



Appeal Decision

Site visit made on 18 June 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref: APP/C2741/X/18/3217786

The Woodlands, 61 The Village, Stockton on the Forest, York YO32 9UF

- 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 P Daggett against the decision of City of York Council.
 - The application Ref 17/00925/CLU, dated 18 April 2017, was refused by notice dated 10 July 2018.
 - 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 residential garden.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal address is referred to by the appellant as No 65. However the Council's decision notice refers to the land subject to appeal as being at No 61, which has not been specifically disputed by the appellant. The relevant land is undisputed to be to immediately behind No 61, and I am satisfied that it has been clearly identified as such on the site plan. My decision therefore refers to the site address as No 61.

Reasons

3. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force (s191(2)). I have not been told that there was any extant enforcement notice relating to the property at the time of this application. Accordingly it is necessary to consider whether, on the balance of probability, the use of the land as a residential garden has continued for a period of ten years or more prior to the date of the application, that being 18 April 2017, so as to be immune from enforcement.
4. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued for the aforementioned ten-year period. The appeal site constitutes a roughly square parcel of land immediately to the north-west of a detached dwelling, denoted as Plot 1 on the accompanying site plan. That property and an adjacent dwelling appear to have been built in 2015, following

- the receipt of planning permission, which involved the sub-division of the former plot belonging to Aspen House (No 65).
5. In support of the application the appellant has provided letters, dated July and August 2013, from acquaintances who say they constantly visit the property and from the adjacent golf club operator. The people in question repeat the representation that the land in question has been kept manicured for over 10 years, such that for all intents and purposes it has been used as and has the appearance of a lawned area, as opposed to a paddock.
 6. A further letter, from around the same time, from a landscape contractor states that the company has been working on the land for over 12 years in connection with its upkeep.
 7. There appears to be no dispute that historically the appeal site was separated from Aspen House by a conifer hedge; that it has been enclosed by planting and fences on the other boundaries and also that it has been regularly mown and manicured. Whilst, from the information provided, the mowing of the land would appear to have been occurring for several years, this in itself, and the appearance of the site as a lawn, would not be sufficient to confirm garden use.
 8. In terms of recreational garden activities, the appellant says that the land has in the past been used for cricket, croquet and tennis. The Council has also referred to an unoccupied marquee being present on the land, apparently in connection with a wedding in 1997. It is unclear whether all of the land or just a small portion of it was used for these purposes and where exactly any related equipment was sited. Furthermore there is a lack of evidence provided to support a claim of continuous recreational use. The aforementioned supporting letters, provided by the appellant, state that for all intents and purposes the site has been used as, and visually resembles, a lawned garden. However even if it was not being used as a paddock for animal grazing, this fails to substantiate how the land was being used in practical terms.
 9. I am mindful that planning practice guidance states "*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.*"
 10. Notwithstanding the Council's undisputed reference to the site being denoted on plans, associated with the 2013 planning application for two new dwellings, as a field or paddock, there is a lack of evidence from the Council to contradict the appellant in terms of the steps evidently taken to maintain and manicure the site. However, for the above reasons and when also considering the extensive area of the site, I am not persuaded that the appellant's evidence is sufficiently precise and unambiguous to be able to say, on the balance of probability, that the land has been in continuous use as a garden, as opposed to continuously manicured, over the relevant period. It seems to me that even if land is enclosed as a single entity, details of the nature and continuity of use and how much of the whole area was involved are an important part of the assessment.
 11. Therefore for the reasons given above, and irrespective of the existing physical relationship of the land to 'Plot 1' or any protection it may have in terms of

development plan policy, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of land as residential garden at 61 The Village, Stockton on the Forest, York YO32 9UF 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.

Roy Merrett

INSPECTOR