
Appeal Decision

Site visit made on 27 September 2016

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 5 December 2016

Appeal Ref: APP/P1805/X/16/3149443

Heimat, Woodgate Road, Lower Bentley, Worcestershire B60 4HA

- 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 Nicholas Rands against the decision of Bromsgrove District Council.
 - The application Ref 15/0648, dated 14 October 2015, was refused by notice issued on 30 October 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 use or development is sought is the use of land as domestic garden (Class C3) associated with the dwelling known as Heimat for a continuous period in excess of ten years.
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Procedural Matters

1. The application form is dated 14 October 2015. However, the submissions indicate that the application was validated on 31 July 2015 and this date is also the one used on the appeal form when confirming the date of the application to the local planning authority. In the circumstances I shall take the date of the application to be 31 July 2015.
2. The appellant submits that the Council's undated decision notice was published on 30 October 2015.

Decision

3. The appeal is dismissed.

Application for costs

4. An application for costs was made by Mr Nicholas Rands against Bromsgrove District Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is whether the appeal site has been used for domestic garden in connection with Heimat on a continuous basis in breach of planning control for such periods as to be immune from enforcement action under s171B of the 1990 Act.
 6. The Planning Practice Guidance (PPG) provides that 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
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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 probability¹. It is therefore for the appellant to demonstrate their case, on the balance of probability that the use applied for is lawful.

7. The property known as Heimat is shown edged blue on the application plan² and comprises the dwellinghouse, garaging and garden area. The appeal site is shown edged red on the application plan to the north east beyond a chain-link fence which runs along the boundary between the area of land edged blue and the appeal site. The appeal site can be accessed from Heimat via a pedestrian gate in the chain-link fence and a metal gate from Woodgate Road. The appeal site is grassed with a number of fruit trees, a garden shed and a greenhouse. There is no dispute between the parties that the garden shed and green house have been in situ since 2004.

The appellant's case

8. The statutory declaration made on 27 April 2015 by Mrs Valerie Thompson states that she was the owner of Heimat between 1969 and 2012 and that from February 1971 she had access to and use of the appeal site. Mrs Thompson maintained the appeal site by regularly mowing the grass, planting and attending a vegetable patch, erecting and using a garden shed and a greenhouse and creating and attending to a compost heap. Although not mentioned in the statutory declaration, the appellant's submissions indicate that the chain-link fence was installed by Mrs Thompson to discourage local wildlife from eating flowerbeds and for easy maintenance purposes.
9. The statutory declaration made on 19 October 2015 by Mr Nicholas Rands states that he has been the registered proprietor of Heimat since 2012. Although, Mr Rands has never occupied the property he has let the property on a number of occasions both informally and on short-term tenancy agreements. Mr Rands states that on every occasion access to and use of the appeal site was given to the tenants. The land was maintained by regular mowing, access to and use of the garden shed for the storage of domestic appliances and access to and use of the greenhouse.
10. Letters have been provided from the tenants - Mr Oliver Stiley and Miss Melanie Garner dated 20 and 21 October 2015 respectively, and an undated letter from Mr Simon Denslow. Miss Garner states that she occupied the property from January 2012 to September 2012 and confirms that she had access to and use of the appeal site for purposes incidental to the enjoyment of the property including use of the garden shed, greenhouse and lawn. The lawn being maintained by the landlord. Miss Garner also states that whilst she occupied the property she used the appeal site continuously as part of the residential enjoyment of the property. Mr Stiley states that he occupied the property from October 2012 to January 2014. Apart from the dates Mr Stiley's letter is identical in format and content as the one from Miss Garner.
11. The letter from Mr Denslow is essentially the same as the other letters apart from the date of occupation being from March 2014 to the present time and the description of activities being described as "using the garden shed for the

¹ The Planning Practice Guidance -Lawful Development Certificates.

² Drawing No 12-499-4.

storage of domestic equipment, accessing and using the greenhouse and using the land for domestic recreational purposes”.

