
Appeal Decisions

Inquiry Held on 21 January 2020

Site visit made on 21 January 2020

by Simon Hand MA

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

Decision date: 5 February 2020

Appeal A: APP/Q3115/C/18/3209719

Land to the rear of Sarsville, 67 Lower Icknield Way, Chinnor, OX39 4EA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Keith Jones against an enforcement notice issued by South Oxfordshire District Council.
 - The enforcement notice, (Notice A), was issued on 26 July 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a timber building and timber decking in the approximate position edged green on the plan.
 - The requirements of the notice are to demolish and/or dismantle the building and decking referred to in 3 above and remove from the land all materials resulting from such works.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
 - An identical appeal has been made by Mrs Susan Jones APP/Q3115/C/18/3209720
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Appeal B: APP/Q3115/C/18/3209599

Land to the rear of Sarsville, 67 Lower Icknield Way, Chinnor, OX39 4EA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Keith Jones against an enforcement notice issued by South Oxfordshire District Council.
 - The enforcement notice, (Notice B), was issued on 26 July 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from agriculture to use as domestic garden.
 - The requirements of the notice are to stop using the land as domestic garden.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
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Decisions on all Appeals

1. The appeals are dismissed and both enforcement notices upheld.

Background to the Appeals

2. The current state of the appeal site is quite different to what it was in the past. No67 stands on the north side of Lower Icknield Way as it runs east from the

village into the countryside. Originally it seems it was a length of ribbon development on both sides. The houses on the northern side had long gardens with fields beyond. A certain amount of infilling has now obscured this character, but the aerial photographs from the 1990s show it was quite a clear pattern. The appellants bought No67 in 1996 and at that time it was a large house fronting Lower Icknield Way. To the rear was an area both parties agree was its garden and to the rear of that an area of less certainty. Both together stretched back to the same depth as the gardens of the houses to the west. Beyond this garden area is the appeal site which the Council say was an area of paddocks. For various reasons that I need not go into the appellants sold No67 to a local builder who built a new house at the back of the garden, close to the appeal site, to which the appellants have now moved. This is now No67, with the old 67 renumbered to 65. The move took place in 2016.

3. The appeal site is large rectangle of land which is about twice as deep as the original plot of old 67 and runs along the backs of the houses to the west. It is effectively divided into two portions. A long strip on the eastern side that acts as a continuation of the garden of old 67 as far as the field boundary to the north. Separated from this by a hedge and fence is the rest of the site. The appellants are firmly of the view that the whole area is their garden, but accept that apart from some dog walking, and mowing a path around the edge, they have little evidence to suggest the western section was used residentially. Their case rests entirely on the eastern section, for which they have provided a considerable amount of evidence.

The Appeal on ground (d) (Appeal B)

4. Setting aside the appellants' evidence for the moment there are a number of planning events that have punctuated the period since 1996 the significance of which are disputed. I shall first determine what these mean and then consider their implications for the appeal.

The Planning Events

5. In 1981 a previous owner of the old 67 made two applications for permission for an extension to the house and a new garage. The file is reproduced only in black and white, but the block plan which shows the application area has only a quite obvious single line around the garden and the land to the rear, the current appeal site. The appellant argued, and I agree with him that this must equate to the red line. There is no subdivision of the land, as one would have expected, into the application site with a red line and the rest of the paddocks with a blue line. It is logical that as there is only one line on the plan it must be red. However, that does not mean the whole area has been granted a residential use. The applications were for an extension and a garage, those were the structures granted permission. There was no material change of use application, either on the face of the documents or implied. So the best this plan can show is that the applicant in 1981 *thought* this was all his garden.
6. However, the rest of the information in the applications documents suggests otherwise. Firstly both applications state the site area is 0.155ha which is roughly the area occupied by the old 67 and its undisputed garden. Both applications describe other land owned by the applicant as "*land at rear shown blue on the plans to total area 1.323ha*". This roughly equates to the current appeal site. It is obvious to me that if the line is only red, then that is a mistake, there was clearly meant to be a blue line around a larger area of land,

and the only larger area of land is the current appeal site. The third and perhaps most convincing point is the detailed plans show the rest of the land behind the garden labelled as 'paddock' with a stable building standing on the edge of the paddock. It is interesting to note this 'paddock' is actually the area I called that of 'less certainty' above. The bottom edge of the appeal site appears on the plans labelled 'orchard' and 'paddock'. The 'orchard' being next to the stable building.

