



Appeal Decision

by **A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 27th March 2025

Appeal Ref: APP/H1033/X/23/3331523

Windy Walls Farm Ashbourne Lane, Chapel-en-le-Frith SK23 9UF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Bill Stevenson against the decision of High Peak Borough Council
 - The application Ref HPK/2023/0231, dated 8 June 2023, was refused by notice dated 3 August 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
 - The use for which a certificate of lawful use or development is sought is described in the application form as follows: "Certificate of Lawful Existing Use or Development to establish that the lawful use of the land outlined in red is incidental domestic use/residential garden land use and that the lawful use of the stone outbuilding is incidental domestic use".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal turns on the facts of this case and relevant planning law and whether the specific matter is lawful as defined by the 1990 Act. Planning merits are not relevant at any stage in this process. I do not consider a site visit is necessary to determine the appeal and proceed on this basis.
3. For background information, an initial LDC application was submitted in November 2022. That application was for the same description of development as set out above. Having assessed the relevant evidence, the Council determined to grant an LDC on 7 March 2023. The LDC excludes a parcel of land and stone outbuilding to the north and west of Windy Walls Farm. A coloured site plan illustrates operational development as follows: a summerhouse, decking and conservatory located to the northwestern elevation of the outbuilding, area to the front, side, rear and a patio and gravel area. The Council considers this operational development is lawful and can be used for incidental purposes in connection with the residential use.
4. A further application for an LDC was made in June 2023 and the Council granted a modified certificate excluding the land and stone outbuilding, which is the subject of this appeal. Essentially, the gist of the appellant's main argument is that the modified LDC is unacceptable. The claim is that the land outlined in red in the application is in a lawful incidental domestic use/residential garden land use and that the lawful use of the stone outbuilding is incidental domestic use.
5. Section 195(1)(a) of the 1990 Act states that where an application is made to a local planning authority (the LPA) for a certificate under s191 and the application is refused or is refused in part, the applicant may by notice appeal to the Secretary of State. Sub (2)

states the following: *'On any such appeal, if and so far as the Secretary of State is satisfied, in the case of an appeal under subsection (1)(a), that the authority's refusal is not well-founded, he shall grant the appellant a certificate under section 191 accordingly or, in the case of a refusal in part, modify the certificate granted by the authority on the application'*. S195(4) states that references in this section [in S195] to a refusal of an application in part include a modification or substitution of the description of the use, operations or other matter in question.

6. The commentary in the EPL suggests that such appeals are confined to the narrow remit of reviewing the Council's decision. The Secretary of State must dismiss the appeal if satisfied, on the evidence now available and on the balance of probabilities, that the LPA's refusal was well-founded and must allow the appeal if found to the contrary¹. This approach is broadly consistent with guidance found in the PPG². I will evaluate the appeal on this basis and consider whether the LPA's decision was well-founded.
7. Finally, precision in the terms of any certificate is vital so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. A certificate for existing use must include a description of the use. The latter needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to spell out the characteristics of the matter to define it with precision. An existing use LDC should clearly describe the activity that was, on the evidence, carried out during the 10-year period. In this case the description includes oblique stroke punctuation and that could be interpreted as meaning 'and' or 'or' (or perhaps both). The written submissions appear to suggest the appellant seeks an LDC certifying an incidental residential use of the LDC application site, which includes the stone outbuilding. I proceed on this basis.

Inspector's reasons

8. The concepts of the curtilage and planning unit are distinct and separate; they should not be confused. The planning unit is a concept evolved as a means of determining the most appropriate physical area against which to assess the materiality of change in the use of land. The mere fact that the appeal site physically adjoins the curtilage, and is in the same ownership, does not automatically mean that it is/not curtilage land. The appeal parties seem to have become fixated on working out if the LDC application site falls within the curtilage to Windy Walls Farm, but the latter defines an area of land in relation to a building and not a use of land.
9. In cases where there is a dispute as to whether material change of use of land or building has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary, as opposed to incidental, uses of that unit. My starting point is the leading authority - *Burdle*³. Beginning with the unit of occupation, the assessment turns on the concept of physical and functional separation. The assessment is a matter of fact and degree, and as a useful working rule, it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

¹ See paragraph P195.03 of the Encyclopaedia of Planning Law and Practice (EPL).

