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: 10 November 2026

Appeal Ref: APP/H1705/X/25/3359959
Malmsmead, Farleigh Road, Preston Candover, Hampshire RG25 2EE

- 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 Matthew Forward against the decision of Basingstoke and Deane Borough Council.
- The application ref 24/02866/LDEU, dated 8 December 2024, was refused by notice dated 31 January 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 residential garden.

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.

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 dictionary definition of a garden is a plot of land next to and belonging to a house where flowers and other plants are grown, often containing an area of grass. Within such an area, normal ancillary 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 the dwellinghouse.

Main Issue

3. The main issue is whether the Council'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.

4. To obtain a certificate, the appellant must demonstrate that the appeal site was in use as residential garden throughout the relevant 10-year period before the application was made. This relates to the time limits for taking enforcement action within s171B of the Act. The last date by which that use would need to have commenced and therefore the material date for this application, is 8 December 2014. With respect to LDCs, Planning Practice Guidance (PPG) reflecting well established caselaw states that if there is no evidence from the Council, nor from any others, to contradict or otherwise make the applicant's

version of events less than probable, there is no good reason to refuse the application (in this case the appeal), provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. It is not for me to assess the planning merits.

Reasons

5. The side elevation of the house 'Malmsmead' directly adjoins Farleigh Road. The dwelling extends into the appeal site with a parking area, courtyard garden enclosed by it and a substantial outbuilding. On the western side of the outbuilding there is a swimming pool and at the time of my site visit, beyond that pool area, the land opens out and was subject to some earth-works. The area beyond the swimming pool area extends for a substantial distance and at the north-western extent, there is a raised, levelled grassed area behind a hedge with an opening allowing access through and timber steps leading up to the raised, level area. There was a pair of goal-posts and a garden bench on this area at the time of my visit. This whole area beyond the main buildings is enclosed on each side and at the end by substantial trees, other vegetation and some fencing. Even though some of the site was being dug up when I visited, I could see that this whole area is a large garden laid mainly to grass.

6. The hedge to the south east of the raised, levelled area appears to have become established since photographs dated 2 July 2017 and 23 March 2018 were taken. They are referenced within the appellant's statutory declaration and I can give them substantial weight as being accurately dated. An earlier photograph dated 24 October 2013 was taken looking from the north-western end of the site and shows a shed in a similar position to one that I saw at my site visit and which is also now positioned behind a gate and hedge which has grown up since that image was taken. These photographs show the well-manicured surface of the extensive grassed area as well as some ornamental planting and also, in the 2013 and 2017 photographs, some domestic garden furniture. Photographs do show some recreational activity taking place over the years even though not clearly at or before the material date.

7. The appellant's statutory declaration confirms that they have always used the land which is shown within one title on the included Land Registry plan with the house, since 16 November 2011. Aerial photographs are also provided and which are a little difficult to pick out detail on. In the absence of expert aerial image interpretative evidence and based upon my own experience, the image from 2013, prior to the material date, is generally consistent with the other images showing the uniform grassed area albeit with no obvious sign of the levelled area to the north-west. It shows some of the garden features such as the enclosed shed and the pathways through. The previous owners of the appeal site have provided a signed letter describing their use of the land within the Land Registry title area between December 1999 and November 2011, as "residential garden". I can give the letter a moderate degree of weight even though it not a statutory declaration.

8. The appellant has provided a body of evidence which shows that the land has physically been in similar condition over the course of more than 10 years prior to the date of the application. This includes some indications of recreational activity including some domestic paraphernalia, albeit evidence is limited before the material date. It is an extensive area which I would not expect a garden on this sort of scale to be used to an intense level when it serves 1 dwelling.

9. There are some allotment areas which could be described as use for “agriculture” but they can just as reasonably be considered as a domestic, recreational activity. There is no evidence that the site is used commercially as part of an agricultural business or for any other non-domestic use. The Council has referred to previous appeal decisions where planning inspectors have explained the type of things that need to be considered but I have no details about those cases or explanation of how similar they are or are not.

10. I am considering this case on the basis of the evidence presented. Whilst the photographic evidence of activity before the material date is limited, it does show an area which looks like a recreational space since 2013. The appellant has provided other written evidence which backs up what they are trying to prove. The Council on the other hand argues that the appellant's evidence is insufficiently detailed but has not identified any specific alternative use of the land during the relevant period, nor produced evidence that would render the appellant's account less than probable.

Conclusion

11. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development for residential garden is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Andy Harwood

INSPECTOR

Planning Inspectorate

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 9 December 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and 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 submitted evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the appeal site has been used as residential garden land throughout a 10-year period prior to the application.

Signed

Andy Harwood

Inspector

Date: **10 November 2026**

Reference: APP/H1705/X/25/3359959

First Schedule

Residential garden

Second Schedule

Land at Malmsmead, Farleigh Road, Hampshire RG25 2EE

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.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 10 November 2026

by Andy Harwood

Land at: Malmsmead, Farleigh Road, Hampshire RG25 2EE

Reference: APP/H1705/X/25/3359959

Scale: See scale bar

