

9th December 2025

Our Ref: SWLC.LPC1432

Wiltshire Council (North)
Wiltshire Council
Monkton Park
Chippenham
Wiltshire
SN15 1ER



Dear Sir/Madam

Town and Country Planning Act 1990

Re: Section 191 Certificate of Lawfulness application to confirm residential garden land use – Land at Restrop Farm, Purton, Wiltshire SN5 4LW

Further to Ms A Robert's advice from your Council regarding my client's footpath diversion and the use of the Defra Presumption Guidance I have pleasure to enclose a Certificate of Lawfulness application as suggested to confirm the garden use of the land in question.

In view of the effluxion of time and the fact that my clients are confident that they have used the land to the north of their house as garden land continually for in excess of 10 it is the purpose of the enclosed Certificate of Lawfulness application to establish the contiguous established and lawful use of the land in association with the host dwelling. The area of land in question is identified below, and is contiguous with the lawned area to the south, and west of the main built grouping. It is also separated by the access point to the east from the kitchen garden south of that.



The enclosed application is of course therefore made pursuant to section 191 (1)(a) of the above Act, which allows any person who wishes to ascertain whether any existing use of buildings or land is lawful to seek such confirmation.

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Section 191(4) of the Act provides that a local Planning Authority shall grant a Certificate of Lawfulness upon such request if it is satisfied, on the balance of probability, that the existing circumstances described are more likely than not to be as stated.

The main issue to consider in processing this application is whether the evidence provided is sufficiently precise and unambiguous to justify the grant of a Certificate on the balance of probability, (Planning Practice Guidance Paragraph: 006 Reference ID: 17c-006-20140306).

Specifically, the Planning Practice Guidance above outlines that;

'In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a Certificate on the balance of probability'.

The essential question is therefore whether the use is lawful and that requires a simple question of law to be assessed and determined; there is no place within that for an assessment of the change against policy or whether the change is acceptable or not. The question is whether the time available for your Council to take enforcement action to require the use of the existing land to cease has expired.

Section 171 (B)(3) of the above Act determines where there has been a breach of planning control involving a change of use as in this case no enforcement action may be taken after the end of the period of ten years, beginning with the date of the breach.

It is understood that the onus to prove the case rests with the applicant.

The benchmark against which the Council's decision will be judged can be drawn from the following erstwhile Circular advice:

"In appeals to the Secretary of State which raise "legal issues" ... where the burden of proof is on the Appellant, the Courts have held that the relevant test of the evidence on such matters is "on the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond all reasonable doubt". Moreover, the Court has held (see FW Gabbitsab v SSE and Newham LBC [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of the certificate "on the balance of probability". The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she may or may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or

activity are relevant to the consideration of the purely legal issues which are involved in determining an application “.

The above paragraph is of considerable importance in that it has established certain requirements which the Council must follow when dealing with this application, and that remain relevant, especially in circumstances where, as in this case, there is no evidence to contradict the information presented by the applicant. The following points therefore emerge:

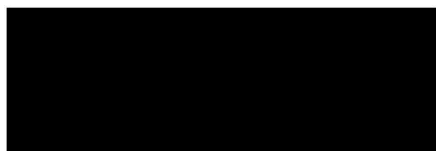
- (i) The test is on the basis of a balance of probability. That test is satisfied if my client can produce evidence that means the position is more likely than not to be as indicated.
- (ii) The applicant's evidence does not need to be corroborated. The applicant's evidence alone can be sufficient to permit the grant of the Certificate provided it is sufficiently precise and unambiguous. In this case of course you will see that it has been corroborated.
- (iii) Where the Council has no contrary evidence of its own there is no good reason to refuse the application provided the applicant's evidence is sufficiently precise and unambiguous.

In this case the primary source of evidence adduced is the applicant's own narrative documentation (including comprehensive photographs) that fully explains the gardening activities/uses that have brought about the established position. The detailed narrative is also supported with appended and dated documentation as referenced in the body of the text, and two corroborative statements.

I do not propose to repeat the narrative provided as it is very clear, but in simple terms, and on the balance of probability, I would strongly maintain that there is no reason to suggest that my clients have not been actively using the land in question for incidental residential purposes, as garden land, which includes the active practices of maintenance for in excess of 10 years.

In conclusion, I trust you will agree the case has been proven, however if you have any questions or wish to clarify the details of the application to ensure the issue of the certificate as sought, please do not hesitate to contact me direct.

Yours faithfully



Simon Chambers
Director

Enc.

Cc: Mr and Mrs Moseley