



Appeal Decision

Site visit made on 30 September 2026

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2026

Appeal Ref: APP/Y1138/X/25/3371760

Land at NGR 281147 102787, (North Of Hele Cottages), West Sandford, Devon, EX17 4PE

- 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 S Colombe against the decision of Mid Devon District Council.
 - The application ref 25/00884/CLU, dated 19 June 2025, was refused by notice dated 14 August 2025.
 - 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 Use of a building as a dwelling in excess of 10 years.
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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.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a certificate of lawfulness was well-founded.

Reasons

3. West Sandford comprises a small collection of properties in a relatively remote area of rural Mid-Devon. 1 Hele Cottages is a semi-detached dwelling that is paired with 2 Hele Cottages ('Nos 1 and 2'). It lies on the corner of the narrow public road running through West Sandford and a private lane that serves several properties. One of these is the appeal building, which he refers to as 'The Cottage', is accessed via a steep drive from the private lane.
4. Amongst other things, section 191(1) provides the mechanism for an application by any person who wishes to ascertain whether any existing use of buildings or other land is lawful. To successfully make their case, an applicant would have to demonstrate: that no enforcement action could be taken against the use, whether because it did not involve development or require planning permission, or because the time for taking enforcement action had passed: and that the use did not contravene any enforcement notice in force at the date of the application.
5. Where, as here, such an application is refused, section 195 sets out the process for an appeal to be made against that decision.
6. The onus lies with the Appellant to make his case on the balance of probabilities. Where a local planning authority has no evidence of its own to contradict what is

claimed, as is the case with the Council here, an Appellant's evidence must be sufficiently precise and unambiguous. The Council's position is that the Appellant's evidence lacks precision and is ambiguous; to a degree, the Council relies on letters from neighbours to back up its case.

7. The evidence shows that there was no enforcement notice in force at the time of the application. The Appellant's case is made on the basis that the time for taking enforcement action had passed.
8. Both parties have approached the matter on the basis that the time limit is ten years. The time limits for enforcement action are set out in section 171B of the 1990 Act. An amendment to this section was inserted by section 115 of the Levelling-up and Regeneration Act 2023, which took effect from 25 April 2024. Prior to the amendment, s171B(2) set out that where the breach of planning control, or, as is the case here, the development for which lawfulness was sought, was a change of use of a building to a single dwelling house then the time limit was 4 years. The amendment changed this to 10 years.
9. However, as the date of the breach was before 25 April 2024, the amendment is not relevant; the time for which the Appellant has to demonstrate the claimed use is 4 years ('the relevant period'). It is, therefore, for the Appellant to demonstrate that, at the date of the application, The Cottage had been continuously used as a dwelling for the relevant period and that, if it had, the use had not thereafter been lost.
10. The Appellant supports his case with a number of statutory declarations ('SDs'), made by him, members of his family, and people who know him and have visited the property. In principle, given the penalties in respect of making false SDs, they are to be attributed significant weight. However, what is actually said in a SD ultimately determines the weight to be afforded to it.
11. Save for a letter from Western Power Distribution regarding a new electricity connection to The Cottage, the Appellant does not provide corroborating evidence in the form of bills and the like. However, evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict the claimed version of events, or make it less than probable, and the evidence is sufficiently precise and unambiguous, it should be accepted.
12. The evidence shows that the Appellant and his wife have owned the land twice. Firstly, between 2001 and 2003. Prior to this purchase the land on which The Cottage lies had been in a horticultural use. The Appellant, who was then living in No 1, built the middle part of the appeal building during that period. It was used as a lounge bed-sitting area and by visiting guests. There is no evidence to show that it was used as a dwellinghouse at that time.
13. He and his wife re-purchased the building in 2010. Extensions were added to either end of the house, which provided a kitchen and a bathroom by the end of the summer of 2014. It was set within a large garden that is enclosed by mature hedges and, between it and Nos 1 and 2, a timber fence. It had its own electricity supply, spring-fed water supply and a private sewage treatment system.
14. The Council does not question the Appellant's account of his ownership of the land nor that of the initial building and subsequent extension of what has become The Cottage. Similarly, it does not question that the building had, at the date of

application, the facilities required for day-to-day living and that it was a dwellinghouse¹. Its position is that the Appellant has not demonstrated the 10-year use in the required manner. However, as I have said, the relevant period is 4 years.

15. Established case law has addressed the question of how continuous use might establish the lawfulness of a dwellinghouse. Neither the physical state of a building nor the occupation of a dwelling taken alone should be seen as being determinative. This case law tells us that there is a difference between use and occupation, and that occupation need not be continuously present in order to establish unbroken use.
16. In essence, the question to be addressed is whether there was any time during the 4-year period when the LPA could not have taken enforcement action against the use of the building as a dwellinghouse. The matter has to be looked at 'in the round' and will be matter of fact and degree, based on the individual circumstances of a case.
17. In his SD, the Appellant says that he bought a house and vineyard in Spain in 2015 and that "post-Brexit" he obtained residency in Spain. I have taken this to mean after the terms of the withdrawal agreement came into effect on 31 December 2020, rather than the date of the referendum in 2015 which was not the date of Brexit. He then says that when back in the UK, he lives within the appeal building which, he says, "has always been used" as a self-contained dwelling and separate to No 1. At times when he is not living there, he says guests can and do occupy the building separate to No 1.
18. The Appellant's statement submitted in support of the application for a certificate asserts that the building has been occupied since 2014, and that this is confirmed in his and others' SDs. However, this is not the case; for example, the Appellant's SD refers to weeks when it is unoccupied. The SD carries greater weight than that statement, and I take its content to be accurate.
19. In their SDs, his wife, brother, son-in-law and two friends confirm the Appellant's history of ownership and building works. His wife confirms that guests have stayed in the building when he is away. She says that he has been back and forth to Spain for "many years" but does not define this period.
20. None of the other SDs provide evidence as to when the Appellant commenced occupation of the dwelling. They do however, state that he lives in it when back from Spain. They have all stayed in the dwelling, but do not provide details of dates and duration of their stays.
21. Furthermore, those other SDs only go as far as to say that the building was complete in 2014. His brother says that it has "always been used as a detached house", and writes of the house being in its current form for over 10 years. However, he does not live at the property and I find that he does not adequately explain how he is able to make these comments.
22. As I alluded to earlier, it is on its content that the value of a SD is to be calculated. Of those submitted by persons other than the Appellant, I find them to be vague and whilst confirming what one might term aspects of the background to the case,

