



Friday, 12 December 2025

Appellant's Statement of Case

Fletcher Farm, Osbaldeston Lane, Osbaldeston, BB2 7LY

3/2025/0808

Certificate of Lawfulness for Existing Use of Land as Residential Use

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1. Introduction

1.1. This Statement of Case has been prepared by Nimble Planning and Development on behalf of Mr. Taras Paprockyj (“the Appellant”). The appeal is made against Ribble Valley Borough Council’s refusal of a Certificate of Lawfulness for Existing Use (3/2025/0808) for the Existing Use of Land as Residential Use. The site address is “Fletcher Farm, Osbaldeston Lane, Osbaldeston, BB2 7LY”.

1.2. The application for Planning Permission was validated on 8th October 2025 under reference 3/2025/0808. The decision to refuse the application was issued on 1st December 2025. The application was refused for the following reason:

1. The applicant has failed to demonstrate that, on the balance of probability, the land to which the application relates has been used for domestic purposes for a continuous period in excess of 10 years, and therefore the use is not considered lawful by virtue of Section 191 of the Town and Country Planning Act 1990.

1.3. The Council’s refusal (Application 3/2025/0808) was predicated on an alleged failure to demonstrate that the Site has been used for domestic (residential) purposes continuously for over ten years on the balance of probabilities. This appeal statement will outline the relevant legal framework and burden of proof, present the extensive evidence of continuous residential use of the Site, and rebut the Council’s grounds for refusal. The Appellant respectfully submits that the evidence **clearly satisfies the statutory test** for lawfulness and that the Council’s decision was not well-founded.

1.4. This Statement of Case has been prepared in accordance with PINS guidance.

2. Legal Framework and Burden of Proof

Certificate of Lawful Existing Use: statutory framework and relevant period

- 2.1. Section 191 of the Town and Country Planning Act 1990 enables any person to apply for a certificate to determine whether an existing use of land is lawful. A use is "lawful" for the purposes of Section 191 if, at the date of the application, it is immune from enforcement action, including by reason of the passage of time.
- 2.2. For alleged unauthorised changes of use, Section 171B(3) of the Act provides that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Where a material change of use has continued openly for ten years or more without effective enforcement action, the use becomes lawful through the operation of this statutory time limit.
- 2.3. The key question in a Certificate of Lawful Existing Use or Development (CLEUD) case of this kind is therefore whether, on the facts, the alleged use began at least ten years before the date of the application and has continued substantially uninterrupted since that time. Intermittent, trivial or de minimis breaks in the pattern of use do not necessarily defeat a claim, provided the overall picture is one of continuity and persistence of the use.
- 2.4. In the present case, the application was submitted in October 2025. The relevant period for the purposes of Section 171B(3) is therefore the ten years immediately preceding that date. The Appellant must demonstrate that the material change of use had occurred by at least October 2015 and that the use has then continued, in substance, without material interruption through to October 2025. In practice, the evidence in this case extends back significantly earlier than October 2015, which strengthens rather than weakens the claim that the ten-year period is satisfied.
- 2.5. Once a CLEUD is granted, Section 191(6) confirms that the certificate is conclusive as to the lawfulness of the use described in it, so long as it was based on accurate information. It is

therefore a formal and definitive recognition that the use is lawful in planning terms and is no longer vulnerable to enforcement action for the breach described.

Standard of proof - "balance of probabilities" and nature of evidence

2.6. In applications for a Certificate of Lawful Existing Use, the burden of proof rests with the applicant, now the Appellant. The applicable standard is the civil standard of proof, which is to say the "balance of probabilities". The Appellant must show that it is more likely than not that the land has been used in the manner claimed for at least ten years prior to the date of the application.

2.7. It is not necessary to demonstrate the case to the criminal standard of "beyond reasonable doubt". Nor is it necessary to prove every single day of the ten-year period with documentary or photographic material. What is required is a coherent, credible body of evidence that, taken as a whole and viewed with common sense, shows continuous use throughout the relevant period.

2.8. Case law, including *F. W. Gabbitts v Secretary of State for the Environment and Newham London Borough Council* [1985], establishes several important principles which are reflected in government guidance:

2.9. The applicant's own evidence, if sufficiently precise, detailed, and unambiguous, can be enough to discharge the burden of proof, even if it is not supported by independent third-party material.

2.10. The planning authority must assess whether the evidence is internally consistent, credible, and probable, rather than dismissing it simply because an interested party provides it.

2.11. If the authority wishes to reject otherwise credible evidence, it needs to have reasonable grounds for doing so, such as contradictory evidence that casts doubt on the claimed pattern of use.

- 2.12. In practical terms, evidence in support of a CLEUD will often comprise a combination of sworn statements, statutory declarations, historic records (such as utility bills, business records, or correspondence), photographs, plans and similar material. The question is always whether, when considered together, these documents and statements show, on the balance of probabilities, that the claimed use has subsisted for the required ten-year period.