7. The appellants referred to the original sale of the land. It was apparently glebe land and was sold in parcels by the church Sexton, who kept one parcel (the land now owned by the appellants) for himself. This explains why it was oddly shaped. This may be true but it does not help with the use of that land. It is clear to me the 1981 applications actually show only a small amount of land to the rear of the old 67 as garden, the rest, including all the appeal site is paddock or orchard. The orchard is separated from the house by a paddock and so it is most likely, in my view, to have been part of the wider agricultural land to the north and was never part of any residential use associated with the old 67.
8. The next important event is the application made by the appellants in December 2013 and granted in 2014. This was for two dwellings in the back garden of the old 67. This time the plans are in colour and the red line runs around the garden (including the area of less certainty called a paddock in 1981 which was now clearly considered to be garden). The blue line encompasses the current appeal site. Plot 2, which became the new 67 is shown with a small garden around it the boundary of which is the edge of the current appeal site that was labelled 'orchard' in 1981. There is no doubt in my mind that this plan defines the residential area of the new 67 and its curtilage. This is supported by the detailed planning statement submitted. In this the garden of the old 67 is described as being 65m deep and which forms the application site. It is argued in the statement that the development would not intrude into the open countryside beyond the northern boundary of the site, and describes Elderdene, a development that abuts the western boundary of the current appeal site as being much further into the countryside than the application site. This all strongly suggests the current appeal site was considered to be countryside.
9. The appellants argued that they were not involved in this application; it was left entirely up to the builder, who was a friend, and to the agent he appointed. They had troubles enough of their own and were just happy that someone was helping to sort them out. I agree this may well be true, but it is noteworthy that the builder was one of the friends who wrote in support of the appeal and who appears in the photographs of various events held on the appeal site. He was in a good position to know exactly what use was made of the land and chose to describe it as countryside.
10. The final event is an appeal¹ in 2018 for further houses which will take up most of the western part of the appeal site and a third of the eastern section. This was allowed and in the decision the Inspector describes that appeal site (which encompasses much of the current appeal site) as "*beyond the dwellings and their gardens in Lower Icknield Way*" and as "*located outside the village such that they would not comprise infill development in the village*".

¹ APP/Q3115/W/17/3192374

11. It is clear to me that in 1981, 2014 and 2018 everyone directly involved in the appeal site considered it was not part of the garden of old 67 but was part of the countryside. There is also no evidence the appeal site was ever granted planning permission as residential land and so its lawful use has always been agriculture. The appellant needs to show the residential use has been going on without significant breaks for any period of 10 years continuously since 1996 and I shall concentrate from now on solely on the eastern section of the appeal site for which the evidence is provided. This part of the site consisted of the small orchard area containing in the corner the stable building mentioned in 1981. The appellants explained this was a dilapidated and dangerous structure when they moved in and eventually they removed it. Next to it is a concrete pad that now houses the timber building, the subject of Appeal A and next to that a smaller stable/store. The orchard is separated from the rest of the land by a rustic timber fence erected by the appellants in 1997.

The photographic and personal evidence

12. The appellant relies on photographs of various family events that have taken place, their own testimony and a large number of letters of support from friends. Essentially the photographs and the letters all show the same thing. There have been regular family events, BBQs, firework parties and picnics during their period of ownership, attended by large numbers of family and friends, many of whom wrote to say exactly that. However, this amounted to only 8 events from 1998 to 2014. I accept the appellants have not systematically photographed everything they did every time they went onto the land, and they may well have more photographs in their garage showing more events, but these are still best described, as the Council did, as special occasions.
13. There are aerial and other photographs available for a number of years. From the aerals a snapshot only is available but they are nevertheless instructive. In 1999 there is no evidence of any use. The land comprises grass and trees. There is no change in 2003 or 2005. In 2006 the furthest end of the land has ben allowed to become overgrown and paths mowed through it to form a wildflower meadow. This was an area for Mrs Jones to sit that was largely hidden from the house. In 2009 the wildflower meadow remains, there is a trampoline and a clearly mown five-a-side pitch with goals. These are also shown in the photographs of the 2009 football BBQ party. In 2016 the land seems to have become overgrown again, the wildflower meadow has only one path and there are a couple of mobile homes on the southern end of the land. These were occupied by the appellants while the new 67 was being constructed.
14. In 2014 the Council visited the site. The original garden of the old 67 was being cleared and the hedge that used to separate it from the appeal site removed in preparation for the development of the new 67. The photographs show the appeal site beyond the small orchard area to be overgrown and grazed by a goat. There are tables and chairs in the orchard. The goat is a family pet, and is still on site now, living in the remaining stable/store. It seems the appellants have had at least 2 goats for most of the time they have been at No67 and the goats have freely grazed the land. The appellants did suggest they may have also grazed in the garden of old 67, but the tiny dots on the aerial photographs are inconclusive. In any event they explained the

