the appeal land or were largely confined to more limited areas.
14. The photographs offer some insight into how the land has been occupied and enjoyed by the residents of the dwellinghouse. The features shown are, however, predominantly temporary or movable in nature, including play equipment, garden furniture, tents and marquees. While the absence of permanent domestic structures or landscaping is not determinative, and residential garden land need not be formally laid out or ornamented, there is limited evidence of any enduring alteration to the manner in which the land functioned or was occupied.
15. I recognise that residential garden land may comprise open grassed areas and need not contain ornamental planting, formal landscaping or permanent domestic structures. Accordingly, my findings do not depend upon the land's appearance alone. However, whether a material change of use has occurred depends upon the totality of the evidence relating to the character, extent and continuity of the use. In this case, although the evidence demonstrates a range of domestic and recreational activities, it does not clearly establish, on the balance of probabilities, that the entirety of the appeal land became and remained part of the residential garden of the dwellinghouse throughout the relevant period.
16. I have also had regard to the appellant's submission that no substantive evidence has been produced to contradict the claimed use and that the land has no realistic alternative purpose. However, the absence of contrary evidence does not remove the requirement for the appellant to positively demonstrate the claimed use on the balance of probabilities.

Conclusion

17. Taking the evidence as a whole including various case law that has been brought to my attention, I find that it is not sufficiently precise and unambiguous to establish, on the balance of probabilities, that a material change of use from paddock land to residential garden land has occurred and that such use subsisted without significant interruption throughout the relevant ten-year period.

18. For the reasons given, I conclude that the Council's refusal to issue an LDC was well founded. Accordingly, the appeal fails and I shall exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

SA Hanson

INSPECTOR