¹ As per the judgement in *Gravesham BC v SSE & O'Brien* [1983] JPL 306

none take his case forward to any great degree. The Council's assertion that "such testimonies [from family and friends] lack the necessary independence and objectivity" is clearly wrong and plays no part in my thinking.

23. From the above, I find that a commencement of the use might be argued from the date of completion of the works in the summer of 2014. However, as case law sets out, being available for use cannot of itself be determinative of the use being continuously undertaken for the relevant period. It needs to be taken in the round with evidence of occupation. The evidence for this is not compelling for the period from completion of the dwelling in 2014 and the end of 2020.
24. 'Post Brexit', as the Appellant puts it, there is more convincing evidence of occupation. As there is more than 4 years between that point and the date of the application, there is a chance for the Appellant to make his case for the use for the relevant period.
25. The Appellant's SD says that he spends 6-7 months in Spain and occupies The Cottage "for at least 6 months of the year"; both cannot be true. His Statement of Case clouds things further as he says that he is away in Spain for some 18-20 weeks. However, I find that even the lower end of his various reports of duration of occupation, about 5 months, is sufficient in principle to make his case for a certificate. In reaching this position, I have taken into account the evidence that shows that when he has been away the building has at times been used by others, it has remained fully furnished and configured as a dwelling and that it has been put to no other use.
26. There was a fire in 2023 that affected the wall and roof over the bathroom. This required repairs to be undertaken to the affected area but the Appellant says "the property remained capable of occupation during that time". That the occupant of No 2 says that it could not have been lived in until 2024 lacks adequate justification and a text message that is said to support that position, from the Appellant's wife, has not been submitted. I have to give due weight to the SD on this matter. In the absence of any counter evidence that might make this version of events less than probable, I take it to be correct. Although part of the property was provided with a new floor, there is no substantive evidence to show that this broke the claimed continuous use of the building.
27. The question to be addressed at this point is whether there was any time during the period "post-Brexit" when the LPA could not have taken enforcement action against the use of the building as a dwellinghouse. Had its officers visited The Cottage, even if there was no occupant it would have found a property that had a fitted kitchen, fitted bathroom and a bed-living area. In the light of this, I find, as a matter of fact and degree, it could have taken enforcement action against the use of the property.
28. Taking 'use' in the round, I find that the Appellant's case has, as a matter of fact and degree, been made on the balance of probability. The Cottage, which lies within a planning unit separate from No1, has been used continuously as a dwellinghouse.
29. The property has not been registered for council tax purposes, nor is the Appellant registered on the electoral roll at The Cottage. However, neither is necessary to establish lawfulness of the claimed use. Similarly, taking all of the evidence into account, the lack of utility bills does not fatally undermine the Appellant's case.

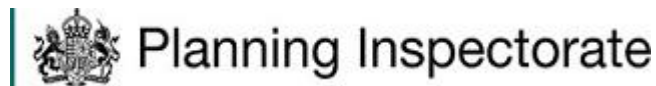
30. Third parties that live near the site have questioned the use of the building. They report: always hearing the Appellant's voice in No 1 when he is back from Spain; that should they want to speak to him, they would always go to No 1; not having any personal experience of the permanent occupation of the dwelling, which can be seen from one of the author's fields; and not seeing lights in the property at night.
31. I note that none of these authors say that they have entered the dwelling. That they might have heard the Appellant inside No 1 is not surprising, as his wife still lives there. Similarly, given the nature of the boundary treatments allied to the position of The Cottage vis-à-vis their properties, I am not surprised that lights in the dwelling might not be seen. I do not find what is said carries sufficient weight, whether taken individually or cumulatively, to outweigh the Appellant's evidence.
32. Those comments made in respect of traffic generation, whether a parish councillor should have declared an interest and the Appellant's need for another dwelling are immaterial to my assessment of the lawfulness of the use.

Conclusion

33. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of a building as a dwelling is not well founded. The appeal should succeed, and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

R Curnow

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 19 June 2025 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black 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 submitted makes the case, on the balance of probability, that the use of the building occurred continuously for the required 4-year period and was not thereafter been lost.

Signed

R Curnow

Inspector

Date: 22 October 2026

Reference: APP/Y1138/X/25/3371760

First Schedule

Use of a building as a dwelling

Second Schedule

Land at Land at NGR 281147 102787, West Sandford, EX17 4PE

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: 22 October 2026

by R Curnow

Land at: Land at NGR 281147 102787, West Sandford, EX17 4PE

Reference: APP/Y1138/X/25/3371760

Scale: Not to Scale

