



Appeal Decisions

Inquiry commenced on 3 September 2019

Site visit made on 4 September 2019

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 19 September 2019

Appeals A & B: APP/B3030/C/18/3208051 & 52

Land at Barfield House, Greaves Lane, Edingley NG22 8BH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr and Mrs Sharpstone against an enforcement notice issued by Newark & Sherwood District Council.
 - The enforcement notice was issued on 28 June 2018.
 - The breach of planning control as alleged in the notice is the material change of use of agricultural land and wooden tables to residential use (garden and storage).
 - The requirements of the notice are to a) cease the use of the land and wooden stable building for residential purposes and b) remove from the land all residential paraphernalia including all unauthorised structures (excluding the wooden stable building) and any planting that is domestic in character that has been undertaken on the land.
 - The period for compliance with the requirements is 1 day for requirement a and 28 days for requirement b.
 - The appeals are 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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Appeal C: APP/B3030/X/18/3208054

Land at Barfield House, Greaves Lane, Edingley NG22 8BH

- 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 Sharpstone against the decision of Newark & Sherwood District Council.
 - The application Ref 18/00406/LDC, dated 21 February 2018, was refused by notice dated 28 June 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 for domestic purposes including a timber stable block used for domestic storage associated with the residential occupation of Barfield House.
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Procedural Matters

1. Evidence was taken under oath.
2. The appeal on ground (f) was withdrawn at the inquiry. The appellant's concerns related to ground (g) were accepted by the Council and 28 days agreed as acceptable for both requirements.

3. For the purposes of the appeal the land associated with the house was identified as follows. Area A is the land immediately adjacent to the house, Area B the land between the rear hedge to Area A and the relatively newly planted fruit trees, with the stable block to one side and Area C is the land beyond the fruit trees.
4. The appellant keeps a number of dogs. Some are kept in the house and use Areas A and B for exercise. Ex service dogs are kept on Area C. I have some concern in relation to the use associated with these and whether it could be considered incidental to the residential use. However, the appellant identified that these dogs do not use Areas A or B, only C. They are exercised on Area C and on footpaths locally. As the use associated with these dogs has no effect in relation to Area B it is not a material consideration for this appeal.
5. At the beginning of the inquiry it was explained that there is a difference between land used residentially and curtilage, which is mentioned in parts of the evidence. The appellant acknowledged that this is the case and in discussions related to the imposition of conditions removing permitted development rights argued that a condition is not necessary for the change of use of Area B, as removal of these rights would only be necessary if the land were part of the curtilage of the dwelling. For the purposes of determining use in this appeal I am considering whether or not there has been a change of use to a residential use of the land and not what is or is not curtilage.

Decisions

Appeal A & B

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

Appeal C

7. 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.

Reasons

Ground (d) and Lawful Development Certificate [LDC]

8. The issues in the ground (d) case and the LDC are the same. There is a small difference in the relevant date emanating from the date of the enforcement notice and the date of the LDC application. The latest date for showing the continued 10 year residential use is that of the date of the enforcement notice of 28 June 2018.
9. The appellants have no direct knowledge of the use of the land prior to them commencing the purchase of the property in 2016 and rely mainly on various aerial photographs and evidence from the previous owner and a plumber who was involved in the construction of the house and who has serviced the property since.
10. The previous owner, notes that the land was used for domestic purposes as residential curtilage. He had a vegetable patch at the end of the stable block (for his own consumption) and regularly kept the grass between Area A and Area C mowed as garden for domestic purposes. This continued during his ownership for a period of about 11/12 years. A second declaration notes the use as domestic garden from 2002, but also indicates since 2006 and during

his ownership always used the land as an extra area of lawn to supplement the existing domestic garden that surrounds the house.