National Planning Practice Guidance (NPPG) and approach of the decision-maker

- 2.13. The National Planning Practice Guidance (NPPG) relating to Lawful Development Certificates reinforces the above principles. It advises that, in determining applications for an existing use:
- 2.14. If the local planning authority has no evidence of its own, and no evidence from others, that contradicts the applicant's version of events or makes that version appear less than probable, then it should not refuse the application, provided that the applicant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
- 2.15. In other words, the absence of contradictory evidence is significant. Where the authority cannot point to tangible evidence that undermines the applicant's case, it should accept credible and clearly presented evidence that shows continuous use for the relevant ten-year period. The decision-maker must look at the "totality" of the material, applying a common-sense approach. Minor gaps in the record, or the lack of photographic coverage for every month or year, do not negate an otherwise coherent and well-supported account of uninterrupted use.
- 2.16. It is also fundamental that only factual and legal considerations are relevant in this context. The planning merits of the use, such as whether it is visually acceptable, whether it causes noise or traffic, or whether it accords with current development plan policies, are immaterial to a CLEUD. Third party representations are only relevant to the extent that they

provide evidence on the factual pattern of use (for example, confirming or contesting the duration or nature of the use), not where they simply express opinions on whether the use is desirable.

- 2.17. Under Section 195 of the Act, the Inspector's role in this appeal is to review, on the facts and the law, whether the Council's refusal of the certificate was well founded. The Inspector must consider all of the evidence before them, including the material that was before the Council and any additional evidence submitted at appeal, and decide whether the Appellant has shown, on the balance of probabilities, that the claimed use has existed continuously for at least ten years prior to the application date. If that test is met, the appeal should be allowed and a certificate granted for the existing use described.

3. Grounds of Appeal

Misapplication of the legal test by the Council

- 3.1. The Appellant contends that, in refusing to grant the certificate, the Council applied an unduly stringent standard of proof and did not properly apply the civil test of the balance of probabilities required by statute and guidance. Although the formal reason for refusal states that the applicant had "failed to demonstrate" ten years of continuous use on the balance of probabilities, the analysis within the delegated officer report reveals that the Council in practice required something approaching near certainty, rather than deciding whether the Appellant's case was more likely than not.
- 3.2. On the face of the report, the Council recites the correct legal framework: it notes that the burden lies with the applicant, refers to the need for precise and unambiguous evidence, and cites the NPPG. However, its treatment of the actual evidence indicates that it then applied a much higher evidential threshold than the law demands.
- 3.3. In particular, the Council discounted or minimised material that clearly supports continuity of domestic use:
- 3.4. The report accepts that the 2009 aerial imagery shows domestic paraphernalia within the land, consistent with garden use.
- 3.5. It then proceeds to criticise imagery from 2015 to 2023 on the basis that domestic items are "unclear" or not readily identifiable in those later years and appears to treat this as fatal to the claim of continuity.
- 3.6. This approach implies that the Council expected unmistakable domestic items such as garden furniture, play equipment or similar paraphernalia to be visible in each individual aerial frame throughout the entire ten-year period before it would accept continuity of use. That is an unrealistic and legally unsound standard, for several reasons.

- 3.7. The resolution and angle of aerial photography inherently limit what can be seen. Many normal domestic activities and features (mowing, planting, low-level furniture, seasonal items) will not be consistently legible from above.
- 3.8. The legal test is not whether each annual image shows conspicuous paraphernalia, but whether all the evidence together makes it more likely than not that the land remained in domestic use throughout the relevant period.
- 3.9. Minor gaps in the photographic record do not displace clear affirmative evidence that the land was maintained and used as garden land at that time, especially where sworn statements and other factual material fill any gaps.
- 3.10. By treating the absence of obvious paraphernalia in every single aerial photograph as decisive, the Council effectively raised the bar above "more likely than not" and approached a requirement for conclusive proof. That is not the standard required for a certificate of lawfulness.
- 3.11. A further defect in the Council's reasoning is its failure to give proper weight to the lack of any contrary evidence. The principle confirmed in *F. W. Gabbittas v SSE and Newham LBC*, and reflected in the NPPG, is that where an applicant's evidence is clear, unambiguous, and unrefuted, there is no good reason to withhold a certificate.
- 3.12. In this case, the Council possessed no evidence that the land had been put to any alternative use within the last ten years, or that the alleged domestic use had ceased at any point.
- 3.13. No third parties asserted that the land had been used for agriculture, storage, or any non-domestic purpose, nor did anyone allege a material break in the domestic use.
- 3.14. The Council did not rely on any historic records, enforcement history or other documentation pointing to a different use or an interruption.
- 3.15. Notwithstanding this complete absence of contrary material, the Council refused the certificate on the basis that the applicant's evidence was "not precise enough" in places.

That is an incorrect application of the guidance. The correct question is whether the applicant's evidence is sufficiently precise and unambiguous to establish the claimed use on the balance of probabilities. If it is, and there is no evidence to the contrary, the application should not be refused.

