

Appeal Decision

Hearing held on 14 February 2017

Site visit made on the same date

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 07 March 2017

Appeal Ref: APP/L1765/X/16/3152524

Butlers, Arlebury Park House, Alresford, SO24 9ER

- 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 Mrs Jane Flowerdew against the decision of Winchester City Council.
- The application Ref 15/02863/LDC, dated 15 December 2015, was refused by notice dated 10 March 2016.
- 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 use of land as a domestic garden.

Summary of Decision: The appeal is dismissed.

Application for costs

1. At the Hearing an application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

Procedural Matter

2. As the decision was issued outside the eight week period the Appellant had originally questioned whether the application had been refused or not determined. At the Hearing she confirmed that she would not be taking the point further and agreed that the appeal should be dealt with on the basis of a refusal.

Main Issue

3. I consider that the main issue is whether the land was being used as a domestic garden on 15 December 2015 and whether that is a lawful use of the land. To establish its lawful use it is necessary to consider whether it was continuously used as such for ten years before that date¹. The planning merits of the use do not fall to be considered in this appeal.

Reasons

4. The Planning Practice Guidance: Lawful Development Certificates (the Guidance) advises that "the applicant is responsible for providing sufficient information to support an application". In this appeal the onus is therefore on

¹ S.171B(2) of the 1990 Act

the Appellant to prove on the balance of probabilities that the domestic garden use was in operation on the material date, that is, the date of the application which in this case is 15 December 2015, that it was a lawful use and that it had continued throughout the ten year period before that date.

5. The Guidance also advises that “in the case of applications for existing use, 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 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 probability”.
6. Arlebury Park House (the House) and its estate date back to the late eighteenth century and the size and layout of the House and land surrounding it have altered over the years as has its ownership. It appears from the various historical maps and other documents that, in common with many country houses, there have always been formal gardens and other land surrounding the House. There is no dispute that some of this other land at the House was parkland on which sheep grazed.
7. At some time the House was converted into flats and in 1996 planning permission was granted for the ‘formation of 5 additional flats and 1 house and re-routed drive and landscaping’ (the 1996 permission)². There is no dispute that this permission was implemented and completed³ but what is in dispute is the interpretation of the permission and what it gave permission for.
8. The ‘red line’ in the application includes the area of land that is the subject of this appeal and it is the Appellant’s case that the 1996 permission gives residential consent for all of the land within the red line and that therefore the use of the appeal land as domestic garden is lawful.
9. The current requirement for plans in a planning application is for a plan to identify the land to which the application relates (the red line land) and other plans and drawings or information necessary to describe the subject of the application. I do not know what the requirement was in 1995/1996 but I consider that it is likely to have been in similar terms. The red line land therefore is for identification purposes and other submitted plans describe the proposal for which planning permission is being sought. This was the case in the 1996 application where the red line area described the land and more detailed plans, including drawing no 1038/03 B⁴, described the proposed development. It is notable that that drawing does not extend beyond the formal gardens to the north of the House. The drawing therefore does not include the appeal land.
10. There is a wide band of land around the formal gardens and buildings which is separated from the agricultural land beyond by a metal fence; this fence follows the line of the red line and was erected around 1996. A post and wire fence, together with a wall on the boundary with the formal gardens to the north of the House, separates the land from the formal gardens. Mrs Field, who has done a considerable amount of research into the history of the House, and Mr Clemmow, who also has considerable knowledge of the House’s history,

² Ref: W00691/31

³ There was therefore no necessity to consider the case of *Pioneer Aggregates (UK) Ltd v SSE and Others* [1985] 1 AC132 referred to by the Appellant

⁴ Appendix 3 to the Council’s statement

advised that this land was used as the tradesman entrance to the back of the House and was still used by a tanker to empty the septic tank that serves the House. It was also land on which sheep grazed. In all her research Mrs Field had never found any use of the surrounding land as other than parkland, that is, grassland with trees and grazing for either sheep or deer.

11. Photographs dated 1976, 1993, 2006/7, 2010 and 2014⁵ clearly show this surrounding land, which includes the appeal land, in different use and separate from the formal gardens and some of the photographs show sheep grazing on the land. Mr Clemmow said that when the development permitted in 1996 had been completed the developing company had retained ownership of the surrounding land and that the residents of the House had no permission or rights to go onto the land for any purpose. The company had said they would not maintain the land and, as the residents did not want to live close to or look at unmaintained land, with the permission of the company they maintained it at their own cost and the maintenance included sheep grazing on the land. The permission to use the land was limited to this extent.
12. This situation continued until about two years ago when the residents purchased the surrounding land from the company, save for the appeal land which the Appellant had purchased some nine months before. The Appellant accepted that until she purchased the land it was used for grazing sheep. The surrounding land, except for the appeal land, is maintained in a similar fashion as previously and sheep continue to graze on it.
13. Since purchasing the land the Appellant has erected a fence along the boundary with the other surrounding land and removed the fence that separated it from her own land, Butlers and its garden, as I saw on my visit and as can be seen in a photograph dated 2015⁶.
14. The Appellant agreed that putting the septic tank, drains and associated engineering works within the surrounding land would not change the use of that land which she maintained was, in any event, residential. The Council's decision with regard to whether another development had been implemented or not referred to by the Appellant⁷ was in my view so different on its facts and matters to be considered that it had no bearing on this appeal.
15. I therefore find that the permission in 1996 was for the development sought, it did not include the surrounding land and thus the appeal land and there was no change of use of land permitted by that permission. There is no dispute that the appeal land was being used as domestic garden land on 15 December 2015 but the appeal land forms part of the land which lies outside the boundary of the formal gardens and its lawful use is not domestic garden for the reasons given above.

Conclusions

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of land as a domestic garden 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.

⁵ Document 1

⁶ Document 1

⁷ Abbey Mill Site, Station Road, Bishops Waltham, SO32 1DH

Decision

17. The appeal is dismissed.

Gloria McFarlane

Inspector

APPEARANCES

FOR THE APPELLANT

Mr R Goodall Planning Consultant
BA(Hons) BTP DMS MRTPI

Miss J Flowerdew The Appellant

FOR THE LOCAL PLANNING AUTHORITY

Ms M Mercer Principal Planning Enforcement Officer
BSc MA MRTPI

Mr A James Planning Enforcement Officer

Ms T Wilson Principal Legal Officer
Fellow – Institute of Legal Executives

INTERESTED PERSONS

Mr G Clemmow Local resident

Mrs J Field Local resident

DOCUMENTS SUBMITTED AT THE HEARING

Document 1 - Numbered and dated photographs from Mr Clemmow previously sent but not previously numbered and dated

Document 2 - Copy of the 'red line' plan for Ref:W00691/31, submitted by the Council

Document 3 - Extract from the 1870 Ordnance Survey, submitted by Mrs Field