
Appeal Decision

Site visit made on 19 July 2016

by **Nigel Burrows BA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 August 2016

Appeal Ref: APP/L2630/X/16/3143550

Wheeler Barn, Hall Lane, Tharston, Norwich, Norfolk, NR15 2YF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Alan Pittaway against the decision of South Norfolk District Council.
 - The application Ref 2015/1141, which is undated, was refused by notice dated 13 November 2015.
 - 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 development is sought is described by the Council as: 'Continuing use of land for residential garden'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development for which a certificate of lawful development (LDC) is sought is described in the following way on the original application form: *"The existing use is as a garden, although I'm informed it is agricultural land. It has not had agricultural use to our knowledge for over 15 years. The piece of land in question is located directly behind an [sic] stable block. I can confirm both previous owners have also used this as garden."*
3. The appellant's subsequent description of the development given on the appeal form is *"Continue as a garden since 2002 (residential land)"*. The Council's refusal notice contains an amended description of the use for which an LDC is sought - which I have recited in the fifth bullet point of the heading above. It is not clear whether the Council agreed this amended description with the appellant. However, it appears to broadly encapsulate the use subject of the application. I therefore intend to deal with the appeal on this basis.

Main Issue

4. The main issue in this appeal is whether the refusal of the application for an LDC for the use described in the fifth bullet point of the heading above was well-founded.

Reasons

5. Wheeler Barn is a dwelling situated within the rural area between Long Stratton and Tasburgh in Norfolk. The building was apparently converted to a dwelling following the grant of planning permission for this development in 2001.¹ The documents provided by the Council indicate the scope of this permission was limited to the site edged red on the approved plans, which included the group of buildings present on the site and

¹ Planning permission ref: 2001/0178

- the land immediately around them. The land subject of the appeal lies adjacent to the eastern boundary of the site shown edged red on the plans originally approved in 2001.
6. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use subject of the LDC is lawful for the purposes of section 191 of the 1990 Act. A use is lawful under the provisions of section 191(2)(a) of the Act if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use in question has expired.
 7. The Council evidently considers the use of the land as 'residential garden' involves a material change of use and, as such, it constitutes development requiring planning permission for the purposes of sections 55 and 57 of the Act. I see no reason to disagree. Furthermore, this does not appear to be disputed by the appellant. However, the appellant's stance appears to be that the use has become lawful through the passage of time. In this respect, the appellant needs to show that at the time of the application for the LDC, the use had been carried on continuously for at least 10 years.
 8. The appellant evidently acquired Wheeler Barn in 2009. According to the appellant the previous owners of the property informed him that they had used all of the land 'solely as a garden and recreational area'. The appellant says that he was also informed the land could not be used for any purpose other than 'garden/residential use' because a restrictive covenant had been imposed by the original owner who sold the land in 2000.
 9. Notwithstanding the appellant's various descriptions of the development, his stance appears to be that the land in question has been used at least since 2005 as a garden in association with the residential occupation of Wheeler Barn. Documents and photographs have been provided in support of this stance, including a letter from one of the previous owners who states (amongst other things) the land was used "exclusively as a garden throughout the 4 years up to 2009". In addition, the appellant has provided letters from his friends and family (some of which include photographs) which indicate they have visited the land on many occasions for social gatherings and functions; reference is also made to occasions when they stayed overnight in tents or caravans, in some cases for several weeks. Some individuals have apparently visited at least 6 to 8 times a year.
 10. In weighing the evidence before me, I have borne in mind the appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. However, a troubling aspect of this case is the lack of precision concerning the way in which the land has been used outside of those periods when the various social gatherings and functions have taken place. In effect, the scope of the evidence is limited to showing that these activities have occurred on a sporadic basis and, moreover, only for temporary periods. Although one of the previous owners indicates the land was used 'as a garden throughout the 4 years up to 2009', there is no firm evidence before me to show this was the case. This assertion also appears to be disputed by residents who live in the vicinity of the site.
 11. At the site visit there was little evidence to suggest the land has been used as 'residential garden'. It is currently laid to grass and is reminiscent of a small paddock - albeit there does not appear to be any enclosure on its eastern side. A mobile home exists within one corner of the land. The appellant indicates this has been used, amongst other things, as 'overspill accommodation'. According to local residents two 'static caravans' were placed on the land in 2015, albeit one has been removed. In any event, the presence of the mobile home adds little weight to the appellant's claim that the land may lawfully be used as 'residential garden'. I take a similar view in relation to the appellant's inference that a waste treatment plant, domestic oil tank and 'shed' lie beyond the land edged red on the original 2001 plans. Whilst the land subject of the LDC might be the subject of a covenant prohibiting its use for any purpose other than 'garden/residential use', this does not imply that such activity is lawful in planning terms, or even that it has been used for this purpose.
 12. As noted earlier, by virtue of section 191(2) of the Act, uses and operations are lawful if no enforcement action may be taken against them. However, I am not persuaded that the land in question may lawfully be used as 'residential garden'. On the balance of probability, I

conclude that its use for this purpose involves the carrying out of development without planning permission and therefore it could be vulnerable to enforcement action.

13. It is well established in planning law that the onus rests with the appellant to make out his or her case. I find that burden has not been satisfactorily discharged in this instance. On the evidence before me, I conclude that the Council's refusal to grant a certificate of lawful development was well-founded. The appeal therefore fails.
14. I have taken into account all the other matters raised in the representations, but I find they do not alter or outweigh the main considerations that have led to my decision.

Nigel Burrows

INSPECTOR