
Appeal Decision

Site visit made on 17 April 2018

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 25 April 2018

Appeal Ref: APP/P2365/C/17/3179085

Kenwood, Moss Lane, Burscough, Ormskirk L40 4AT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Pam Sales against an enforcement notice issued by West Lancashire Borough Council.
 - The enforcement notice was issued on 9 June 2017.
 - The breach of planning control as alleged in the notice is the change of use of the land from agriculture to domestic garden ancillary to the residential occupation of Kenwood, Moss Lane, Burscough.
 - The requirements of the notice are (i) Cease the use of the land for purposes ancillary to the residential use of Kenwood, Moss Lane, Burscough; (ii) Remove from the site all domestic paraphernalia and non-indigenous planting upon it; and (iii) Reinstatement of the land to a condition suitable for agriculture or natural regeneration.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mrs Pam Sales against West Lancashire District Council. This application is the subject of a separate Decision.

Reasons

The ground (d) appeal

3. The onus of proof in a ground (d) appeal is on the Appellant and she must provide sufficient precise and unambiguous evidence to justify a conclusion that, on the balance of probability, the alleged change of use of the land from agriculture to domestic garden occurred more than ten years before the date of issue of the enforcement notice. For this ground of appeal to be successful the change of use must therefore have occurred before 9 June 2007; the critical date.
4. Kenwood is a semi-detached dwelling with a rear and front garden that has an east frontage to Moss Lane. To the north is the appeal land; a roughly rectangular mainly grassed area. The two areas of land have been owned by the Appellant since 2016. Prior to this they were owned by Mrs C Gale who inherited the property from her parents, Mr Pickavent, who died in 2009, and Mrs Pickavent, who died in 2015. Mr and Mrs Pickavent first lived at Kenwood in 1954.

5. Mr and Mrs Pickavent had a market garden business and they used the property, and further land that was sold in September 2008 to become part of the property to the north, Homefield, for the growing of flowers and salad vegetables. The rear part of the appeal land was occupied by greenhouses and the front part was cultivated. In 2000 Mr Pickavent, then 74 years old, retired and the market garden business ceased. The Appellant claims then that "...Mr Pickavent began to tidy up the land and he gradually converted the front section...into a private garden area. In early 2006, all but one of the greenhouses were sold. At this time...the back section of the land was converted into a private lawned garden".

6. Ms S Parker has lived at Brixham, the dwelling attached to Kenwood, since 1982, Ms A Nelson has lived at Mossville, on the opposite side of Moss Lane to the semi-detached dwellings, since 1953, and Mr C Nelson has lived at or been associated with Nelson Farm and Shop, opposite Kenwood, since 1956. Ms Parker, Ms Nelson and Mr Nelson provided Statutory Declarations that were submitted to the Council in support of previous applications for Certificates of Lawful Development for the residential use of the appeal land. The declarations corroborate the Appellant's aforementioned claims and mention, amongst other things, Mr and Mrs Pickavent's golden wedding anniversary party held at Kenwood in 2002 where "Family and friends enjoyed celebrating in the front section...with food provided in the greenhouse...to the rear".

7. Ms Parker, Ms Nelson and Mr Nelson were clearly friends of Mr and Mrs Pickavent and resident in close proximity to Kenwood throughout the relevant ten year period, and were well placed to observe the use of the appeal land during and prior to that period. They confirm that, in 2006 following removal of the greenhouses, "The back section of land was then converted into a private lawned garden area". It is reasonable to conclude, based on the Appellant's evidence and that of three independent witnesses who lived nearby and who were friends of Mr and Mrs Pickavent, that the appeal land was, on the critical date, lawn or was on the way to being such. Aerial and street view photographs of 2009, 2013, 2015, 2016 and 2017 show the appeal land to be, almost wholly, lawn.

8. The Council rely on an aerial photograph of 23 August 2007, which shows the appeal land to be, probably, tilled soil. However, there is clear evidence that the appeal land was not in commercial use post-2000 and, given the party held in 2002 and other evidence, was in use by Mr and Mrs Pickavent as an extension to their residential property. At that time the front part of the land, on the Appellant's evidence would have already been "...a private garden area". The removal of the greenhouses in 2006 would have necessitated the seeding of the rear part of the land, and this probably occurred in the following year, 2007. It is possible that Mr Pickavent took the opportunity to till and seed the whole of the appeal land at the end of summer when he and his wife had finished enjoying the private garden area in the front part of the appeal land. The aerial photograph relied on by the Council might have been taken at this moment in time. It was not, as the Council suggests, "...cultivated in association with Homefield..." because the whole of the tilled land was in Mr Pickavent's ownership at that time.

9. There is no evidence to indicate that the appeal land was in any commercial use after Mr Pickavent retired in 2000. There is corroborated evidence that the land was in active use as an extension to his and his wife's residential property from that time. There is, also, clear evidence that the appeal land was almost wholly lawned in 2009, indicating that the possible seeding that might have occurred in 2007 had been successful. There is, in this case, sufficient precise and

unambiguous evidence, corroborated by third parties, to justify a conclusion that, on the balance of probability, the alleged change of use of the land from agriculture to domestic garden occurred more than ten years before the date of issue of the enforcement notice, and the residential use of the land has subsisted uninterrupted since then. The ground (d) appeal thus succeeds and the ground (a), (f) and (g) appeals do not therefore need to be considered.

John Braithwaite

Inspector