



Appeal Decision

Site visit made on 11 November 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2020

Appeal Ref: APP/V1505/X/20/3256239

12 The Rowans, Billericay, Essex CM11 2PB

- 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 Geoffrey Wheatley against the decision of Basildon Borough Council.
 - The application Ref 17/01738/LDC, dated 20 November 2017, was refused by notice dated 20 April 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 as an extension to the private garden, is now lawful having been used for this purpose for in excess of 10 years".
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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 require planning permission 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. The land subject to this appeal is at the end of the rear garden. It is necessary to consider whether, on the balance of probability, the use of the land as part of the rear garden has continued for a period of ten years or more prior to the date of the application, that is from at least 20 November 2007, 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. The appeal site is roughly square-shaped. The appellant claims that the land was neglected and untidy and was cleared in 2000, then used as additional residential curtilage. From my visit I noted the presence of garden furniture, play equipment, a shed, timber decking, planted beds and a mature tree on the land. I am in no doubt that the land, the subject of the appeal, currently has the appearance of being used for recreational purposes as part of the garden.

5. Various statutory declarations have been provided by family members and friends, in support of the appeal. These declarations refer to knowing the appellant as the owner of the property and knowing the use of the site, either from having lived at or visited the property. It is apparent that not all of those making declarations claim to have known the site for the entire ten-year immunity period (that is November 2007 – 2017). However, notwithstanding this, of paramount importance in order to give credibility to the claimed garden use of the land, is that it would reasonably be expected that declarations would specifically refer to such use. In this case the declaration providers, whilst claiming to be aware of the use of the land, have not actually specified what in their view that use is or for how long the use has endured. Nor have they set out the basis for such views.
6. The Council has referred to a procession of aerial photographs taken at various times between 1999 and 2017. It says that only in the most recent photograph from 2017 is the change of use to garden evident, with the site appearing to be forested as part of the adjacent woodland in earlier photographs. The Council therefore suggests that the change of use has occurred since 2013. Whilst I concur with the appellant that the tree canopies in the earlier photographs may be concealing the actual use of land beneath, neither do the photographs positively weigh in favour of the garden use actually occurring. I am unable to conclude solely from these photographs, or indeed from aerial photographs provided by the appellant, dated 2010 and 2018, that the land subject to the appeal has, on the balance of probability, been in garden use for the necessary immunity period.
7. 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."*
8. Despite a lack of evidence from the Council to contradict the appellant, and the claim that nobody, other than the appellant (or his spouse), has maintained the land, for the above reasons I am not persuaded that the appellant's evidence, as set out in the various statutory declarations and aerial photographs, is sufficiently precise and unambiguous to reach a reasoned view, on the balance of probability, as to when the appearance and use of the land as a garden first commenced, or to conclude that it continued in such use after this time. I am not therefore persuaded that the information and evidence provided by the appellant satisfactorily demonstrates, on the balance of probability, that the appeal site has been in continuous garden use for the entire 10-year immunity period.
9. Therefore for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "Use of land as an extension to the private garden, is now lawful having been used for this purpose for in excess of 10 years" at 12 The Rowans, Billericay, Essex CM11 2PB 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