



Appeal Decision

Site visit made on 10 December 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal Ref: APP/E2001/X/19/3231471

Westcroft Farm, Long Street, Rudston YO25 4UH

- 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 Phil Slasor against the decision of East Riding of Yorkshire Council.
 - The application Ref DC/18/02033/CLE, dated 21 June 2018, was refused by notice dated 13 August 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 continued use of the land as "amenity space, that is the garden".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. From the appellant's statement and the Council's decision notice it appears that the appellant is seeking an LDC for the continued use of the land as domestic curtilage. However "curtilage" is not actually a use of land and, notwithstanding how the Council may have referred to curtilage in previous decisions elsewhere, it would not be appropriate to make my decision on this basis. I have therefore summarised the description of use from the appellant's application form, which refers to 'garden' use, as reflected in various representations from the parties.
3. The boundaries of the application site include the main dwelling, known as Westcroft Farm, the associated driveway to the front and side of that dwelling and a detached garage in the north east corner. Self-evidently these elements of development are different to the use for which an LDC is sought, namely garden land, and are thus excluded from consideration.

Reasons

4. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development or because the time for enforcement action has expired (s191(2)). In this case, the appellant seeks to rely on the passage of time.

5. It is necessary to consider whether, on the balance of probability, the use of land within the appeal site as a garden area has continued for a period of ten years or more prior to the date of the application, that is from at least 21 June 2008, so as to be immune from enforcement. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued for the aforementioned ten-year period.
6. The appeal site is roughly rectangular and, as mentioned above, includes the dwelling, known as Westcroft Farm. From my visit it was apparent that this dwelling has been altered to allow for the construction of an additional house. The side and rear boundaries of the site are fenced, with the enclosed area outside the building footprints and driveways comprising a continuous grassed expanse.
7. Notwithstanding the presence of a significant quantity of building material stored on the land, the grassed surrounding area has the appearance of a garden associated with Westcroft Farm, albeit somewhat overgrown, but nevertheless open and capable of recreational use. The grassed area is distinct from the more overgrown and unkempt appearance of the field beyond the eastern boundary of the site. However the appearance of land, at a snapshot in time, is not the only relevant factor and even if land is enclosed as a single entity, details of the nature and extent of use over time are an important part of the assessment.
8. The appellant has submitted various supporting information, including photographs claimed to be taken in certain years. The photographs include a Google Earth aerial image of the site (dated 2007), which appears to show the extension of the eastern boundary to its current position further eastwards; a second aerial photograph (purchased 2008) and a photograph taken to the east of the site (dated 2008) also showing this extended area; photographs from 2010 which appear to show the extended and original enclosed areas as a continuous expanse of mown grass; a photograph (dated 2018) showing a continuous mown area with goal posts present on the land.
9. The appellant claims that the Council's acceptance of the garage constructed in the north east corner of the site as permitted development¹, means that the area on which it was constructed was acknowledged to be garden land. He also refers to a permitted development enquiry at the property, dated 2015, which apparently made reference to the development of a garage / workshop in the garden area².
10. The photograph taken to the east of the site, claimed to be in 2008, is useful as it broadly corresponds with the baseline date for the 10-year immunity period. However this shows the extended part of the plot to be newly seeded, with the grass yet to be established and lacking the appearance of a maintained garden, viable for recreational use. I am not therefore satisfied that all of the appeal site could be said to be in garden use at the time when this photograph was taken. Furthermore, whilst the mowing of the land may have occurred for several years, this in itself, and the appearance of the site as a lawn, would not be sufficient to confirm garden use.

¹ Ref 07/10952/PPA

² Ref 15/11365/PPA

11. In terms of recreational garden activities it is unclear whether all of the land subject to the application, or just a portion of it has been used for such purposes and, notwithstanding the appearance of portable goal posts in some of the photographs, where exactly any related equipment was sited and for how long. Furthermore whilst various social gatherings are said to have occurred on the site, the regularity with which they occurred in order to enable a view to be formed about whether this would materially weigh in favour of the claim of continuous use of the land, or whether it amounted to an extensive but temporary use only, remains open to question. Whilst it would appear that pet lambs have been kept on the site and I have no reason to doubt that laundry has been dried there, I have not been provided with any information to persuade me that this supports the proposition of continuous garden use of the appeal site.
12. In support of the application, letters have been produced by various acquaintances of the appellant. However none of the representations provide a compelling account of the continuous use of the land as a garden for the requisite immunity period.
13. Therefore, in the absence of further photographic evidence and notwithstanding the other evidence provided and current characteristics of the appeal site, it is not possible to reach a reasoned view as to when the appearance of the land as a garden first commenced, or to conclude that it continued to be used as such over its entire expanse after this time, and throughout the whole immunity period.
14. I am not therefore persuaded that the information and evidence provided by the appellant satisfactorily demonstrates, on the balance of probability, that the appeal site has been in continuous garden use for the entire 10-year immunity period. Furthermore, from the information provided, I am unable to reach a view, on the balance of probability, as to the lawfulness of any specific smaller area within the appeal site, as garden land.
15. 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."* Despite a lack of evidence from the Council to contradict the appellant, and the steps evidently taken to enclose and maintain the land, for the above reasons I am not persuaded that the appellant's evidence is sufficiently precise and unambiguous when considering the area of the land in question.
16. The appellant has made various references to the Council having accepted the appeal site as curtilage or garden, within the context of previous permitted development enquiries and a planning application. However, regardless of the veracity of this information, I am not persuaded that it weighs in favour of the current application because the Council, when considering these various matters, was not formally determining the lawfulness of the land use subject to this appeal. Furthermore the absence of enforcement action by the Council would not, in itself, make the use of the land lawful.
17. Therefore, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of continued use of

the land as “amenity space, that is the garden” at Westcroft Farm, Long Street, Rudston YO25 4UH 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