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## Appeal Decision

Site visit made on 6 January 2020

**by B.S.Rogers BA(Hons) DipTP MRTPI**

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

**Decision date: 15 January 2020**

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**Appeal Ref: APP/A4710/X/19/3224758**

**Birchfield Farm, 6 Birchfield, Norland Town Road, Sowerby Bridge, West Yorkshire, HX6 3RH**

- 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 Robert Sumner against the decision of Calderdale Metropolitan Borough Council.
  - The application Ref 18/01266/191, dated 13 October 2018, was refused by notice dated 30 November 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 the land as a garden.
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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 extent of the existing use which is considered to be lawful.

### Reasons

2. The onus in this case is on the appellant to demonstrate, on the balance of probability, that the land in question has been used continuously for the use described for a period of 10 years prior to the date of the application. To support the application, witness statements from the appellant and from three local residents are submitted, together with maps and photographs of the site. These are to be read in addition to the evidence enclosed with an earlier application for a LDC for the same use on the same area of land, which was refused by the Council in 2018 (Ref: 18/00415/191).
3. Messrs Crowther, Halliday and Cole are very long-standing local residents of Norland, who knew the previous owner, Mr Crossland (now deceased), and have observed the historical use of the appeal site from close quarters. Mr Crowther lives next door, Mr Halliday lives across the road and Mr Cole lives in the village. Their evidence is consistent in stating that, about 30 years ago, Mr Crossland fenced off the appeal site from the original field, planted trees, shrubs and flowers and began to use the site as a garden. They refer to his gardening activity and to his keeping some rescue dogs in the garden, for which he built timber kennels, and also cats. They note his building a stable in a corner of the garden to house the horses which he kept in the remainder of the original field, now referred to as the paddock – the stable doors face the

- paddock and not the garden. This stable remains on site in a dilapidated condition.
4. The historical photographs submitted with the statements are consistent with this evidence. They include photographs of the timber kennels (now demolished) on the appeal site and of horses in the paddock, which is clearly fenced off from the appeal site. The vertical aerial photographs show the area as plainly different in character from the paddock, although the tree cover makes it difficult to clearly identify features on the ground. The oblique aerial photograph taken from a helicopter, which Mr Crowther is able to accurately date as being from May 1990, more visibly shows the features described above. The extract from Calderdale Maps online is also consistent in showing the appeal site as being distinct from the rest of the field, although the appellant accepts that is not an indication of the actual use.
  5. The witness statements indicate that Mr Crossland continued to use the appeal site as a garden throughout his occupation of the property, including during his retirement from his employment in the tax office. His cultivation and maintenance of the garden was reduced over time, when his health began to decline. When the appellant purchased the property in 2017, the site had become rather overgrown but he states that he found a path, a bench seat, a wheelbarrow and gardening tools in amongst the trees, shrubs and flowers; he provides photographs of the bench seat, of domestic flowering plants and of old plant identification labels found on site.
  6. The Council does not dispute that the appeal site was fenced off and planted, as described above, but considers its use was of a non-domestic nature, referring to the keeping of chickens, pigs and a donkey. However, there is no evidence at all of the keeping of chickens or pigs; they are not mentioned in any of the witness statements. The Anderson air raid shelter that appears in photographs, and was formerly on the site, appears to be mistakenly referred to by the Council as a pig arc.
  7. Mr Cole does refer to the presence of a donkey 'at one time', although whether that was kept on the appeal site or in the paddock is not clear; the likelihood is that it was in the paddock as he refers in the same sentence to the keeping of horses in the paddock. Mr Halliday also refers to the keeping of three pet sheep but that was explicitly stated to be in the paddock. To my mind, it would be unusual to find shrubs and flowers on land being used for the keeping of non-domestic animals, particularly as such animals would be likely to cause damage to plants. The bench seat appears to be a conventional garden seat, again not an item that would normally be expected to be found in a non-domestic context.
  8. Although the Council in its assessment refers to the correct test as being the balance of probability, in practice it appears to have assessed the evidence on a stricter basis of requiring convincing proof. The Planning Practice Guidance indicates that, *"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"*. In this case, I consider the appellant's evidence to be clear and consistent as to the way the site was fenced off and first used as a

garden some 30 years ago. There appears to have been no cessation or abandonment of the use; it simply became poorly maintained due to the declining health of the previous owner. The Council has provided no evidence of its own to contradict the appellant's case. Indeed, I have seen no indication that the appeal site, as opposed to the paddock, was used for non-domestic purposes.

9. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land as a garden 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.

*B.S. Rogers*

Inspector

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## 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

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**IT IS HEREBY CERTIFIED** that on 13 October 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged with a thick black line 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:

The use of the land as a garden commenced more than 10 years prior to the date of the application and the use has been continuous since then.

Signed

*B.S. Rogers*

Inspector

Date 15 January 2020

Reference: APP/A4710/X/19/3224758

### **First Schedule**

Use of the land as a garden

### **Second Schedule**

Land at Birchfield Farm, 6 Birchfield, Norland Town Road, Sowerby Bridge, West Yorkshire, HX6 3RH

## 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: 15 January 2020

by **B.S.Rogers BA(Hons) DipTP MRTPI**

**Land at: Birchfield Farm, 6 Birchfield, Norland Town Road, Sowerby Bridge, West Yorkshire, HX6 3RH**

**Reference: APP/A4710/X/19/3224758**

Scale: nts