3.16. Here, the two Statements of Truth are explicit, detailed, and consistent regarding the nature and continuity of the domestic use, extending over a period of some 15 years. The Council did not identify any internal inconsistency or ambiguity in those statements, nor did it challenge any specific factual assertion they contain. There was nothing inherently implausible in the account given. The decision to remain unconvinced, despite the absence of any opposing evidence, demonstrates an overly sceptical approach inconsistent with the Gabbittas principle and the NPPG.

3.17. The Council also appears to have misunderstood the legal concept of continuity of use, treating it as if it required unbroken, day to day activity documented throughout the entire decade. That is not the test in law.

3.18. For the purposes of the ten-year rule, "Continuous" use does not mean that some visible form of activity must be present every single day, or that the evidence must document each period of weeks or months.

3.19. What matters is whether there has been any significant interruption in the use, such as a prolonged period when the use ceased altogether or when the land was put to a materially different use.

3.20. The evidence before the Council included clear confirmation from the previous owner that the land had been used as part of the domestic garden without any break for approximately 15 years. The Council did not point to any specific period when that use is said to have stopped, nor did it produce evidence of any alternative use over the relevant ten-year period. In those circumstances, to conclude that continuity had not been shown

effectively required the Appellant to disprove the possibility of some hypothetical gap, rather than requiring the authority to produce evidence that such a gap actually occurred.

3.21. Once an applicant has established a prima facie case of continuous use, the evidential burden shifts to any party alleging an interruption to provide some basis for that contention. No such evidence was forthcoming here. Instead, the Council's stance suggests that it expected the Appellant to demonstrate an unbroken chain of documentary proof, which again strays beyond the civil standard of proof and approaches a requirement for certainty or the disproving of a negative.

3.22. Taken together, these factors show that the Council did not properly apply the balance of probabilities test. The Appellant's evidence was comprehensive, internally consistent and supported by both documentary material and sworn statements over a period longer than the minimum ten years. There was no contrary evidence and no identified break or change in the use.

3.23. The defect lies not in the quality of the Appellant's case, but in the way the Council evaluated it: insisting on near conclusive visual proof year by year, giving inadequate weight to unchallenged sworn evidence, and treating theoretical doubts as if they were evidence of interruption. This approach is inconsistent with established authority and national guidance, which state that if the local planning authority has no evidence of its own, nor any from others, to contradict the applicant's version of events, then, provided that version is sufficiently precise and unambiguous, there is no good reason to refuse a certificate.

3.24. The Inspector is therefore invited to apply the correct legal test afresh. When the evidence is assessed on the proper balance of probabilities standard, the only reasonable conclusion is that the domestic use of the land has continued for at least ten years prior to the date of the application, and that a certificate of lawfulness should be issued accordingly.

Continuous Residential Use of the Site for Well Over Ten Years

3.25. The appeal concerns a defined area of land immediately adjacent to and physically associated with the dwelling known as "Fletcher Farm". The Appellant contends, and the evidence clearly demonstrates, that this land has formed part of the residential garden of the property continuously since 2007. By the date of the application in 2025, the use had therefore persisted for approximately 18 years, significantly exceeding the 10-year period required for lawfulness under section 171B of the Town and Country Planning Act 1990. Throughout that time the use has been open, obvious, and uninterrupted, characterised by typical domestic activities, garden structures, and incidental buildings. When the sworn testimony, photographic record and planning history are considered together, they establish a coherent and compelling picture of long-term residential garden use, and there is no credible evidence to the contrary.

3.26. The starting point is the sworn evidence of those who have occupied Fletcher Farm. Two detailed Statements of Truth have been submitted: one from the former owner, who owned and occupied the property from 2007 until 2022, and one from the present owner, the Appellant, who has been in occupation since February 2022. Both statements unequivocally confirm that the appeal Site has been used throughout as part of the dwelling's garden. The previous owner explains that, from the time he acquired the property in 2007, the land was treated, maintained, and enjoyed as domestic garden land. It was regularly mown and used for everyday residential purposes such as lawn recreation, drying laundry, family gatherings, barbecues, and children's play. He describes the presence of classic garden paraphernalia, including trampolines, slides, and swings, and refers to small scale domestic animal keeping, including a hen coop. He also confirms the creation of a pond and the erection of a wooden pump house on the Site around 10 to 15 years ago, expressly as garden features for the enjoyment of the household. Two garden sheds were present prior to the subsequent construction of the stable. At no time was the land used for agricultural cropping or for commercial grazing; the only grazing related to the family's own

horses, kept as a hobby. Crucially, he confirms that this domestic pattern of use was continuous, with no significant break, cessation, or abandonment. The land was always maintained, always accessible and always regarded as part of the home.

3.27. The Statement of Truth from the current owner carries that account forward without interruption. Since acquiring Fletcher Farm in early 2022, the Appellant and his family have used the Site in the same way, as an integral part of the residential garden. The statement describes regular mowing and upkeep on at least a weekly basis, children's play and family recreation, social events and gatherings, and the erection of temporary gazebos and similar structures for parties and barbecues. The pattern of use described is entirely consistent with that of the former owner and shows a seamless continuation of domestic garden use from 2007 to the present day. Both statements are detailed, first-hand accounts from persons with direct knowledge, covering the whole relevant period. In the context of lawful development certificate applications, such sworn evidence is capable of carrying considerable weight where it is precise and unchallenged. In this case there is no contrary witness evidence, and the Council has not produced any documentary material that undermines or calls into question the occupants' testimony.