12. The planning history of Heimat includes an application for a new vehicular access Ref: BR.60/66. The approved plan for this application shows a solid black line around both the area of land edged blue and the appeal site which the appellant considers means that having been included on the plan the appeal site was granted residential use at this time.
13. A number of images from www2.getmapping.com showing aerial views of the site in 1999, 2004 and 2010 have been provided along with others which show someone mowing the grass verge which lies between Woodgate Road and the boundary hedge of the appeal site. The appellant contends that these images show the appeal site to be very different in character and appearance when compared to the agricultural land on the opposite side of the road. The appeal site being significantly better maintained with mowed grass and pruned hedgerows and trees.
14. The appellant contends that the Council accept the use of the land as garden in its email to the appellant dated 14 September 2015 which states that the shed, vegetable patch and greenhouse all point to a material change of use to domestic use having taken place.

The Council's case

15. The Council's historic mapping records show the appeal site as orchard. Although it is agreed that the shed and green house have been in situ since 2004 the Council argue that this does not equate to a material change of use of the land. Furthermore, the plan accompanying the application Ref: BR.60/66 shows a defined boundary between Heimat and the appeal site.

Interested persons

16. The emails³ from neighbours state that since the early 1970s the land has always been orchard. The letter from Bentley and Pauncefoot Parish Council refer to the appeal site as an 'orchard plot' and that the "area of well-established fruit trees has, for many years, been separated from the Heimat domestic garden plot by a fence which still defines the boundary between them."

Assessment

17. In cases dealt with by way of written representations the legally sworn statements must carry considerable weight since any deliberate untruth carries with it the risk of a perjury charge. In the complete absence of any evidence to the contrary there is nothing to cast doubt on the statutory declarations.
18. However, whilst there is no dispute that the greenhouse and garden shed have been on the land since 2004 and used by Mrs Thompson and subsequent tenants, notwithstanding the contents of the Council's email dated 14 September 2015, the placing of these items alone does not amount to a material change of use of the land. In order for there to be a material change of use of the land there has to be a material change in its character. Whilst stating that the grass has been regularly mowed and the shed and greenhouse

³ Emails from S Y Keyte dated 20 June 2016 & Lis Gardner dated 3 June 2016.

used, the statutory declarations and letters give no detail regarding the scale of domestic activity. There is no evidence that the appeal site has been used for recreational activities such as children playing, outside games and barbecues to indicate that the land has been used for residential purposes in a manner that would constitute a breach of planning control. Although this is not a reason to set these statutory declarations or letters to one side, it does reduce the amount of weight I am able to give them.

19. Due to the plan attached to BR.60/66 being in black and white it is not possible to discern with any certainty whether the appeal site was coloured differently to the rest of the land. Although included in the black line there is nothing to deduce that the appeal site formed the garden area of Heimat. Furthermore, there is a boundary line between the appeal site and Heimat which correlates with the Council's historical mapping. Thus, this plan does not provide conclusive evidence that the appeal site was in residential use.
20. Notwithstanding the appellant's comments regarding OS maps, the aerial images referred to show that there were a large number of trees on the land which gave it the appearance of an orchard up until at least 2010. This is further corroborated by the Council's historical mapping records and the emails⁴ from neighbours who state that since the early 1970s the land has always been orchard.
21. I acknowledge that the pruned roadside boundary hedge is different in appearance than the hedge bordering the agricultural land. However, this together with the mowing of the grass verge does not equate to the land being used for residential purposes.
22. From the evidence, although there is no dispute that the garden shed and greenhouse have been on the land since 2004, I do not consider that their use together with the vegetable patch and compost heap alter the character of the land to a sufficient degree to amount to a material change of use of the land. I consider that the primary use of the appeal site has historically been more akin to that of an orchard and certainly not as residential land.

Conclusion

23. I find that the evidence is not sufficiently precise and unambiguous to establish a lawful use on the balance of probabilities. I therefore conclude that on the balance of probability the appeal site has not been used as domestic garden associated with the dwelling known as Heimat for a continuous period in excess of ten years in breach of planning control to justify the grant of a LDC.

Overall Conclusion

24. 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 domestic garden associated with the dwelling at Heimat, Woodgate Road, Lower Bentley Worcestershire B60 4HA was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Elizabeth Jones

⁴ Emails from S Y Keyte dated 20 June 2016 & Lis Gardner dated 3 June 2016.

INSPECTOR