
Appeal Decision

Site visit made on 3 September 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 07 September 2020

Appeal Ref: APP/B9506/X/19/3243996

The Belvedere, Stonehills, Fawley, Hampshire SO45 1DU

- 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 Robin Pearce against the decision of New Forest National Park Authority.
 - The application Ref 19/00343, dated 17 April 2019, was refused by notice dated 27 June 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 use of land as a garden.
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Decision

1. The appeal is dismissed.

Main Issue

2. The Belvedere is a two-storey detached house, the last of several detached houses on Stonehills, a lane that leads north-eastwards off the main B3053 road. Its rear garden slopes fairly steeply down to a stream, the plot of land being roughly rectangular in shape. The land the subject of the appeal is the adjoining contiguous land to the east, also approximately rectangular in shape. The main issue is whether the Council's refusal to issue a certificate of lawfulness for the garden use of this land was well founded.
3. Under s191(1)(a) of the 1990 Act, any person who wishes to ascertain whether any existing use of buildings or other land is lawful may make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2)(a) of the 1990 Act specifies that for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
4. The time limit relevant for taking enforcement action under s171B(3) of the 1990 Act regarding the use of buildings or other land is the end of 10 years beginning with the date of the breach. The ground under which the appellant applied for the LDC was that the use began more than 10 years before the date of the application.

5. The appellant therefore needs to show, on the balance of probability, that the use of the land as a garden had existed on a substantially uninterrupted basis for at least 10 years by the date of the application for the LDC, which was 17 April 2019. Consequently, the evidence to support that claim needs to date back to at least 17 April 2009. The burden to make out the case rests with the appellant.

Reasons

6. The appellant's evidence comprises three emails and a letter from local people as well as five Google Earth aerial photographs dated from 1999 to 2015.
7. Regarding the former, Mr Moore, the previous owner of The Belvedere, says he planted about six trees in "*the field*" 14 years ago, erected a timber swing about 12 years ago and kept a caravan there from about 2001. Mr Bessant, the next door neighbour, says that in the 20 years he's lived here the land has been used for various domestic activities including those mentioned by Mr Moore and not for any agricultural activity. Mr Cooper, who the appellant states has for many years rented the adjoining meadow to the east of the site, confirms that "*the paddock*" was used by Mr Moore to park his camper van and that he planted a few trees on its lower level; that it was used to graze a couple of ponies some years ago; it was mown by Mr Moore two or three times a season; and that a large marquee has been erected on it for a few large family functions, all within the last ten years.
8. The Google Earth photos are dated 1999, 2005, 2014, 2015 and 2017. The 2005 photo shows a hard surface track and what appears to be a camper van parked on the north part of the site, together with some other planting or possibly outbuildings although the image is unclear. The 2015 and 2017 photos also show that a camper van or possibly a caravan or other structure was sited in a similar location near to the northern boundary. But there is no sign of such a vehicle or structure in the 2014 photo, albeit there may possibly be a hardstanding or some flower or vegetable beds in this location.
9. The statements of Mr Moore and Mr Cooper refer to the land as a field or a paddock, which imply it isn't or wasn't part of The Belvedere's garden in the last 10 years. It is not uncommon for vehicles including caravans to be parked on agricultural land, but the temporary or on-off parking of a single caravan or camper van is certainly not sufficient to materially change the use of an agricultural field. Besides, neither the above statements nor the photographic evidence demonstrate, on the balance of probabilities, that the storage of such a vehicle or structure has occurred for a continuous 10 year period.
10. I note that several of the photos appear to show a swing located in the north east corner of the site, in approximately the same position where the current swing is. But I cannot see any such swing on the 2017 photo nor on the 2005 photo and so these photos are not proof of its continual presence for 10 years. In any case, the presence of such a swing combined with the camper van on the northern part of this large site is insufficient to demonstrate its lawful use as a garden. The erection of a marquee on a piece of land for a short temporary period would not require planning permission and consequently is not evidence of any material change of use. The indication that the land was used to graze ponies is essentially confirmation that it was not used as a garden at the time.

11. I noted on my visit the chicken shed structure, chicken enclosure and raised vegetables beds near to the close boarded fence running along the site's northern boundary, as well as the ornamental trees/shrubs planted on the lower part of the site. But the chicken shed and vegetable beds are clearly a more recent addition to the land since they are absent from the Google Earth photos. The planting of a few ornamental trees/shrubs is insufficient to change the lawful use of the site from agriculture to garden since such planting is immaterial to the land's use.
12. I acknowledge that the land appears to have been mown with the rest of the lower part of The Belvedere's main garden recently and that the boundary fence between the property's main garden and the site is now largely missing. But that did not appear to be the case from the 2017 aerial photo, where the site is of a different colour and appearance to the main garden of the house.
13. Agricultural land does not cease to have a lawful use for agriculture just because no commercial arable or pastoral farming occurs on it. The onus is on the appellant to prove that this land has been used as an extension to his garden continuously for 10 years preceding the date of the application. But all that he has succeeded in proving is that a small part of the northern half of the site has had a swing installed and a camper truck parked on it for a period of less than 10 years. Neither are sufficient to demonstrate, on the balance of probabilities, that the whole site has been continuously used as residential garden land for a period of at least 10 years prior to the date of the application.
14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land as a garden 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.

Nick Fagan

INSPECTOR