Planning Inspectorate

Appeal Decision

Site visit made on 21 August 2026

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2026

Appeal Ref: APP/Z4718/X/25/3373190
Bar House, Penistone Road, Holmfirth, HD9 2TR

- 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 D Mosley against the decision of Kirklees Council.
- The application ref 2025/CL/90436/W, dated 15 February 2025, was refused by notice dated 14 May 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 described as residential curtilage.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form, appeal form and decision notice all describe the use of land for which a LDC is being sought as residential curtilage. However, curtilage defines an area of land associated with a building, and not a use of land. Furthermore, a change of use of land to residential use does not necessarily mean that it becomes part of the curtilage of any residential building it may be associated with. Had I been allowing the appeal and granting a certificate, I would therefore have replaced the term residential curtilage with residential garden or purposes incidental to the enjoyment of the dwellinghouse. This would reflect the evidence submitted, particularly the way in which the use of the land is described in the submitted Statutory Declarations, the Council's reason for refusal and a previous appeal decision[1].

3. The previous appeal, seeking a certificate to confirm the lawful use of the land was for purposes incidental to the enjoyment of the occupiers/owners of Bar House, was dismissed on 31 August 2023. That decision refers to a range of supporting evidence, which I have not been provided with as part of the current appeal. As such, I have not taken this into account except where it appears as evidence in the Council's statement.

4. In an appeal relating to a lawful development certificate the onus of proof rests with the appellant, and the standard of evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone

[1] APP/Z4718/X/23/3317784

may be sufficient to justify the grant of a certificate provided it is sufficiently precise and unambiguous.

Main Issue

5. The main issue is whether the Council's refusal to issue a LDC was well founded. That will turn on whether the appellant has proved on the balance of probability that the use of the land was residential garden, incidental to the enjoyment of the occupiers/owners of Bar House, on or before 15 February 2015 (10 years before the date on which the application was made) and that the use then continued without significant interruption for 10 years after that date.

Reasons

6. The only evidence submitted in support of the application and appeal is a statement, the previous appeal decision, and five Statutory Declarations made by people that currently or have previously lived close to the site. The Statutory Declarations, to which I afford due weight, all state that prior to his death, the last occupier of the dwelling, Mr Cass, gardened the land in question, mowed the grass, grew vegetables for his own consumption and planted flowers. It is also declared that no animals were kept on the land. One declaration refers to an earlier owner of the land, Mr Todd, creating the terraces by constructing small drystone walls to the rear of the house in the early 1950s. Reference is also made to Mr Todd growing vegetables behind the existing gate, but it is unclear which of the existing gates is being referred to as the plan attached to the declaration is not labelled.

7. Only one declaration makes any reference to Mr Cass having cars that he parked to the rear of the house. It states that vehicular access was obtained from the gate to the left of the dwelling (looking from Penistone Road) and that Mr Cass also had a small vegetable patch to the left of the gate and within the red line boundary. However, the land to the left of the gate is outside of the red line boundary and fence.

8. The Council's statement includes photographic images dated 2002, 2006, 2009, and 2012, which show a car on the grass. As this car does not appear on later images dated 2018 and 2021 it is feasible that the vehicle belonged to Mr Cass and was removed when he passed away. Some images also show the grass mown shorter to facilitate car access, turning and parking. This would appear to be a logical place for any occupier of the dwelling to park, given that the dwelling fronts directly onto a main road and I am advised the grass verge to the front and side of the dwelling is highway land. However, the images also show the car parked to avoid obstructing the access track running along the eastern boundary of the red line site, between two gates, which would not be necessary if that access track formed part of the residential garden.

9. A 1907 map contained within the Council's statement indicates that there was an area of land directly to the rear of the house and to the west of it, which was historically related to it. Whilst this does not reflect the red line plan, it increases the probability that there was some rear garden, that may well have been extended eastwards overtime to reflect changing circumstances, such as changes in ownership, increased car ownership and increased traffic using Penistone Road. However, I do not have any land registry or ownership information or any later old maps indicating any boundary changes.

10. At the time of my site visit, I noted that there is direct access into the land from a timber framed outbuilding (partially repaired with some corrugated metal) attached to the dwelling, which contains a small side door into the dwelling. I did not see any evidence of any current or past vegetable patch. There is a swing, a bench and a small table and chairs on the grass behind the house but there is no evidence of how long these have been in place, and they are not apparent from any historic images provided. In any event, it does not appear to be a matter of dispute that this part of the site has historically been used as garden.

11. It appears from what I saw and the 1907 map, that historically access was between the stone outhouse attached to the western side of the dwelling and the stone wall that aligns with the front of it. This access still exists but is partially reduced in width by the timber framed outbuilding attached to the side of the dwelling and the remains of a further brick and stone structure. No reference is made to this access or how it has been used in the appellant's submissions.

12. The access to the east of the dwelling is a rutted grass track, with signs of some loose rubble beneath it where it crosses the grass verge that slopes upwards between the highway and the timber gate. The grass track then runs along the eastern side boundary of the red line site to a metal bar gate into a field. The wooden gate and access appear little used and there is no evidence of any obvious permanent residential parking, turning or hardstanding areas. Although the site is separated from the surrounding agricultural land by post and wire fencing, the access track through it appears to be primarily for agricultural use between the two agricultural style gates.

13. People use gardens in different ways and maintain them accordingly. Cutting the grass outside a building to keep it tidy does not on its own make it garden. Likewise, the lack of paving, any formal layout, a perfectly cut lawn, or ornamental planting does not necessarily mean that land is not residential garden or is not used for purposes incidental to the use of the dwelling. I am mindful of the fact that it is not unusual for properties in rural areas, with no immediate neighbours, to have no formal layout or boundary treatment. I also acknowledge that in this case, the Statutory Declarations suggest that the last occupier of the property was for many years a single gentleman living a simple lifestyle and keeping himself to himself. Much of the land appears physically and functionally related to the cottage and except for the unsurfaced gated access track, which runs through it, the site does not appear at present, or in any images before me, to be agricultural in use, scale or character.

14. Although the dwelling has not been occupied since 2014, the residential use of it does not appear to have been abandoned and there is no evidence to indicate that the dwelling, the outbuildings or the land adjoining it have been put to any other use. However, the extent of the garden land remains unclear.

15. I have taken account of case law referred to by both main parties regarding LDCs and curtilage, but this does not alter my findings.

Conclusion

16. It is more likely than not that at least part of the land in question has been used for purposes incidental to the dwelling for a significant period of time, and no substantive evidence has been submitted by the Council or others to contradict the applicant's version of events. However, the written evidence before me relating to

the use of the land contains conflicting information, and as such, is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the whole of the land, including the access to the east, was regularly used for residential purposes in connection with the use of the dwelling over a period of ten years before the date of the application and that that use has continued since without interruption.

17. The absence of any intervening boundary treatment separating the access route through the land from the remaining land in the red line boundary does not alter my view on this.

18. Section 193(4)(a) of the Act allows that a LDC may be issued for the whole or part of the land specified in the application. However, although the Council accepts that some part of the land may have been used for purposes incidental to the dwellinghouse, it is not clear to me from the evidence submitted what extent of the land has been used for residential purposes and as such I am unable to amend the plan accordingly.

19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of land as residential curtilage or garden was well-founded. The appeal should fail and I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Bartlett

INSPECTOR