



Appeal Decision

Site visit made on 10 February 2020

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

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

Decision date: 17 February 2020

Appeal Ref: APP/M1005/X/19/3235983

The Roost, Ridgeway Farm Court, Crich Lane, Ridgeway, Ambergate, Belper, DE56 2JL

- 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 Dr A. Rantzen against the decision of Amber Valley Borough Council.
 - The application Ref: AVA 2019 0459, dated 9 May 2019, was refused by notice dated 9 July 2019.
 - 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 garden for dwelling.
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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 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, 9 May 2009.
3. The appellant states in a signed affidavit that she purchased the house known as The Roost in April 2000. She bought the land to the rear, the appeal site, in March 2008. At this time, she states that the land was fenced, was seeded to grass, had hedging planted, a pathway laid into it, it was part levelled and a tool shed was erected. This is corroborated in letters from two longstanding friends of the appellant, one of whom lives in a neighbouring dwelling. It is also consistent with the evidence of the aerial photographs provided by the Council, which show the appeal site as part of a large, adjoining field in 2007 but enclosed and with the shed erected in the photograph dated 1 January 2010. The land appears to have changed very little in appearance in the image dated May 2017, which appears similar to how I saw it during my site visit.
4. As to the use of the land, the appellant points to a widely reported High Court case of 2008 in which Lord Justice Moses opined that "the Oxford English Dictionary states that a garden is 'an enclosed piece of ground devoted to the cultivation of flowers, fruit or vegetables. That definition is clearly now too narrow, as the current fashion for wild gardens and meadow areas amply

demonstrates". I accept the appellant's submission that a garden use can be, for the most part, passive in nature, with occasional bursts of activity. Many gardens are simply kept tidy (or in some cases untidy) with very limited activity. However, in this case, the appellant states that the land has been used for family parties, including specific birthday parties, barbeques and gatherings. Various photographs of such events are submitted, albeit that these are undated. The two letters from friends indicate that the land has been used continuously since 2008 as a garden, including use for parties, gatherings, family relaxation and children's play area. It appears likely that the tool shed on the land has been in continuous use for domestic storage.

5. The Council points to planning applications in 2011, 2013 and 2019 made in respect of the dwelling itself in which the appeal site was excluded from the red line and "identified as other land controlled by the applicant rather than set out as domestic curtilage". I also note that, in a further application dated 2019, the land was included within the red line. However, that does not appear to me to be a relevant test. The LDC is sought in respect of use as a garden. Whether the land should be regarded as being within the curtilage of the dwelling house is a separate matter, more relevant to the exercise of permitted development rights.
6. In turn, the Council points to the aerial photographs as showing the land as not having a manicured finish, as is the case with the original domestic curtilage; this is interpreted as a clear delineation in terms of the appearance, and therefore the use, of the appeal site. The Council considers the appeal site to have the appearance of a paddock, rather than a garden, albeit that there is no suggestion that it has been used to keep horses, or used for any purpose other than domestic use, since 2008. Reference is made to an internal fence, separating the site from the original garden. However, the fence in question also encloses part of the appeal site and, in any event, it does not appear to me to be unusual to find internal enclosures within larger gardens.
7. 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"*.
8. In this case, the Council does not dispute any of the appellant's evidence. The use to which the appeal site has been put is clearly domestic in nature and there is no evidence of any other intervening uses. Whilst some of the submitted photographs are undated, they appear to span a significant period of time and are consistent with the appellant's narrative and the corroborative letters.
9. In conclusion, for the reasons given above, it appears to me that the Council's decision to refuse the application was not well founded. Accordingly, 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.

B.S. Rogers 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 9 May 2019, the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 of the land as a garden commenced more than ten years prior to the date of the application and the use has been continuous since then.

Signed

B.S. Rogers

Inspector

Date

Reference: APP/M1005/X/19/3235983

First Schedule

Garden for dwelling

Second Schedule

Land at The Roost, Ridgeway Farm Court, Crich Lane, Ridgeway, Ambergate, Belper, DE56 2JL

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:

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

**Land at: The Roost, Ridgeway Farm Court, Crich Lane, Ridgeway,
Ambergate, Belper, DE56 2JL**

Reference: APP/M1005/X/19/3235983

Scale: NTS