11. The grass was mown similar to the main house but was less formal than that adjacent to the house. The fruit trees were planted around 2002. The stables were constructed around 2002 for personal use, and from around 2006 onwards the stables were continually used as an area of overflow storage of domestic paraphernalia, including gardening equipment, barbecue, deck chairs, camping equipment etc. The land in Area C was generally left unattended. Children played and sometimes camped on the land and barbecues were held there. The sales particulars support the previous owner's view of the use of the land identifying that the 'gardens extend into the adjacent paddock'.
12. The plumber has confirmed this pattern of use. I accept that when the plumber visited the stable to get paint as part of the repair/refurbishment of the bathroom and to obtain a spare fitting for the underfloor heater he would have seen the use of the stables and land. However, the hedge between Area A and Area B is thick and allows limited views of the land forming Area B and it is hard to understand that the plumber would have gained any significant views or understanding of the use on all the days he visited. I attach some limited weight to his evidence.
13. A number of aerial photographs are provided, starting at 2004. These clearly show a difference in the way the land/grass in Area B is maintained in relation to Area C. The grass appears to be more consistent with the grass in Area A. In these photographs there is evidence of the vegetable area mentioned by the previous owner. To my mind these are very consistent with the way the previous owner indicated use of the land. I accept that maintenance of the grassed area is not itself indicative of a change of use or continual use, but it is clear, given the aerial photographs are taken at random, at uncontrolled times, that the mowing of the grass is likely to have occurred on a regular basis. There seems little reason for the previous owner to do this other than for use as a garden area, rather than grazing/paddock as area C.
14. I accept that there is some question about whether the stable was used for horses. It would appear that this did occur in the early days, Cllr Poole noting this was when horses were kept elsewhere and brought back at times to the stable. However, other witnesses such as neighbours have not indicated use for horses. Overall, it seems to me that there is no obvious use for the stable and Area B since about 2004, other than the residential use identified by the previous owner. If the land had no such use, then in all probability it would have been used and maintained as Area C.
15. I have taken account of the views of Cllr Poole and neighbours that they do not think barbecues were held in that area, Cllr Poole having attended a number at the property. However, it is unlikely that these interested persons would have been at all parties or seen all parties that took place. While I accept that there are no photographs and the Council would like to see more detailed evidence, it is not essential to have such detailed evidence. Here we have a series of aerial photographs that show consistency with the evidence of the previous owner, who has no interest in the appeal outcome. I think there has been clear use for vegetables that would require regular attendance and the stable has been used for storage associated with the house, again something likely to require regular visits. The fact that the grass may not have been walked on every day or used

for a specific purpose does not mean its use is not part of the residential use. The regular cutting, to my mind, corroborates the use claimed.

16. I have taken into consideration the state of the land in 2013 when it looks very bare. However, at this time the grass in Area A is green as is the grass in Area C. The appellant notes that this was a very dry year and the photograph was taken in July. I accept that grass now appears in 'lines' but again this is consistent with it having been originally planted as grazing/pasture. The fact that it is nearly bare soil and Area C is not, also suggests that the maintenance of Area B has been very different from Area C.
17. The neighbour considers that the field was rough cut and only began to be mown approximately two years ago. The aerial photographs clearly show that the land was maintained very differently from that of Area C and appears more consistent with Area A over a considerably longer period than about the last 2 years.
18. I have taken into consideration the previous inspector's decision, which I accept has relevance in relation to ground (a), but he specifically notes that the decision does not make any comment on the lawful use of the paddock that surrounds the kennel.
19. The Court has held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA has no evidence of its own, or 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".
20. I consider that the appellant's evidence is sufficiently precise and unambiguous and that the evidence provided by the Council and others is not sufficient to make it less than probable, so there is no good reason to refuse the application for a LDC. It has been demonstrated that there has been a continuous residential use of the land since about 2004.
21. The appeals succeed on ground (d) and the LDC appeal is successful. I therefore do not need to consider the other grounds of appeal.

Graham Dudley

Planning 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 date of application 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:

On the balance of probability, the use has been shown to have occurred continuously for more than 10 years.

Signed

Graham Dudley

Planning Inspector

Date 19 September 2019

Reference: APP/B3030/X/18/3208054

First Schedule

Use for domestic purposes including a timber stable block used for domestic storage associated with the residential occupation of Barfield House.

Second Schedule

Land at Land at Barfield House, Greaves Lane, Edingley NG22 8BH

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 19 September 2019

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

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Reference: APP/B3030/X/18/3208054

Scale:NTS

