

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/3035	Case Officer:	Catherine Cardin
Application Type:	Lawful Development Certificate -Proposed		
Proposal:	This Lawful Development Certificate (LDC) application seeks to confirm that the entire rear garden of the property forms part of its lawful curtilage, as illustrated in the plans submitted under application DM/25/2161.		
Site:	Middle House, Lanehurst, Twineham Lane, Albourne, Hassocks, West Sussex, BN6 9JP,		
Validation Date	26 Nov 2025	Overall Expiry Date:	23 Dec 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	15 Jan 2026
Target Date:	21 Jan 2026	Recommending Officer Signature:	<i>Catherine Cardin</i>

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	<i>Stephen Ashdown</i>	Date:	16 Jan 2026
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/3035

Middle House, Lanehurst, Twineham Lane, Albourne, Hassocks, West Sussex, BN6 9JP

This Lawful Development Certificate (LDC) application seeks to confirm that the entire rear garden of the property forms part of its lawful curtilage, as illustrated in the plans submitted under application DM/25/2161.

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REPRESENTATIONS

There were no letters of representation received in response to the lawful development certificate.

CONSULTATIONS

Parish Council

Albourne Parish Council has no legal reason to object to the application and therefore has no further comment to make.

INTRODUCTION

The application seeks to obtain a certificate of lawful use for the continuous use of a parcel of land as residential curtilage in association with the existing dwellinghouse at Middle House, Lanehurst, Twineham Lane, Albourne.

RELEVANT PLANNING HISTORY

10/02528/FUL- Two storey front extension (Amended block plan and certificate B received on 14 December 2010). Withdrawn.

10/00913/FUL- Proposed porch to the front elevation. Permission.

SITE AND SURROUNDINGS

The Certificate of Lawfulness relates to Middle House, a terraced two storey property. The property is characterised by white render, with timber and upvc windows. The property benefits from a large narrow rear garden the widens to the west. There is a large, wooded area to the west of the site. The dwelling benefits from a front porch extension and off-street parking to the front of the property that can accommodate approximately two cars.

With regard to policy constraints, the site lies outside the built-up area boundary of Albourne. Neighbouring properties are located to the north and south. Highway is to the east.

APPLICATION DETAILS

The application seeks a Lawful Development Certificate under Section 191 of the Town and Country Planning Act 1990. The application is supported by the following schedule of documents:

- A Planning Statement
- Statutory Declaration Confirming Use of Garden Land
- Location Plan

LEGAL FRAMEWORK

Section 191 of the Town and Country Planning Act 1990 indicates that the burden of proof lies with the applicant.

The relevant test is 'the balance of probability' and Local Planning Authorities are advised that if they have no evidence of their own to contradict or undermine the applicant's version of events there is no good reason to refuse the application provided that the applicants' version is precise and unambiguous to justify the grant of a certificate. This section also indicates that 'if on an application under this section, the LPA are provided with information satisfying them that the use or operations described in the application would be lawful, if instituted or begun at the time the application, they should issue a certificate to that effect; and in any other case they shall refuse the application'.

Time limits for enforcement set out in Section 171B of the Town and Country Planning Act 1990:

- 1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- 2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- 3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
- 4) The preceding subsections do not prevent:
 - (a) the service of a breach of condition notice in respect of any breach of planning control if an enforcement notice in respect of the breach is in effect; or
 - (b) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach.

In this case, the relevant time period relating to the existing use is ten years as per 171B(3).

The onus of proof is firmly on the applicant, and the standard of proof is the balance of probability. If there are contradictions in the applicant's evidence on material issues, then the LPA would be entitled to refuse the certificate.

Planning Practice Guidance sets out that a LDC application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced (Paragraph: 005 Reference ID: 17c-005-20140306).

ASSESSMENT

The application form states that the entire garden area identified in application DM/25/2161 forms part of the property's curtilage. It states that the land has been and is used continuously and uniformly as garden space, is directly and physically connected to the dwelling, and functions as a single, enclosed unit. It continues that there are no intervening features such as roads, footpaths, or watercourses that would separate it from the main residence. It further states that the garden is used exclusively by the occupants of the dwelling, wholly incidental to its residential use, and is held under the same title and ownership.

The application is supported by a statutory declaration from the previous owner. The declaration states that during their period of ownership, the use of the garden land on the plan marked AAS1 was used wholly for residential purposes.

In addition, the application is supported by photographic evidence. These photographs show a trampoline, picnic bench and swings. The declaration states that one photograph shows a trampoline in situ in 2014. However, these photographs are not date stamped and these articles could be considered temporary structures. Aerial mapping from 2018 onwards appear to show a trampoline in situ. Aerial

photographs prior to this do not appear to show the trampoline. Furthermore, aerial photographs from 2018 show a greater extent of tree coverage.

It should also be noted that the plans that were submitted for previous planning applications at the site (10/00913/FUL, 10/02528/FUL), show that the land subject of this application was not included in the red line boundary. Whilst it is noted that curtilage can change over time, and that the red line is not definitive in the determination of what the curtilage is, it is an important consideration.

Historical OS mapping shows clear lines separating the curtilage area of the dwelling from the land that is the subject of this application. Again, whilst it is noted that curtilage can change over time, and that the red line is not definitive in the determination of what the curtilage is, it is an important consideration.

When assessed on the balance of probabilities, the evidence provided is not considered to precisely or unambiguously demonstrate that the land has been used continuously as residential curtilage over a period of ten years. As set out in The Town and Country Planning Act 1990, the burden of proof lies with the Applicant, and the Planning Practice Guidance establishes that there is no room for doubt when assessing Certificates of Lawfulness (Existing). The level of information pursuant to the current application to establish the parcel of lands continuous use as residential curtilage is considered to be insufficient.

CONCLUSION

It is considered that the applicant has not established, on the balance of probability, that the land has been in a continuous use as residential curtilage for 10 years up to the date of the Lawful Development Certificate (Existing) application. As such a certificate for lawful use cannot be issued.

Decision: Refusal

Case Officer: Catherine Cardin