The Planning Inspectorate

Appeal Decision

Site visit made on 25 February 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2020

Appeal Ref: APP/P2365/X/19/3228804
Fir Tree Garden Centre, Holmeswood Road, Holmeswood, Ormskirk L40 1TY

- 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 David Bradshaw against the decision of West Lancashire Borough Council.
- The application Ref 2018/0961/LDC, dated 4 September 2018, was refused by notice dated 27 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 land and premises as retail garden centre.

Decision

1. The appeal is dismissed.

Reasons

2. 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.

3. It is necessary to consider whether, on the balance of probability, the use of land within the appeal site constitutes a retail garden centre and has continued in such use for a period of ten years or more prior to the date of the application, that is from at least 4 September 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.

4. 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."*

5. In essence the question before me is whether the site is operating and has continued to operate as a retail garden centre as opposed to a nursery, within the definition of agriculture, or as a mixed use, potentially neither one nor the other. The Council, within its statement has referred to definitions of a garden centre as a '*retail operation that sells plants and related products for the domestic garden as its primary business*[1]*; 'a large shop, usually with an outdoor area where you can buy things for your garden such as plants and gardening tools*[2]*.* By contrast, the Council has referred to a nursery as *'a place where plants are propagated and grown to usable size. Some nurseries specialize in one phase of the process: propagation, growing out, or retail sale…'*

6. The aforementioned definitions are not disputed by the appellant. It seems to me that the key distinction between the two operations is that a garden centre primarily sells a range of garden related products that are not produced on site. It is essentially a retail operation. A nursery, on the other hand, is primarily concerned with growing plants on the site, although the extent to which the focus there is on growing or retail may vary. Nonetheless, a nursery use is generally accepted as falling within the definition of an agricultural use.

7. The appeal site is roughly triangular in shape and simply laid out, comprising a rectangular glasshouse with forecourt car parking, accessed directly from the adjacent Holmeswood Road. During my visit I observed various garden related products on display within the glasshouse, including bedding plants, ornaments, furniture, cleaners and pesticides, with more plants, ceramic items and compost bags displayed externally, at the edge of the car park.

8. The appellant states that the appeal site, one of two parcels of land in his ownership, is used as a retail garden centre, with the second parcel used for the growing of plants for sale. He says that the use of the appeal site changed after 1990 following the re-development of a glasshouse on the site, which was smaller than approved, to allow for customer parking.

9. Various evidence has been submitted in support of the application. This includes a statutory declaration, dated August 2018, from the appellant's wife, Mrs Bradshaw. Within this declaration Mrs Bradshaw states that she has worked full time at the garden centre since it opened approximately 26 years ago; that the business evolved to sell a wide range of items; that at one point a Spanish property sales agency was also operated from an office within the glasshouse building, to provide an additional source of revenue; and that throughout the period of employment only retail customers have been dealt with at the site.

10. Invoices are provided, indicating the purchase of various products for onward sale from the site including bags of compost, seeds, bulbs, plants, garden tools, pottery, soft drinks and ice cream[3]. Google Street View imagery (2009), appears to show pottery items and bags of compost displayed around the edge of the car park. There is also a banner advertisement referring to the Spanish property business from that time. Various photographs appear to show plants and other miscellaneous items for sale at the site.

[1] Wikipedia
[2] Collins dictionary
[3] Invoices date from 2007, 2008 and 2009.

11. It is evident from the statutory declaration that a business has operated on the site for many years and that it has evolved to sell a range of garden related products. Given that any person who lies about the information contained therein could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I give the declaration significant weight.

12. The appellant accepts that some of the plants sold from the appeal site are grown at another site in his ownership, but that this is not the primary use of the appeal site itself, rather that the business there is primarily concerned with selling products imported from elsewhere. He states that as plants are a living item inevitably there is an element of 'growing on', but all plants on display are for sale to the general public only. It is also evident from the Council's statement that it agrees that plants appear to be propagated off site, before being sold from the appeal site.

