

Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

Appeal Ref: APP/H0520/X/24/3348935

The Cottage, New Manor Farm, Ellington Road, Woolley, Cambridgeshire PE28 5BH

- 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 Mrs Margaret Harris against the decision of Huntingdonshire District Council.
- The application ref 24/00122/CLED, dated 25 January 2024, was refused by notice dated 1 May 2024.
- The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 (as amended).
- The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is described as 'Unrestricted use of a dwelling granted planning permission on 28 May 1996 under reference 96/0408'

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the matter constituting a failure to comply with a condition or limitation which is found to be lawful.

Application for costs

2. An application for costs was made by Mrs Margaret Harris against Huntingdonshire District Council. That application is the subject of a separate decision.

Preliminary Matters

3. The application form describes the certificate that is sought in the terms set out in the header above. Elsewhere the form indicates that the certificate sought relates to the breach of condition 3 of the planning permission. On the appeal form it is described as '*Lawful Development Certificate Existing for unrestricted use of a annex as a separate dwelling*'. The Council's decision refers to it as '*Lawful development certificate existing for unrestricted use of a dwelling granted planning permission on 28 May 1996 in excess of a period of 10 years in breach of Condition 3 of 9600408FUL*'.
4. From the above it appears that the certificate sought is for occupation as a dwelling without compliance with Condition 3 of Planning Permission Ref 9600408FUL, granted on 28 May 1996.

Main Issue

5. The main issue is whether the Council's decision to refuse to issue a certificate was well founded. This turns on whether, on the balance of probability, and prior to the application, the property was continuously occupied as independent living

accommodation in breach of Condition 3 for a sufficient period to gain immunity from enforcement action.

Reasons

6. In 1996, planning permission was granted for a development described as 'Erection of dwelling' at New Manor Farm. The permitted scheme, which involved extending a large garage attached to the existing farmhouse, was subject to Condition 3, which states 'The accommodation hereby permitted shall only be used as living accommodation ancillary to the use of New Manor Farm as a single family dwellinghouse'. It is the appellant's case that the structure has, in fact, been continuously occupied as a separate dwelling for 10 years, in breach of the condition.
7. In making out her case, the appellant refers to a number of statutory declarations which, I understand, were submitted with the LDC application to the Council. I have not been provided with copies of these. However, I have been provided with an outline of their contents, and the Council does not dispute the appellant's claims regarding the occupancy of the unit. Moreover, the Council advises that it holds Council Tax records which accord with the periods of occupancy claimed by the appellant. Consequently, I have no reason to doubt the appellant's claims.
8. The property was completed in 1996 and occupied soon after by a family member. However, from 2001 it was let separately to several tenants who were not family members and who occupied the property as a dwelling, independently from the farmhouse. The evidence shows that the property was occupied in this way continuously from July 2011 until the LDC application in January 2024 and beyond, save for gaps in the periods 30 September 2022 - 7 November 2022 and 30 June 2023 – 17 July 2023.
9. Section 191(3) of the Act establishes that any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
 - (a) the time for taking enforcement action in respect of the failure has then expired; and
 - (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.
10. There is no suggestion of any enforcement notice or breach of condition notice in force in this instance, so my decision rests solely on 191(3)(a).
11. In the planning statement submitted to the Council, it was argued that the relevant period for establishing immunity from enforcement action was the 4 years in s171B(2) of the Act for 'the change of use of any building to use as a single dwellinghouse'¹, a view supported by the Court of Appeal decision in *First Secretary of State v Arun DC & Brown [2006] EWCA Civ 1172*. Notwithstanding that, both parties now approach the appeal on the basis that the relevant time period here is the 10 years set out at s171B(3) of the Act for 'any other breach of planning control'. But regardless of which of those time periods is applied, immunity from enforcement action has been achieved on the facts of this case.

¹ The Levelling-up and Regeneration Act 2023 has subsequently amended s171B(2) to refer to a 10 year period, but it was 4 years at the time of the LDC application.

12. It is common ground that a single letting to somebody who was not a family member, in breach of the condition, commenced on 24 July 2011 and continued to 13 May 2022. Thus, by 24 July 2021, the condition had already been breached for a continuous 10-year period and there was immunity from enforcement action. From then on, the lawfulness of occupying the property in breach of the condition could not be lost by a period of compliance with the condition, let alone the brief periods of non-occupation the Council has identified. Accordingly, occupation in breach of the condition was lawful when the LDC application was made, and a certificate to that effect should have been issued.
13. I appreciate that the Council was concerned with the 10-year period immediately prior to the LDC application, but the legislation establishes that the relevant period starts with the date of the breach, unless there is some interruption. Here, the evidence suggests that there was no interruption during the 10-year period starting 24 July 2011.
14. The Council refers to the cases of *Nicholson v SSE & Maldon DC* [1998] JPL 553 and *North Devon DC v SSE & Rottenbury* [1998] EGCS 72 in support of its (correct) view that there is 'no defined de minimis period of vacancy'. *Nicholson* also suggests that the failure to comply with a condition must be in existence at the date the LDC application is made.
15. However, the later decision of the High Court in *R (Ocado) v Islington LBC* [2021] EWHC 1509 (Admin), reviews earlier decisions, including *Nicholson*, and concludes that, once a condition has been breached continuously for any ten-year period, without significant interruption, the breach will be lawful thereafter, unless that lawful right has been lost through some event sufficient to terminate it. The breach does not have to be continuing at the date of an LDC application to become lawful. To the extent that there is conflict between the judgements, *Ocado* is to be preferred in my view, since it was made with the benefit of the earlier decisions of the High Court, and more closely reflects the wording of the legislation. Following the approach established by *Ocado*, the question of whether the period of vacancy in 2023 cited by the Council is de minimis does not arise, since non-compliance was already lawful at that point.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development 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) and grant the certificate applied for.

Peter Willows

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 25 January 2024 the matter described in the First Schedule hereto, constituting a failure to comply with a condition or limitation subject to which planning permission has been granted, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the dwelling was continuously occupied in breach of the disputed condition for a period in excess of 10 years prior to the making of the Lawful Development Certificate application. Consequently, in accordance with sections 191(3) and 171B of the Act, the occupation of the property in breach of the condition was lawful when the application was made.

Signed

Peter Willows

Inspector

Date: 12 May 2025

Reference: APP/H0520/X/24/3348935

First Schedule

Occupation as a dwelling without compliance with Condition 3 of Planning Permission Ref 9600408FUL, granted on 28 May 1996.

Second Schedule

Land at The Cottage, New Manor Farm, Ellington Road, Woolley, Cambridgeshire
PE28 5BH

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 matter, constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 or 187A of the 1990 Act, on that date.

This certificate applies only to the extent of the matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any matter 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: 12 May 2025

by Peter Willows

Land at: The Cottage, New Manor Farm, Ellington Road, Woolley, Cambridgeshire PE28 5BH

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Scale: Not to Scale

