
Appeal Decision

Site visit made on 1 August 2017.

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 24 August 2017

Appeal Ref: APP/T3725/X/17/3167356

Holywell Farm, Holywell, Shrewley, Warwick CV35 7BH

- 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 by Antony Harper against the decision of Warwick District Council.
 - The application ref. W/16/1435, dated 2 August 2016, was refused by notice dated 7 November 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is use of the land as part of the domestic curtilage of Holywell Farm, as identified on plan 16-090-01.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Preliminary matters

2. For purposes of clarity, I should explain that in an appeal under section 195 of the Town and Country Planning Act 1990 as amended (the Act), which relates to an application for a lawful development certificate, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
 3. In a LDC appeal the burden of proof is on the appellant to show that, on the balance of probabilities the claimed change of use has occurred, and is lawful. Furthermore, paragraph 006 of the government's 'Planning Practice Guidance – Lawful Development Certificates' advises that in the case of applications for an 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.
 4. Section 191(2) of the Act sets out that uses and operations are lawful at any time if, (a) no enforcement action may be taken against them - whether because they did not involve development, or require planning permission, or because the time for enforcement action has expired or for any other reason - and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
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5. Section 171B of the Act defines time limits that apply to taking enforcement action, and sub-section (3) sets out that for any other breach of planning control (than carrying out development without planning permission, or the change of use of a building to a single dwellinghouse), no enforcement action may be taken after a period of 10 years beginning with the date of the breach.
6. As the Council point out 'domestic curtilage' is not a use of land. In their decision notice they use the term 'use as part of the domestic garden '. I have determined the appeal on the same basis, and do not consider any party is substantially prejudiced by this change.

Main Issue

7. The main issue in a LDC case is whether the Council's decision was well founded. In that regard, the principal question is whether the claimed change of use took place and has been continuous for a period of 10 or more years before the date of the LDC application – that is, 2 August 2016.

Reasons

8. Holywell Farm lies on the southern side of the principal road running through this rural hamlet. The original farmhouse is a Grade II listed building. It partly enclosing a three-sided courtyard to the front, and has its main garden area to the south and west. The land subject of this appeal lies immediately to the east of the house. To the south and east of the principal garden and of the appeal site are open fields.
9. I saw that the appeal site has a post-and-rail fence along its boundary with the open fields. There is no formal separation from the principal garden of the house or the front courtyard. The northern appeal site boundary is on the road, along which is a dense belt of trees. There is a road access with a gate directly on to the appeal site, giving on to a track of compacted hardcore.
10. On the northern side of the appeal site, nearest the house and backing on to the belt of trees, is an open corrugated metal shed in which I saw a tractor, a small handcart and gardening implements. Beyond that is a stables building, to the front of which are parallel concrete tracks with mown grass between. There is another, somewhat dilapidated open shed to the east of the stables, on the other side of the access track. I saw that this contained a disused tractor, at least two handcarts, a motorised log saw, and piles of logs.
11. The open area to the front of the shed and stables is planted with numerous trees such as sycamore and birch, and decorative shrubs. The grass is well mown, and there were several hen or rabbit coops. There is a further stand of trees on the eastern side of the dilapidated shed, a mixture of alder, birch, oak laurel, and other decorative trees. The more or less triangular area beyond that is again well mown grass, where there is a garden seat, a chestnut tree, and a bird bath. At the western end of the appeal site are two domestic style greenhouses.
12. The appellant says the house was bought in 1962, together with the land holding of approximately 6.5 hectares. At that time the main agricultural activity was chicken farming, and there were 2 substantial chicken sheds on the appeal site. The chicken enterprise continued, but this was a secondary

income for the family. That use ceased, and the sheds were eventually removed in 1974, and the stables erected soon thereafter, retaining some of the hardstanding on which the sheds stood. Also, the new road access to this part of the site was formed, and trees planted along the northern boundary. These features of the site can be seen in a 1977 aerial photograph. Furthermore, it can be seen that, at that time, the formal garden to the south and west of the house had not then been created, and that land was essentially part of the open field. However, by that time there was clearly no agricultural use being made of the appeal site or formal garden areas.

13. A 1988 aerial photograph shows the formal garden taking shape, and a post and rail fence enclosing the whole of the house site, the formal garden, and the appeal site. It is apparent that there is no separation between the house and land around. However, at that stage the appeal site appears to be given over mainly to the stables, and it is not clear what is happening on the triangular section at the eastern end of the appeal site. The tree belt along the northern boundary has become well established.
14. The last aerial photograph put in is from 1992, and clearly shows the fencing off of the entire site from the open fields, and the ornamental tree planting to the front of the stables is well established, there are cars parked near the corrugated metal shed.
15. Several sworn affidavits have been submitted. Two of these are from gardeners who attended the site from 1996 to 2008, and from 2008 to the present day. Both state that during their employment the appeal site has been exclusively in domestic use – to a great extent as a ‘working’ part of the garden for maintaining the formal garden. They have carried out activities such as composting, mowing, pruning, lighting bonfires, storing tools and materials, cultivating plants, and cutting wood for the fireplaces in the house. It was readily apparent from my observations of the appeal site that such activities had taken place, probably over many years, and that they still continue. I find this evidence both precise and unambiguous, and closely reflects what I saw of the appeal site.
16. I appreciate there is a distinct difference in appearance between the formal garden, with its well-kept lawns, formal beds, and fine trees, and the appeal site, which has a somewhat rough and ready appearance. However, I concur with the view put forward for the appellant that garden maintenance, and the operations associated, are part and parcel of a domestic use of the land – particularly for a substantial house such as this with its extensive garden. Furthermore, it is apparent that the majority of the appeal site has been cultivated as part of the surroundings of the house – notably in the extensive planting of trees and shrubs, fencing, and the laying out of lawns. The fact that there is also a functional character to parts of the site does not to my mind mean that it is any less in a domestic use, closely related to the use of the house.
17. Overall, it appears to me that on the balance of probabilities the primary use of the appeal land is as domestic garden associated with the Farmhouse, and that this has been the case, probably at least since 1996. This is considerably longer than the 10 year limit for taking enforcement action. Although there are

stables on the land – now clearly disused - they occupy a small proportion of the overall area, and of the use made of the appeal site. In my view the equestrian use was incidental to the residential use of the dwelling, and should still be seen as a domestic use.

18. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land as part of the domestic garden of Holywell Farm, as identified on plan 16-090-01, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Stephen Brown

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 2 August 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

That on the date of the application the use had subsisted continuously for a period of 10 or more years, and was immune from enforcement action under the provisions of Section 171B(3) of the Town and Country Planning Act 1990 as amended.

Signed

Stephen Brown

Inspector

Date: 24 August 2017

Reference: **APP/T3725/X/17/3167356.**

First Schedule

The use of the land as part of the domestic garden of Holywell Farm.

Second Schedule

Land at Holywell Farm, Holywell, Shrewley, Warwick CV35 7BH.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 August 2017

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Scale: DO NOT SCALE.