13. I have no reason to disagree, and there is no information before me to suggest that the other site referred to as being in the appellant's ownership, forms part of the same planning unit as the appeal site, which is clearly demarcated by boundary fencing / hedging from adjacent premises. Even if some of the sales are of plants grown elsewhere by the appellant, or indeed others, from the earliest stages, it does not seem to me that the 'growing on' of plants is the main focus of the appeal site itself, other than what might happen there naturally, as those plants are waiting to be sold. Rather it would appear that the use of the appeal site is primarily for the sale of plants and other garden related products that have been brought there for that purpose from elsewhere.

14. I concur with the view, as set out in an appeal decision relating to a different planning matter at the site, considered previously, that both a nursery and garden centre are able to grow plants for sale and sell other products not produced on the site[4]. Furthermore I agree that it is a matter of fact and degree as to whether a use represents a nursery use within the definition of agriculture, with ancillary sales; it is a garden centre within Class A1 retail use, with ancillary sales of plants produced on the site; or it has the characteristics of a mixed use.

15. I am not, however, persuaded by the Council's suggestion that a use may still be classed as a nursery when the site is primarily used for the retail sale of plants, with no or only very limited 'growing on', as governed by the time taken to sell the product. Although I understand that the above definition, cited by the Council, which refers to specialisation could be interpreted in this way, I am firmly of the view that a primary rather than ancillary retail operation would fall outside the definition of agriculture.

16. I have arrived at this view having had regard to the case drawn to my attention by the Council[5]. However it appears to me that the case in question is distinguished from the present one, on the basis that sales taking place on that site involved products that were 'grown on' there, linked to the horticultural use of the site.

[4] Ref APP/P2365/W/16/3143485
[5] Ref APP/C/89/P2365/23-24 – Land at 68 Southport New Road, Tarleton

17. In this context, despite the limited timespan of invoices provided, the absence of detailed comprehensive sales information distinguishing imported products, the possibility that the site may previously have had a primary horticultural use and the limited size of the operation, I conclude, on the balance of probability from the information before me, that the use of the site is and has been that of a garden centre, rather than as a nursery or some form of mixed use. Leading on from this it is however still necessary to consider whether there has been continuous use, such that the granting of a certificate would be justified.

18. In this regard there is no dispute that the appellant, previously operated a foreign property sales business from the site, which was operational at the same time as the garden centre. The appellant states that this business did not employee anybody, and was very small in scale with no separate phone lines or advertising, other than signage immediately outside the site. In his view this use was only *de minimis* and did not involve a material change in the use of the site.

19. However, although the business in question may have been relatively small, it is evident from Mrs Bradshaw's statutory declaration that it provided an additional source of revenue. Furthermore it is apparent from photographs of signs outside the site advertising the property business, associated with the appeal representations, captured in 2009 and around 2007, that the business was more than simply a fleeting project, with reference also being made to various property types and locations. I am not therefore persuaded, based on the information before me, that the business in question was so insignificant as to be regarded as *de minimis*.

20. By its nature, the property business in question did not owe its existence to the garden centre and cannot therefore be considered as having been ancillary to it. From the information before me, it seems that the property business comprised a separate primary use of the same site, therefore resulting in a mixed use. Accordingly I am unable to rule out that the establishment of the business resulted in a material change of use of the site to that of a garden centre and property sales business, which accordingly resulted in a new chapter in the planning history of the site. Furthermore I am unable to discount that the ending of the property sales business resulted in a subsequent material change of use.

21. The photographs provided indicate that the use in question was still in existence in 2009 such that any change of use back to one of solely a garden centre happened since this time. Accordingly the requirement to demonstrate that the site has been in continuous use as a retail garden centre for the necessary 10-year immunity period cannot be demonstrated.

22. Therefore, for the reasons given above I conclude, on the balance of probability, that the Council's refusal to grant a certificate of lawful use or development in respect of Use of land and premises as retail garden centre at Fir Tree Garden Centre, Holmeswood Road, Holmeswood, Ormskirk L40 1TY 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