3.28. The sworn evidence is strongly corroborated by a substantial body of aerial photography and other visual material that charts the physical evolution and appearance of the Site between 2009 and 2023. A sequence of aerial images from May 2009, April 2015, July 2017, June 2018, April 2020, September 2021, June 2022, and June 2023 shows the land visually distinct from the surrounding agricultural fields. As early as 31 May 2009 the Site is clearly fenced off from adjoining farmland, signifying its residential use. The grassed area is neatly mown, and a range of domestic garden items can be seen, including a trampoline, and a shed. These are unmistakable markers of residential garden use, present only two years after the claimed commencement date of 2007.

3.29. By 22 April 2015, the imagery shows the land still well maintained, with a manicured lawn and two sheds. Ground markings are apparent that correspond with preparations for the stable later constructed, which accords with the 2014 planning permission for a single storey stable block. The aerial image of 17 July 2017, taken after construction of the stable, shows the stable building within the Site and continued domestic paraphernalia in the surrounding garden area, again indicating that the character of the land remained residential. Subsequent images in 2018, 2020, 2021 and 2022 all show the land as a clearly defined part of the property, containing a combination of lawn, paths, concrete yard, small outbuildings, and landscaped areas. The grass is consistently shown as regularly cut, and there is no indication of rough pasture, arable cultivation, or other agricultural use. The latest image of 5 June 2023 confirms that the position is unchanged: the land reads as an integral part of the garden of Fletcher Farm, with lawn, ornamental plantings (including a substantial evergreen hedge planted for privacy), outbuildings and garden structures. An undated ground level photograph submitted with the application reinforces this impression, depicting the pond and pump house, a trampoline and closely mown grass within an enclosed garden setting. Taken together, these images provide an objective, time stamped visual record of more than 14 years of continuous garden use that aligns precisely with the narrative given by the owners.

3.30. The planning history and the Council's own records further reinforce, rather than undermine, the Appellant's case. Planning Permission ref. 3/2013/1014 was granted in 2014 for the erection of a single storey stable block comprising three stables and a feed store on the appeal Site. That permission is explicitly framed as a private facility restricted to the occupants of Fletcher Farm, with a condition preventing commercial equestrian use. Importantly, the 2013 application form described the existing use of the land at that time as "residential garden". That description was provided to the Council in the ordinary course of the planning process and, on any sensible view, represents a clear and contemporaneous

indication that both the applicant regarded the Site as part of the domestic garden. The Council did not challenge or correct that description, and it did not treat the proposal as involving a change of use from agriculture to equestrian. Had the land been considered agricultural, it is reasonable to expect that the Council would either have required a specific change of use or at least identified that issue in the officer report or decision notice. It did not do so. Instead, the permission simply imposed an ancillary use condition, which is consistent with the land already being in residential use.

3.31. Further support is found in the subsequent grant of planning permission ref. 3/2016/1008 for a horse exercise manege on an adjacent field within the same ownership. That manege is located outside the appeal Site, on land that is more plainly agricultural in origin. The fact that the manege was sited on the adjoining field rather than within the appeal Site, and that the two areas are separated by fencing, demonstrates that the applicants themselves differentiated between the "field" and the garden land. The horses were stabled and exercised in the manege, while the appeal Site functioned as a maintained garden and yard area around the stable, used in association with the dwelling. The previous owner confirms that the construction and use of the stable did not alter the essential character of the land, which remained part of the household's garden. The stable itself is an ancillary outbuilding serving the domestic enjoyment of the occupiers.

3.32. When all of the evidence is brought together, the Appellant has plainly discharged the burden of proof. The sworn statements provide precise, unambiguous, and continuous accounts of residential garden use of the Site from 2007 to the present day. The aerial and ground level images independently verify that account by showing physical features and patterns of maintenance that are characteristic of garden land, and they do so consistently over more than 14 years. The planning history confirms that, by 2013 at the latest, the land was being described to the Council as residential garden, and that position has never been contradicted or disturbed. At no stage does the evidence show a reversion to agricultural

use or any period of abandonment. On the contrary, the land has been actively tended and enjoyed as an integral part of the dwelling's grounds throughout.

- 3.33. On the balance of probabilities, it is therefore clearly far more likely than not that the appeal Site has been used as residential garden land for a continuous period considerably in excess of 10 years. Indeed, the Council's own delegated report accepts that the land is maintained and even acknowledges the presence of a trampoline in 2009, which is entirely consistent with the Appellant's case. The Council's error lies not in disputing the factual pattern of use, but in its assessment of whether the evidence before it was sufficient to demonstrate lawfulness. For the reasons set out above, the available evidence is both abundant and internally consistent, and it comfortably meets the legal test.

