
Appeal Decision

Site visit made on 29 September 2020

by D H Brier BA MA MRTPI

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

Decision date: 15 October 2020

Appeal Ref: APP/M1005/X/20/3253066

10 Main Road, Whatstandwell, Matlock, Derbyshire DE4 5HE

- 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 D Unsworth and Ms J M Gadie against the decision of Amber Valley District Council.
 - The application Ref AVA/2020/0243, dated 7 March 2020, was refused by notice dated 5 May 2020.
 - 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 for private purposes incidental to the residential occupancy of 10 Main Road, Whatstandwell.
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Decision

1. The appeal is dismissed.

The Appeal Site and Background

2. The appeal site is a roughly rectangular area of land lying to the south and south-east of the rear of No.10 Main Road. To the east it borders onto the rear gardens of 2 of the neighbouring properties, 'Summerfields' and 'Borrowdale'. To the south-west and south-east it is flanked by the Cromford Canal and beyond the site's south-eastern boundary is a field.
3. There are tree belts alongside the canal and the site's south-east boundary, but save for a small vegetable patch, covered wood piles and some border planting on the south-western edge of the land alongside a wall which separates the site from No.10's rear garden, and a timber shed just inside the south-eastern edge of the site, the majority of the land is open and down to grass.
4. Planning permission was granted for the change of use of land to the south-east side of No.10, that is between it and 'Summerfields', from agricultural to domestic curtilage¹ on 18 December 2012². A further planning permission was granted for a 2 storey side extension to No.10 on this land on 6 April 2013³.

¹ As noted in the appellants' submissions, 'curtilage' is not a land use – it is a term that describes the relationship of land to a building.

² Reference AVA/12/0995.

³ Reference AVA/13/0325.

Reasons

5. In order for the appeal to succeed it has to be shown that the use in question commenced more than 10 years before the date of the LDC application and has continued without significant interruption throughout the subsequent 10 year period. In the light of this, the relevant date is 7 March 2010. The test for the evidence is the balance of probability, and the Courts have held that in cases such as this, the onus on proving it lies with the appellants.
6. The north-eastern part of the site adjoins the land for which planning permission was granted in 2012. Condition 2 of that permission required the provision of boundary treatment here, but this has not been carried out. As a result, save for the presence of the extension approved in 2013, there is no physical demarcation between the land included in the 2012 application and the appeal site. But, while there appears to have been a recognition that the 2012 application site constituted domestic curtilage, albeit 'curtilage' is not a use of land, no such claim has been made insofar as the appeal site is concerned. Nor is it argued that the use in question does not involve development by virtue of the provisions of section 55(2)(d) of the 1990 Act.
7. Moreover, although the term "*use of land for private purposes*" used in the LDC application is cross-referenced to the residential occupancy of No.10, this is a somewhat abstract concept. It does not translate readily into an actual land use. That said, insight into the manner in which the site has been used can be gleaned from the appellants' submissions and associated supporting evidence. This includes: 31 pages of annotated photographs; a statutory declaration by the appellants, to which some of the photographs, together with 2 representations by neighbours, are appended; and the Design and Heritage Statement which accompanied planning application ref. AVA/12/0995.
8. The photographs referred to above span a period from 5 February 2009 through to 25 December 2019. As well as providing an indication of the condition of the land in early 2009 – rough grass flanked in places by brambles and the like – they show children playing on it and various functions being held there. Also discernible on the photographs are items such as football goal posts – a set was present on the land when I carried out my site inspection – and picnic benches, one of which was also present near the canal bank.
9. According to the appellants, the use in question commenced immediately after the land was acquired on 4 February 2009. Since then it has been used by the appellants' family on a daily basis for purposes incidental to the occupancy of No.10. Their Statutory Declaration notes that following the purchase of the land, it was cleared of grass and weeds which, "*rendered it part of our effective garden area*". In addition, the text accompanying the 31 pages of annotated photographs includes various references to "*garden activity*" and the use of the land as a "*garden*".
10. From what I saw, together with the photographic evidence put forward, I have reservations as to whether the appeal site as a whole can reasonably be regarded as a garden. In this respect, I note that The Cambridge Dictionary defines "*garden*" as "*a piece of land next to and belonging to a house, where flowers and other plants are grown, and often containing an area of grass*". Similarly, in The Chambers Twentieth Century Dictionary, the definition is, "*a piece of land on which plants are cultivated adjoining a house*".

11. Mindful that common to both these definitions is the process of the growing or cultivation of plants and the like, my view is that, save for the fairly modest sized vegetable patch – I estimated it to be about 7m long by some 1.5m deep – and the border planting, both of which are on the north-west edge of the land, the rest of the site does not display these characteristics, even when the tree planting near the canal that was pointed out to me is taken into account. Moreover, judging by the dates on the photographs, such cultivation that has occurred on the land appears to have taken place after the relevant date, not prior to it.
12. There is no suggestion that any agricultural use that the land may have had in the past persisted after its acquisition by the appellants. It is also apparent from their evidence that the land and a good deal of its fringes have been tidied up since 2009. Indeed, I saw that the condition of the land contrasts markedly with the somewhat unkempt appearance of the neighbouring field to the south-east. Be that as it may, my impression was that the land still appears as a field, albeit one that has been improved.
13. I acknowledge that there have been elements of domesticity present on the land such as the picnic benches, the wood stores and a compost heap, together with what is referred to as 'garden paraphernalia'. But even if these items did alter the character of the land to a certain degree, judging by the dates on appellants' photographs, the evidence of their presence is all after the relevant date. The same applies to the various functions that took place on the land shown on the photographs. And, while I assume that what is described as a "domestic store shed" is the timber shed referred to in paragraph 3, no indication of how long it has been present on the land has been put forward.
14. The land is clearly managed and maintained, and I accept that this appears to have been the case for some time. However, I am not inclined to attach much weight to these attributes as strong indicators showing that a material change of use had occurred. In my view, the nature of these type of activities falls short of demonstrating that the use of the land changed from a field to incidental to the residential occupancy of 10 Main Road.
15. There is unchallenged evidence that the appellants' children have used the land as somewhere to play since 2009 and that this continued as they grew older. I also note that a photograph dated 28 June 2009 shows a miniature football goal on the land, and a larger set of goal posts, possibly the one I saw, can be seen on some of the later photographs. I acknowledge that the use of the land by the appellants' children points to a relationship of sorts with the residential occupancy of No.10. But even if this was a regular or daily occurrence, as is stated, I am inclined to regard this as an essentially casual activity which in itself was not sufficient to materially alter the character of the land.

Conclusion

16. Appellants are often best placed to provide evidence concerning the nature, extent and manner in which activities on land have taken place over the years. I am also mindful that the Council have produced no evidence of their own that serves to contradict or otherwise call the appellants' evidence into question. Nevertheless, the circumstances of this case are such that I am not satisfied that it has been shown there has been a material change of use, or that the evidence is sufficiently clear and precise to justify the grant of a LDC on the basis that on the balance of probability the use commenced more than 10

years before the date of the LDC application. The burden of proof that lies with the appellants has not been discharged.

17. For the reasons given above, and having regard to all the other matters raised, I am satisfied that the Council's refusal to issue a LDC in respect of the use of land for private purposes incidental to the residential occupancy of 10 Main Road, Whatstandwell was well-founded. I shall therefore exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D H Brier

Inspector