² Paragraph: 020 Reference ID: 16-020-20140306 and Paragraph: 009 Reference ID: 17c-009-20140306.

³ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

10. The appellant purchased the property, Windy Walls Farm, in 1983. It comprises two dwellings, which are occupied by the family. To the north of the dwellings are a small group of workshops used in connection with the family's stonemason business. The area around about the dwellings include laid to lawn garden, patio and raised decking, fuel tanks, a summerhouse, and the property has vehicular and pedestrian access from Ashbourne Lane.
11. To the northwest of the dwellings there is an enclosed parcel of land, which the appellant confirms is not included in the LDC application. The evidence is that the area used as garden is not demarcated from the adjoining land to the northwest, because a post and rail fence had been removed late 2000⁴. While the land to the northwest, including the LDC application area, has been managed and mowed, the evidence presented suggests to me that this area is agricultural in character. Moreover, the aerial image exhibited at appendix 7, which the appellant maintains was taken pre-2010, reinforces my assessment.
12. As a matter of fact and degree, I find that Windy Walls Farm complex forms a single unit of occupation but it is in a mixed agricultural, residential and commercial use. There is little, if any, physical separation between these primary uses and there is also functional link given the appellant's commercial use of the workshops. An alternative argument might be that the land to the northwest forms a separate agricultural or horticultural planning unit, but such a conclusion has no material impact on my assessment of the presented evidence. This is because the LDC application site, including the outbuilding, appears to fall on land in agricultural use. For immunity arguments to succeed, the evidence needs to show, on the balance of probabilities, that the incidental residential use began on or before the relevant date, which is 8 June 2013 and continued thereafter for a period of 10-years without significant interruption.
13. Essentially, when assessing an incidental residential use, it is important to consider the nature and type of activities or uses of the land on a case-by-case basis⁵. The appellant's sworn statutory declaration affirms that the LDC application site has not been used for any agricultural purpose since about 1983. However, that does not necessarily mean it was never part of an agricultural field before the appellant purchased Windy Walls Farm.
14. The appellant's claim is that the stone outbuilding had been used as a children's play space and for keeping domestic items. The land around and about has been maintained as garden since the appellant acquired Windy Walls Farm. Moreover, from 2009 onwards the LDC application site has been used by family and friends for social gatherings, sitting out on and hanging clothes on washing lines, and for family gatherings and barbeques. The outbuilding is used like a domestic shed to store gardening equipment and growing plants, but the evidence before me indicates that it is in a dilapidated condition.
15. I consider that the quantum of the evidence presented does not clearly show the nature or scale of the incidental residential use. For example, it does not precisely show when the incidental residential use of the LDC application site began as there is no specific

⁴ Taken from a previous LDC application statement appendix 6 to the appellant's bundle and statutory declaration sworn by the appellant 31 October 2022.

⁵ *O'Flynn v Secretary of State for Communities and Local Government* [2016] EWHC 2894 (Admin) applied.

timeline or sequence of events. In addition, it is unclear as to what type of equipment had been stored in the outbuilding given its condition nor is there clear explanation of when and how frequently the LDC application site had been used or maintained. Given the lack of specificity in the detail provided, I am not satisfied that the evidence presented sufficiently shows the previous agricultural or horticultural use of the LDC application site changed to an incidental residential use on or before the relevant date.

16. My analysis and assessment of the evidence presented reveals imprecision and lack of detail. The quantum of documentary information submitted fails to meet with the balance of probabilities test. In my judgment, the sworn testimony is ambiguous because it does not clearly explain the version of events. In addition, there is some evidence to cast doubt over the use of the outbuilding given its dilapidated condition. Apart from the appellant's statutory declaration, there is no other documentary evidence to show how the LDC application site, including outbuilding, has been used for incidental residential purposes and has continued without significant interruption for a period of 10 years. On the evidence before me, I find that at the date of the LDC application, the existing use claimed had not become lawful for the purposes of s191(2) of the 1990 Act, due to the passage of time.
17. As I have said elsewhere, the appeal parties refer to curtilage but that is not a use of land. No argument has been made before me to indicate the curtilage to the dwellinghouse has extended over the LDC application site. I am not persuaded s55(2)(d)⁶ of the 1990 Act is of direct relevance to this case.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant an LDC was well-founded, albeit for different reasons, and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

A U Ghafoor

INSPECTOR

⁶ The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land... the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.