Rebuttal of the Council's Stated Reasons for Refusal

- 3.34. The Delegated Report identifies a series of specific concerns which the Council relies upon to justify refusing the Lawful Development Certificate. Those concerns can be grouped into four main issues, each of which is addressed below. When properly analysed in light of the correct legal test for a certificate under section 191, none of these points undermines the Appellant's case that, on the balance of probabilities, the land has been used as residential garden land for the requisite ten year period.

(a) The 2013 Stable Application and the "Residential Garden" Description

- 3.35. The Council attaches only "limited weight" to the fact that the 2013 stable planning application described the land as "residential garden", suggesting that land adjacent to a curtilage is "often mistakenly referred to as residential garden". It further points out that the 2013 proposal was advanced as a full planning application rather than a householder scheme, and that the officer's report at that time referred to the land as a field.
- 3.36. There are several problems with this reasoning. First, the application form is contemporary documentary evidence prepared and signed by the then owners. It records

their understanding and description of how the land was being used at that time. There is no evidence whatsoever that they “mistakenly” used the term “residential garden”. That suggestion is pure speculation by the Council. In contrast, the owners’ actions were entirely consistent with the description they gave: they were using the land for garden activities and treating it as part of their garden. The description on the form therefore aligns with and supports the sworn evidence now before the Inspector.

3.37. Second, the fact that the Council in 2013 processed the proposal as a full application and that the officer’s report referred to the site as a field does not prove that the land was not already in domestic use. It simply shows that, at that time, the Council had not formally accepted or recorded that use through a certificate process. It is not unusual for the planning authority’s internal characterisation to lag behind what has been happening on the ground, especially where no previous legal determination has been sought. Non-recognition is different from non-existence.

3.38. Third, the nature of the 2013 approval is in fact significant. The permission imposed a condition requiring the stable to be for private use, and no change of use application was required in connection with that development. The only rational inference is that the Council was content to allow a private stable building in association with the dwelling and its land. If the land had genuinely been regarded as agricultural or in some wholly different use, one would have expected a very different approach, for example an agricultural justification or conditions controlling use accordingly. The stable was plainly a facility to support the occupiers’ hobby and domestic lifestyle, not a building serving a separate planning unit.

3.39. Fourth, the Council argues that the existence of a private stable does not “automatically” mean the land is in domestic use. That is correct as a generalised statement but irrelevant here. The Appellant’s case is not that the stable of itself creates a domestic use. Rather, the stable is part of the physical and functional context of land that was already being used as garden land ancillary to the dwelling. The stable is a result of that residential

use, not its origin. Its presence sits coherently alongside the other indicators of domestic use; it does not contradict them.

- 3.40. Taken overall, the 2013 application form and permission are either positive indicators of domestic garden use or, at worst, neutral. They are consistent with the Appellant's evidence and certainly do not disprove continuous residential garden use. The Inspector is fully entitled to treat the 2013 documentation as contemporaneous evidence that the owners regarded and used the land as part of their residential garden at that time.

(b) Domestic Paraphernalia in Aerial Photographs

- 3.41. The Council accepts that an aerial photograph from May 2009, together with an undated aerial image shows a trampoline on the land. It then states that in images from 2015 to 2023 the presence of domestic paraphernalia is "unclear", and on that basis gives this line of evidence limited weight.
- 3.42. This approach misunderstands the role and limitations of aerial photography in LDC cases.
- 3.43. First, aerial images are only one strand in the evidential picture. By their nature, they are periodic snapshots taken from height, with unavoidable limitations of resolution, angle, and seasonal variation. It is unrealistic to expect every piece of domestic paraphernalia to be crisply visible in every photograph for it to "count."
- 3.44. Second, even at that level of limitation, the images nevertheless show a pattern that is wholly consistent with garden use and wholly inconsistent with agricultural or non-domestic use. The land is enclosed and physically integrated with the dwelling, has been laid to lawn, contains paths, structures, and features such as sheds, and exhibits the appearance of maintained green space. It does not display the characteristics of a cropped field, grazing land, or unmanaged paddock. That general appearance is a strong contextual indicator of domestic use.

3.45. Third, and most importantly, aerial photography must be assessed alongside the direct accounts from the people actually using the land. The Statements of Truth confirm that domestic items, including trampolines, play equipment, seating, a clothes line and other garden furniture, have been present over many years. If those items are not always clearly seen from above, that speaks to the limits of the imagery, not to the absence of use on the ground. Lawful use is often proven by sworn testimony supported by sporadic photographs, rather than by a perfectly continuous photographic record.

3.46. The 2009 trampoline visible in the aerial image is in fact a powerful corroboration of the previous owner's account. It shows that the use described in the statement did occur. The absence of conspicuous "clutter" on later images is entirely compatible with a well-tended domestic garden where items are moved, stored in sheds, or partially screened. The Council's reasoning effectively penalises the Appellant for maintaining a tidy garden: the neater and more ordered the space, the fewer individual objects will stand out from the air.