fence was put up to contain the goats, who seem to have been generally corralled on the site beyond the orchard.

15. In 2017 the Council also visited because of a mobile home that was located on the western section of the appeal site. This was being stored and was removed shortly after. Photographs show the western section completely overgrown, but the eastern part to be fairly short grass with a picnic bench in the orchard. The photographs from another visit in 2018 show the same, except for the addition of the timber building.
16. I have no doubt about the sincerity of the appellants and their evidence. They clearly do consider the land to be their garden and have used it from time to time as a garden. But it has also been used as grazing for goats and it would seem for nothing very much at all. There has been no infrastructure added, nothing but the occasional mown path and some easily moved garden furniture. The only exception is in 2009 when it clearly was turned into a football pitch and party area. The appellants said they held these parties every year, but even if they did, they left no lasting evidence which suggests the changes were temporary. The key test for determining a material change of use is whether the Council could at any time have issued an enforcement notice. In other words could the Council have dropped in at the site and realised the land was being used residentially, rather than as a paddock or orchard. The answer would seem to be that most of the time they would have seen a roughly mown area with a goat in it and so no evidence of a material change of use at all.
17. On its own the appellants evidence and the photographs provided by the Council do not support the claim that on the balance of probabilities the land has been used for residential purposes for a period of 10 years or more. Adding in the evidence from the three planning applications and appeal and such a claim becomes even more improbable. The appeal on ground (d) fails.

The Appeal on Ground (c)

18. This appeal depends largely on the outcome of the ground (d) appeal. It is claimed the building is permitted development by virtue of Class E of Part 1 of Schedule 2 of the General Permitted Development (England) Order 2015. As I have concluded above that the land was not used residentially its lawful use remains agricultural. Permitted development rights are only exercisable within the curtilage of a dwelling. When the timber building was erected in its current location the only dwelling on the land was old 67. In my view the site of the timber building was beyond the boundary of the garden of old 67, marked by a thick hedge, and squarely within the agricultural land. The curtilage of old 67 was limited to its garden and so there are no Class E permitted development rights for the area where the timber building was erected. The appeal on ground (c) fails.

Conclusion

19. There is no evidence at all for the use of the western part of the land for residential purposes except for the appellants' suggestion that mowing the edges, letting the children cycle on it and walking dogs amounted to such a use. They actually claim it is their garden, it is merely that they couldn't prove it. The allegation in the notice is a material change of use to domestic garden and the requirements are to stop using the land for that purpose. I do not

think therefore that there is anything useful to be gained by amending the notice to alter the plan. No appeal was made on ground (b) that there had been no material change of use, as it is the appellants' firmly held view that there has been a material change of use. I shall therefore dismiss the appeals and uphold the notice.

20. The use of the land for residential purposes should cease and the timber building needs to be removed, in both cases within 6 months. As far as the use is concerned this does not mean the goat cannot still be grazed on the land, nor that the occasional party cannot be held there. But it cannot be used generally for residential purposes.
21. I would also note that when the 2018 appeal decision is implemented, assuming it is, then it appears to include a larger garden area for the new 67 than was shown on the plans in 2014. This would include most of the current orchard area. If that is the case, and I can make no definitive comment as I have not seen any of the other documents pertaining to that appeal, then that planning permission would override this enforcement notice as far as the two were incompatible. In other words it would allow a lawful use of the orchard area as garden, but not any other part of the current appeal site that lies outside the boundaries of the 2018 appeal site.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Keith Jones and Mrs Susan Jones

FOR THE LOCAL PLANNING AUTHORITY:

Charles Forrest of counsel

He called

Robert Cramp – South Oxfordshire DC

DOCUMENTS

- 1 Enlarged version of 1981 plan
- 2 Enlarged version of 2018 appeal plan
- 3 Council's closings