



Appeal Decision

Site visit made on 17 April 2018

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

an Inspector appointed by the Secretary of State

Decision date: 21 May 2018

Appeal Ref: APP/T2350/X/17/3181658

19 Woodfield View, Whalley, Clitheroe BB7 9TB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Phillip Haworth against the decision of Ribble Valley Borough Council.
 - The application Ref 3/2017/0441, dated 5 May 2017, was refused by notice dated 7 July 2017.
 - 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 described on the application form as "garden use of area originally agricultural grazing land".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. My decision is based on the facts of the case, and on relevant planning law and judicial authority. As such, the planning permission granted on the adjoining land cannot form part of my appraisal as this would relate to the planning merits of the use.

Main Issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Background

4. The appeal site comprises a rectangular-shaped area of land to the rear of Nos 19 and 21 Woodfield View. I saw from my site visit that most of land is undeveloped and is partially covered in grass and other vegetation. A proportion of the site is covered with hardstanding and contains a relatively large storage building and two sheds. There is a further shed and a summerhouse located on the northern part of the site. A field gate on the boundary provides access to the adjoining land. The appeal site originally formed part of the agricultural land to the east and was in use for grazing.
5. The appellant's case is that the land was annexed in 2002, was used subsequently for growing vegetables and is now given over to lawn and

residential use. A photograph has been submitted which shows the timber sheds, a boat and a raised bed containing a vegetable plot. It also shows an area of rough grass. It is submitted that the photograph, developed in 2003, was actually taken in 2002. To support this, a Google aerial view dated 2003 has been provided. This shows two sheds, the boat in storage, an area of hardstanding and the field access. It also shows an area of mown grass/flower beds to the rear of No 19. In addition, a letter has been submitted from a local farmer which explains that the land was used for grazing up until 2001, when it was fenced off and used to store building materials, and after that date it was cultivated.

6. The Council's case is that the evidence submitted does not demonstrate that the land has been in residential use for 10 years or more for a continuous period.

Reasons

7. In this type of appeal, the onus of proof is firmly upon the appellant. In *Gabbitas*¹ the Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
8. As set out above, the appellant's case is that the land was annexed from the adjoining agricultural land in 2002. However, the evidence in relation to the nature of the use is ambiguous. It is stated that the land was first used for growing vegetables, and horticultural use also appears on the appeal form. Furthermore, the independent supporting letter refers to the land being cultivated, as opposed to being used for residential purposes. Prior to that it is stated that the site was used for the storage of building materials, although it is likely this ceased sometime in 2003, judging by the appellant's Google aerial image (2003).
9. Under s336(1) of the 1990 Act as amended, "agriculture" includes horticulture and, therefore, vegetable growing is not necessarily a residential use. Even if vegetable growing is regarded as a gardening activity, which may be considered an incidental use within the meaning of s55(2)(d) of the 1990 Act as amended, the appellant confirms that the land is owned in part by No 21 Woodfield View and is not wholly within the residential curtilage of No 19. Therefore, the land is not used for residential purposes incidental to the use of No 19 as a single dwelling-house.
10. Moreover, the evidence shows that the vegetable plot only occupied a relatively small part of the site. It is difficult to establish from the appellant's photographs the exact location and extent of the vegetable beds. This does not show that the whole of the site has been in use for residential purposes.

¹ *Gabbitas v Secretary of State for the Environment* [1985] JPL 630.

11. The appellant's photograph, dated 2003, shows a substantial area of rough grass. It is unclear how far this extended but from the accompanying aerial image, it appears to have extended to the site boundary. The rough grass is similar in appearance to the surrounding grazing land (albeit uncut) rather than a cultivated lawn. The sheds, hardstanding and the boat in storage are apparent in the aerial photograph, however, the evidence does not clearly show the nature, scale and extent of their residential use.
12. This evidence suggests the residential use has evolved over time. It appears that the gardening activities were restricted to part of the land, whilst the remainder was left uncut. As the gardening activities expanded, the rough grass has been cultivated as lawn and, more recently, a summer house has been erected. It is not apparent when these changes took place.
13. I am aware the land is in joint ownership, hence the different appearance of parts of the site. Nonetheless, it is necessary to show that the whole site has been used as a garden for a continuous period. The evidence presented does not show when the material change of use occurred and how it has been used for a continuous period of at least 10 years.

Other Matters

14. I note that the Council suggests a planning application for change of use of the land from agriculture to residential use would be likely to be supported. The outcome of this appeal does not prevent that course of action.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "garden use of area originally agricultural grazing land" 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.

Debbie Moore

Inspector