3.47. When the aerial material is combined with the sworn evidence, a consistent and credible picture emerges. The land has been fenced, maintained, and used in a manner indistinguishable from a typical residential garden, with domestic paraphernalia present over the relevant decade. The Council's decision to afford only "limited weight" to this line of evidence, on the basis that certain objects are not visible in all images, is neither fair nor consistent with the way evidence is properly approached in LDC cases.

(c) Additional Structures Post 2018 and Absence of Specific Permissions

3.48. The Council refers to the introduction, from around 2018, of additional hard surfacing and outbuildings on the land, including sheds, a workshop, and a dog kennel. It notes that these structures do not have the benefit of specific planning permissions and asserts that "no clear evidence of their domestic use has been provided."

3.49. Again, this line of reasoning misconceives what is at issue under section 191.

3.50. First, the lawfulness of individual structures as operational development is distinct from the question of the lawful use of the land. The fact that a shed or a kennel was built without a separate planning permission does not mean that the underlying use of the land is anything other than domestic garden. It is entirely commonplace for householders to erect sheds, kennels, and other small outbuildings within their gardens, sometimes under permitted development rights, sometimes without realising permission might be required. The existence of such buildings is typically a consequence and manifestation of domestic use, not evidence against it.

3.51. Second, the Appellant has clearly explained how these structures are used. There is no allegation, and no evidence, that any of the buildings have been used for commercial, industrial, or agricultural activity. In the absence of contradictory material, there is no reason to doubt the Appellant's sworn explanation, which is entirely consistent with the character of the site and the wider residential use.

3.52. Third, the Council appears to criticise the Appellant for not providing stand-alone evidence of the use of each individual structure. That approach imposes a level of granularity which is not required in law. The question is the planning unit and the primary use of the land. In a residential context, outbuildings, hardstanding, and similar works are ordinarily regarded as ancillary elements that serve and support the main use. There is no suggestion of a separate planning unit emerging in 2018 or of any distinct non-residential activity being introduced at that time.

3.53. Fourth, even if any of the structures themselves required planning permission and did not benefit from it, that would be a matter for the operational development immunity test. The presence of apparently long-standing domestic outbuildings on the land since 2018 at least demonstrates that the occupiers have invested in and relied upon the land as residential land. Far from undermining the Appellant's case, this strengthens the narrative of continuous and evolving domestic use.

3.54. The Council's criticism that "no clear evidence" has been provided for the use of these structures is therefore misplaced. Their very form, location and described function sit entirely comfortably with the long-term residential garden use asserted, and there is no rational basis for treating their appearance in 2018 as any sort of break in or change to a different use.

(d) Failure to Assess the Totality of the Evidence and the Absence of Contradiction

3.55. The most fundamental flaw in the Council's decision is its failure to apply the correct evidential approach. Rather than considering the cumulative weight of all material presented, the Council dealt with each item in isolation and dismissed it if, taken alone, it was not absolutely conclusive.

3.56. The proper question in a section 191 case is whether, on the balance of probabilities, the evidence demonstrates that the use claimed has subsisted for the required period, having regard to all the material and any counter evidence. Sworn statements, documentary records, photographs, aerial images, and the physical layout on the ground must all be read together as parts of a single evidential mosaic.

3.57. Here, that mosaic includes the physical integration of the land with the dwelling, including its fencing and layout, the consistent mowing and maintenance of the land as a lawned area, not as an agricultural field, the presence of a trampoline in 2009 aerial imagery, tallying with the previous owner's description of domestic play equipment, the construction of a pump house, sheds, a chicken run and later a stable, all in a domestic or hobby context, the later introduction of further domestic outbuildings, hardstanding and a dog kennel and the detailed Statements of Truth from both current and former owners, giving precise accounts of what was on the land, how it was used, and when

3.58. There is no competing narrative offered by the Council. No evidence is cited to suggest that the land was used for grazing livestock, growing crops, commercial storage, or

any other non-domestic purpose. The Council does not point to any period when the land reverted to some non-residential state. It simply states that, in its view, the Appellant's evidence is not "precise and unambiguous" enough.

3.59. In reality, the Appellant's evidence is both detailed and internally consistent. The previous owner identifies specific structures and approximate dates, such as the pump house around 2010, the early sheds and chicken run prior to 2014, and the later stable. The current owners describe the nature of their own use over a continuous period, including day to day activities such as children playing, sitting out, drying clothes, keeping animals, and storing domestic items. This is not vague or generic assertion. It is a clear and coherent account supported by documentary and photographic material.

3.60. The Council's stance amounts to saying that it remains unconvinced, but without bringing forward any contrary facts or alternative explanation. That is not enough to justify refusal where the applicant has discharged the evidential burden on the balance of probabilities. If the Council had genuine doubt about particular aspects or time periods, it could and should have canvassed additional evidence. The absence of any third-party objection or contrary statement is, in itself, highly significant. In many LDC cases, neighbours with a different recollection will quickly come forward to challenge exaggerated or inaccurate claims. Here, there is silence.

