Planning Inspectorate

Appeal Decision

Site visit made on 21 October 2026

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date 06 November 2026

Appeal Ref: APP/H1705/X/24/3357151
29 Laverstoke Lane, Laverstoke, Hampshire RG28 7NY

- 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 Miss Jayne Hudson against the decision of Basingstoke and Deane Borough Council.
- The application ref 23/02438/LDEU, dated 10 October 2023, was refused by notice dated 24 May 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 described as "Use of land as domestic garden area associated with the use of 29 & 31 Laverstoke Lane (dwelling houses)."

Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is no definition of what a garden is in planning law. 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. It is important to consider the ordinary meaning of the word. A reasonable definition of a garden is a plot of land normally next to and used in connection with a house or houses where flowers and other plants are grown and often containing an area of grass. Within such an area, normal recreational activities can also be expected including play space for children and general domestic enjoyment by the nearby residents. The parameters of what was applied for do not necessitate the consideration of whether the land also forms the curtilage of any dwellinghouse.

Main Issue

3. The main issue is whether the Council's decision was well-founded. The onus is upon the appellant to demonstrate their case. To do so, the appellants must demonstrate, on the balance of probability, that the use as applied for was occurring on the date of the application was lawful.

Reasons

4. The appeal site is located behind several dwellings alongside Laverstoke Lane although the LDC relates to Nos 29 and 31. The site is part of a much larger parcel of land at the rear of these dwellings. The appellant states that whilst a larger area than the appeal site is owned by them but the red line was drawn around the area where the garden use has been concentrated and includes the areas where all garden related structures and features are located.

5. I accessed the appeal site via No 31 and there is no boundary enclosure between the garden at the immediate rear and side of that dwelling and the appeal site. The appeal site also adjoins the individual gardens around the neighbouring dwellings including No 29. No 29 is not the immediately adjoining neighbour of No 31, there is another dwelling in-between them which the site also adjoins.

6. There are no subdivisions with fences or other means of enclosure within the land to define the appeal site area as shown by a red-line on the submitted plans or to allocate any part of the land to either of the dwellings at Nos 29 and 31. Furthermore, at least 2 other properties appear to have gates within fences at the rear of their gardens which enables access through into the appeal site. An area of land to the north of the defined appeal site and to the rear of No 25 is accessible from the site and there is no physical restriction to accessing land beyond the south-eastern end of the appeal site boundary.

7. I saw several obviously domestic items close to the private rear gardens of the row of dwellings such as rotary washing lines and play equipment. The grass covering on that part of the land appears manicured and I saw what appeared to me to be ornamental planting in beds. There are also some sheds, a green house and some raised, planted beds. Further to the east, there are some other structures such as a small enclosure around what appeared to be a bird-coop and further still to the east, what looked like hives. The whole area including that outside of the appeal site has a scattering of mature and younger trees, including some saplings within protective mesh. Whilst the grass surfacing does get rougher and longer further to the east, there is nothing physical on the ground to indicate the extent of the appeal site.

8. Whether the land is used as domestic garden associated with Nos. 29 and 31 as applied for is therefore a matter of fact and degree to be assessed from the evidence as a whole. I have no evidence that indicates that the physical features such as the fencing at the back of most of the dwellings, has changed since the application was submitted. From what I could see, there is no physical restriction that realistically could secure use only for the occupants of Nos 29 and 31. Interpreting what has been applied for more broadly, I could understand that the appellants want confirmation of the domestic garden and that this could include use by residents of Nos 29 and 31. However, the evidence before me indicates that domestic activities have taken place on an extended area and that various nearby dwellings have access to it.

9. I have to also consider the use in the context of what is the appropriate planning unit. There is no dispute that if the use was occurring, it would have constituted development therefore was a material change of use within the meaning of s55 of the Act. If the use was being undertaken at the date of the application, it is then necessary to consider whether the evidence indicates that it has been continuous for at least 10 years prior to the date of the application, with reference to the time limits for taking enforcement action in s171B of the Act.

10. I need to consider what the primary use or uses are within the planning unit. The planning unit concept is well established in case law with the starting point being the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes.

11. Whilst domestic activity appears to occur close to the rear of the dwellings, there is no physical or distinct separation between that and the wider field. The appellant's statement confirms that the wider land is not just used as "garden land". They describe the application site on the submitted plan was drawn to align "with the evidence available" and that "the extremities of the land are not and have not been used as garden land, whilst the identified area has." What the wider land has been used for, is not explained although there has in the past been some scattering of by-products of paper manufacturing.

12. The red-line application site appears to indicate a sub-area of a wider planning unit for which there may be use other than just as domestic garden and neither the appellant nor the Council has presented evidence to assist with that. If there is more than 1 primary use of the planning unit, that would indicate a mixed use of the whole unit which cannot be artificially sub-divided. There is insufficient evidence that the red-line area forms a physically separate and distinct unit from the wider field or therefore that it is a separate planning unit.

13. The Planning Practice Guidance confirms that LDC applications (and therefore appeals as well) need to describe precisely what is being applied for and the land to which the application relates. Without sufficient or precise information, it goes on to say that a local planning authority (or planning inspector) may be justified in refusing a certificate. In this case, from what is said in representations, there may be other uses, not just use as a "domestic garden" within the applicable planning unit and the extent of the applicable planning unit has not been clearly demonstrated.

Conclusion

14. I cannot identify the appeal site as being a separate planning unit used only for the use for which an LDC is sought. The evidence indicates there may be additional uses occurring within the wider planning unit. Consequently, I cannot be satisfied that the use as described in the application accurately reflects the use of the relevant planning unit and the appellant has not discharged the burden of proof.

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use of land as domestic garden area associated with the use of 29 & 31 Laverstoke Lane (dwelling houses), 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 (as amended).

Andy Harwood

INSPECTOR