



Appeal Decision

Site visit made on 29 May 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Appeal Ref: APP/C3810/X/19/3220163

Arundel Vineyard, Church Lane, Lyminster BN17 7QJ

- 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 & Mrs Andrew and Susan Byrne against the decision of Arun District Council.
 - The application Ref LY/11/18/CLE, dated 17 May 2018, was refused by notice dated 31 July 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: Existing use of land as ancillary to the residential property of Arundel Vineyard and not as a commercial vineyard.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Preliminary Matter

2. I have dealt with other appeals on this site and these are the subject of separate decisions.

Main Issue

3. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

4. If any person wishes to ascertain whether any existing use of land is lawful they may make an application to the local planning authority specifying the land and describing the use. For the purposes of the above Act, in general terms, a use is lawful at any time if the time for enforcement action has expired. Where there has been a breach of planning control consisting of a change of use of any land, it is usually the case that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
5. If, on an application under section 191, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use described in the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

6. The applicant is responsible for providing sufficient information to support an application. 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.
7. Arundel Vineyard is a former vineyard which includes an agricultural dwelling. The purpose of the appellant's application in this case was to demonstrate that the land has not been used for commercial agricultural purposes, but for domestic, residential use and thereby the land has been used as ancillary to the dwelling since the purchase of the site in 2000.
8. The appellant has provided a statutory declaration pursuant to The Statutory Declarations Act 1835. This declares that:
 - the appellant purchased the site as a disused vineyard on 31 May 2000;
 - the appellant has never been employed in any agricultural capacity nor have they grown grapes on the site for commercial reasons;
 - between 2003 and 2010 the appellant grew some grapes which were bottled off site for their own use; and
 - the land has been laid out and used as residential garden since October 2010.
9. Representations received suggested vines have been grown at the property until 2015, and, the Council states that aerial photographs show rows of vines on a substantial part of the site in June and December 2012. But the presence of vines on the site does not mean the land was not being used as described by the appellant. Indeed some vines were present on the site at the time of my visit and the site was laid out as a residential garden.
10. Moreover, the appellant has stated that the evidence provided for the certificate was to the effect that the land was not used **commercially** from prior to the occupation of the site by the appellants and **not** on how long the land has been laid out as garden land.
11. It is clear that up until 2010 a considerable number of bottles of wine were produced from grapes grown from vines on the site, and, that this included a period after the date 10 years before the date of the certificate application. But evidence produced by the appellant indicates the wine produced was for domestic consumption and not for sale. In my view, this is a crucial factor in this case.
12. The Council considers the scale of production was such that it would be unreasonable to conclude that the appellant consumed all the wine themselves. But there is no evidence in this case of a threshold beyond which wine production becomes a commercial activity rather than a hobby carried out which is ancillary to the residential use.
13. Moreover, based on the information before me, the dwelling on site is substantial. It has multiple bedrooms and ample space for entertaining. So in my judgement it is quite possible that the wine produced was consumed by

occupants of the dwelling and their guests, and, there is nothing particularly unusual about produce being shared with or gifted to others.

14. A third party has stated they received wine from the appellant as a gift and that it was clearly packaged and presented for something other than personal use. But evidence of this has not been provided and in any event I am not satisfied this means the land has not been used as described by the appellant.
15. The Council is of the view that growing vines is an agricultural use, regardless of who shall consume the end product. But it depends on the overall use to which the site is put. Based on the information provided, in my judgement, the vineyard was a hobby for the appellant, rather than a commercial enterprise, and the appellant's activity was ancillary to the residential use of the site incorporating the main dwelling of Arundel Vineyard. Crucially in this case, since the appellant purchased the property no wine produced from grapes grown on the land has been sold.

Other Matters

16. Representations received raise concerns about future development of the land, the effect of the appeal development on Lyminster Conservation Area and the listed building at Lyminster House and concern that the appeal development is contrary to the development plan. But as is set out in Planning Practice Guidance¹, views expressed by third parties on planning merits are irrelevant when determining a lawful development certificate application.
17. I am aware of concern about errors relating to boundary lines shown on drawings provided. However, from the information available to me, the errors described in the representations received have no material effect on the appeal before me or on the ownership of the land concerned and so any such errors make no difference to my overall conclusion in this case.

Conclusion

18. 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 the existing use of land as ancillary to the residential property of Arundel Vineyard and not as a commercial vineyard, 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.

L Perkins

INSPECTOR

¹ Lawful Development Certificates, paragraph: 008 reference ID: 17c-008-20140306



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 17 May 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 land has been used as ancillary to the residential property of Arundel Vineyard and not as a commercial vineyard, for 10 years continuously prior to the date of the application and so is lawful under section 171B(3) of the above Act.

Signed

L Perkins

Inspector

Date: 19 June 2020

Reference: APP/C3810/X/19/3220163

First Schedule

Existing use of land as ancillary to the residential property of Arundel Vineyard and not as a commercial vineyard.

Second Schedule

Land at Arundel Vineyard, Church Lane, Lyminster BN17 7QJ

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 19 June 2020

by **L Perkins BSc (Hons) DipTP MRTPI**

Land at: Arundel Vineyard, Church Lane, Lyminster BN17 7QJ

Reference: APP/C3810/X/19/3220163

Scale: Not to scale