3.61. Accordingly, when the evidence is viewed as a whole, the only reasonable conclusion is that the claimed use as residential garden land is more likely than not to have existed continuously for at least ten years prior to the application date. The Council's piecemeal assessment, its tendency to discount positive evidence because it was not individually "conclusive," and its failure to identify any genuine contradiction or alternative narrative, all point to a misapplication of the correct legal test.

3.62. For these reasons, each of the specific grounds relied on by the Council is either misconceived or irrelevant to the core question of lawful use. None of them displaces the

strong, consistent, and unchallenged body of evidence advanced by the Appellant. The Inspector is therefore invited to find that the statutory test is met and that a Lawful Development Certificate should be granted.

4. Relevant appeal decisions

4.1. In addition to the statutory framework and guidance already outlined, there is a body of appeal decisions that illustrates the correct approach to evidence in lawful development certificate cases involving residential garden land. While each case turns on its own facts, these decisions are materially analogous and support the Appellant's position that the evidence in this case comfortably meets the civil standard of proof.

4.2. In Rodwin, Allscott, Telford (APP/C3240/X/24/3343388, decision dated 18 September 2025) the Inspector allowed an appeal against the refusal of a certificate for the use of land as private garden land associated with a dwelling. The land had historically been in agricultural use but had been fenced, mown and used with domestic paraphernalia such as play equipment for well over ten years. The Inspector reaffirmed that the relevant standard is the balance of probabilities, not proof beyond reasonable doubt, and emphasised that an appellant's own evidence should not be rejected simply because it is not supported by independent third-party material where there is no evidence to contradict it and it is sufficiently precise and unambiguous. Aerial photographs showing an enclosed, well maintained lawned area with domestic items were treated as consistent with the sworn evidence, even though every single image did not show conspicuous paraphernalia. The appeal was allowed and a certificate granted.

4.3. The Rodwin decision is directly relevant here. It confirms that fenced and consistently maintained land, visually distinct from surrounding fields and containing domestic items in some images, is a strong indicator of residential garden use. It also illustrates that a local authority falls into error where it in practice applies a near criminal standard of proof or expects continuous photographic depiction of paraphernalia year by year, rather than deciding whether the appellant's coherent account is more likely than not in the absence of contrary evidence.

4.4. In *Field House, Lower Kingswood, Surrey* (APP/L3625/X/24/3349950, decision dated 7 May 2025) the Inspector considered an appeal concerning the use of land as part of the curtilage of a dwelling. The Inspector confirmed that for a certificate to be granted, the appellant must demonstrate on the balance of probabilities that residential garden use began at least ten years before the relevant date and then continued without material interruption. Aerial photographs over a lengthy period showed lawn, paths, a tennis court and other domestic features, creating a consistent pattern of domestic use. The Council had little substantive evidence to the contrary.

4.5. In *Field House*, the Inspector used the powers under section 191(4) of the Act to adjust the description in the certificate to reflect what the evidence actually showed, granting a certificate for the use of the land as residential garden land. The decision reinforces two important propositions. First, aerial and other visual material that depicts an enclosed, maintained and domestically equipped area can be powerful corroboration of sworn testimony. Second, where the evidence demonstrates that the ten year test is met, the appropriate course is to grant a certificate, refining the description if necessary, rather than to refuse on technical or semantic grounds.

4.6. An earlier but closely analogous decision is *Moor Copse, West Berkshire* (APP/W0340/X/13/2195252, decision dated 17 December 2013), which concerned an application for a lawful development certificate for the use of land as residential garden land serving a bungalow. The Council relied heavily on a sequence of aerial photographs and argued that the appeal site was not a formally cultivated garden and was maintained differently from the immediately adjoining garden area. The Inspector accepted that the photographs showed some differences in mowing and appearance, but noted that they were simply snapshots and did not reveal any non residential activity that contradicted the sworn declarations.

4.7. In Moor Copse the Inspector expressly applied the principle that, where the authority has no evidence of its own or from others that contradicts the applicant's version of events, and where the applicant's evidence is sufficiently precise and unambiguous, there is no good reason to refuse a certificate. The land did not need to be laid out as an ornamental garden in order to be in residential use. Earlier planning site plans which included the land within the residential plot were treated as further support for the claimed use. The Inspector concluded that residential garden use had continued for more than ten years without material interruption and allowed the appeal.

4.8. Moor Copse is plainly supportive of the Appellant's case in several respects. It underlines the limited weight that can properly be placed on aerial images in isolation, confirms that differences in grass treatment and the absence of formal landscaping do not negate residential use, and gives clear weight to statutory declarations and historic planning documentation that already treat the land as part of the dwelling's grounds.

4.9. Taken together, these appeal decisions show a consistent and well established approach to lawful development certificate cases involving garden land. They confirm that the correct test is whether the claimed residential garden use is more likely than not to have subsisted for the required ten year period, that sworn evidence from those with direct knowledge can be decisive where it is detailed, internally consistent and unchallenged, and that aerial and ground photographs are to be treated as supporting snapshots rather than determinative records, with their limitations recognised. They also demonstrate that minor uncertainties or the absence of conspicuous paraphernalia in every image do not defeat an otherwise coherent and credible account, and that historic planning applications and permissions which describe or treat land as residential garden are important contemporaneous indicators of use.

