



Appeal Decision

Site visit made on 8 December 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 December 2025

Appeal Ref: APP/L3245/X/24/3346766

Whitehouse Farm Barn, Netherton Lane, Highley, Shropshire WV16 6NJ

- 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 Sid Davies against the decision of Shropshire Council.
 - The application ref 24/01328/CPE, dated 30 March 2024, was refused by notice dated 15 May 2024.
 - 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 land that has been continuously used as residential garden for a period exceeding 10-years.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Town and Country Planning Act 1990 (as amended) (the Act) if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
4. The appellant's case is that the appeal site has been used for children's recreation and residential amenities since 2009. In support of their case, the appellant relies on aerial photographs.
5. The 2009 aerial photograph depicts what the appellant contends is a trampoline. Although the photograph is not annotated, it is reasonable to conclude that the trampoline referred to is the circular object. However, the only circular object on the photograph appears to be located outside the appeal site. It is not located within the parcel of land to the east of the building complex and nor is it located on

the access area leading to this land from Netherton Lane. No other objects in the photograph are referred to as supporting the appellant's case.

6. A trampoline is also referred to in the 2011 aerial photograph. However, the photograph is of such poor quality that it is not possible to establish with any certainty which object the appellant refers to as the trampoline. They also refer to this photograph as depicting associated garden and amenity equipment. However, these are also not clearly evident due to the quality of the photograph. The 2013 aerial photograph provided by the Council is of a better quality. However, it does not appear to show any notable garden or amenity equipment on the appeal site.
7. With the 2017 and 2018 aerial photographs, it is reasonable to conclude that there is a trampoline within the eastern part of the appeal site, adjacent to which could be the wooden play apparatus. These objects remain visible in the 2021 and 2023 aerial photographs. However, the 2017 aerial photograph is well within 10 years prior to the date of the LDC application. I am not satisfied that the aerial photographs prior to 2017 demonstrate, on the balance of probabilities, that associated garden and amenity equipment are present on the appeal site.
8. Notwithstanding the above, the apparatus the appellant refers to being depicted in the 2018, 2021 and 2023 aerial photographs cover only a very small portion of the appeal site. There is no evidence how the rest of the appeal site has been used for domestic activities.
9. The parties refer to a drawing¹ attached to the 2015 planning application². Part of the appeal site forms two parcels of land depicted on the drawing as 'Garden' and 'Paddock'. However, these fall outside the application site edged in red on the drawing and therefore it has no bearing on the lawful use of this land.
10. At the time of my site visit, the wooden play equipment had been removed. A number of old wagons, some in various states of disrepair, were present on the site as well as a couple of triple axel trailers, one containing what appeared to be parts of a metal frame for a shed. On the site there was also the frame of an agricultural/horse trailer; multiple stacks of concrete blocks; three cars in various states of disrepair; and, a container containing two generators, what appeared to be commercial style tool boxes, and large plastic drums. There was also a large metal shed containing one of the wagons, a triple axel trailer and a large number of tyres. In addition, there was a static caravan a small timber shepherds hut type cabin, both of which appeared to be used for small scale storage. The totality of these items do not support the appellant's contention that the land is being used as a residential garden as the scale of their storage is not typically akin to a residential garden use. However, I acknowledge that the requisite period of immunity is prior to the date of the LDC application, not my decision.
11. Overall, I find the evidence in support of the use of the appeal site as a residential garden is not sufficiently precise and unambiguous. I find therefore that it fails to demonstrate that, on the balance of probabilities, a material change of use of the appeal site to a residential garden has occurred continuously for a 10 year period prior to the date of the LDC application, without significant interruption.

¹ Site Location & Block Plans; Drg No.000; Rev A

² Council reference 15/03600/FUL

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development 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.

A Walker

INSPECTOR