4.10. When the present appeal is assessed against these principles, the Appellant's case is at least as strong as, and in several respects stronger than, those in which certificates have

been granted. The combination of long term sworn evidence from successive owners, a comprehensive run of aerial and ground level photographs, and a planning history that has treated the land as serving the dwelling, all point clearly to continuous use of the appeal site as residential garden land for well over ten years. In the absence of any contradictory evidence from the Council or third parties, the proper application of the balance of probabilities test, as illustrated in the decisions above, supports the grant of a Lawful Development Certificate in this case.

5. Conclusion:

- 5.1. The central question for this appeal is whether, on the balance of probabilities, the appeal Site has been used as residential garden land, incidental to the occupation of Fletcher Farm, for a continuous period of at least ten years prior to the date of the application.
- 5.2. The legal framework under sections 191 and 171B of the Town and Country Planning Act 1990, together with the established case law and national guidance, requires the decision-maker to assess whether the evidence as a whole shows that the claimed use is more likely than not to have subsisted throughout the relevant ten-year period. It does not require proof beyond reasonable doubt, nor does it demand a perfect or uninterrupted documentary record. The task is to form a planning judgment on the totality of the material, applying common sense and giving appropriate weight to sworn testimony and corroborating documents where these are precise, consistent, and unchallenged.
- 5.3. In this case, the Appellant has provided two detailed Statements of Truth from the former and current owners of Fletcher Farm that together span the entire period from 2007 to the present day. Those statements describe, in clear and specific terms, the continuous use of the appeal Site as part of the residential garden of the dwelling, including regular mowing and maintenance, children's play, outdoor recreation, family gatherings, small scale domestic animal keeping and the erection of typical garden structures and outbuildings. The use described is plainly domestic in character, it is said to have been uninterrupted, and there is no evidence of any alternative or conflicting use.
- 5.4. That sworn evidence is strongly supported by the visual and documentary record. Aerial photographs from 2009 onwards show the land fenced, laid to lawn, and physically integrated with the house and its immediate surroundings, with domestic paraphernalia and ancillary structures present over many years. The appearance of the Site is consistently that of a maintained garden area associated with a dwelling, not an agricultural field or separate

commercial unit. Ground level photographs further confirm the presence of garden features such as the pond, pump house, and children's play equipment in a clearly domestic setting.

5.5. The planning history provides additional corroboration. In 2013 the then owners applied for and obtained planning permission for a private stable block on the appeal Site. The application form described the existing use of the land as residential garden, and the permission itself treated the stable as an ancillary facility to support the occupiers' hobby and domestic lifestyle, subject to a condition preventing commercial use. At no stage did the Council suggest that the proposal involved a change of use from agriculture or any other non-domestic use. That history is entirely consistent with the Appellant's case that the land was already part of the garden by that time and has remained so since.

5.6. Crucially, there is no contrary evidence. The Council has not identified any period during the relevant ten years when the domestic use ceased, when the land was used for agriculture, storage, or any other non-residential purpose, or when it reverted to some different planning unit. No third party has come forward with a competing account. The Council's concerns rest not on an alternative factual narrative, but on a view that the Appellant's evidence is not sufficiently precise in itself. That is not consistent with the approach required by Gabbittas and the NPPG, which make clear that unrefuted, credible, and reasonably specific evidence should be accepted where it demonstrates the claimed use on the balance of probabilities.

5.7. The criticisms advanced in the delegated report arise from an unduly stringent treatment of individual items of evidence in isolation, rather than a fair assessment of the evidential mosaic as a whole. The Council placed disproportionate emphasis on the absence of clearly visible domestic paraphernalia in every single aerial frame, questioned the significance of the 2013 application description without any factual basis for suggesting a mistake, and attached unwarranted doubt to long standing domestic outbuildings simply because they did not have separate permissions. In doing so it effectively raised the standard of proof above

the civil threshold and overlooked the cumulative strength of the Appellant's case and the absence of any competing material.

5.8. When the correct legal test is applied, the position is clear. The appeal Site has been used as residential garden land continuously since at least 2007. By the application date in October 2025, that use had persisted openly and without material interruption for well over ten years. The statutory requirement for immunity under section 171B has therefore been met, and the existing use is lawful for the purposes of section 191.

5.9. Accordingly, the Appellant submits that the Council's refusal of application ref. 3/2025/0808 was not well founded. The evidential burden has been discharged, there is no substantive evidence to the contrary, and the only reasonable conclusion is that the claimed use is more likely than not to have subsisted throughout the relevant period.

5.10. The Inspector is therefore respectfully invited to allow this appeal and to issue a Certificate of Lawfulness for the existing use of the land edged red on the submitted application plan as residential garden land, ancillary to the dwelling known as Fletcher Farm, Osbaldeston Lane, Osbaldeston, BB2 7LY.