



Appeal Decision

Site visit made on 2 December 2020

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2020

Appeal Ref: APP/M1710/X/20/3254206

Land North of 10 Kings Hill, Beech, Alton GU34 4AL

- 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 Allen Taylor against the decision of East Hampshire District Council.
 - The application Ref 30797/028, dated 30 January 2020, was refused by notice dated 9 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 is sought is described as: Use of land for residential amenity use (C3).
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Summary of Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal concerns the lawfulness of the appeal site for residential amenity use. It is then stated on the application form that this is seen as being an extension to the garden of 10 Kings Hill. However, as the site is physically separate, it cannot be an extension to the garden and therefore I proceed to determine the appeal based on whether the residential use of the appeal site would be lawful. This is consistent with how the appeal application was first described by the appellant. Moreover, the appellant does not claim the land to form part of the curtilage of the dwellinghouse.
3. The parties are content that the appeal can proceed by the written representation procedure. I have no reason to disagree and so will proceed to determine the appeal on the basis of the written evidence before me. As this appeal concerns lawfulness, planning policy considerations do not apply.

Main Issue

4. The main issue is whether the Council's decision to refuse a certificate of lawfulness for the residential use of the land is well founded.

Reasons

5. In cases such as this the onus is on the appellant to demonstrate, on the balance of probabilities, that the use has continually subsisted for a relevant

- period, being at least 10 years prior to the submission of the certificate of lawfulness.
6. The site historically formed part of a brickworks and a lake has since been created. There has been an agricultural use on parts of the wider land associated with 10 Kings Hill and in more recent times planning permission granted for three detached dwellings¹. That planning permission related to dwellings now situated between the appeal site and the dwelling at 10 Kings Hill. According to the Council, that dwelling is more than 100m away from the appeal site.
 7. In considering lawfulness it is necessary to first establish the planning unit. To this effect the Statutory Declaration of Mr Allen Taylor demonstrates on the balance of probabilities that he and his partner purchased 10 Kings Hill and associated land and buildings in 1998. There is therefore common ownership between that dwelling and the identified appeal site. However, the site is an otherwise physically and functionally separate parcel of land and so in my view forms its own planning unit. This is again consistent with how the appeal application was first described by the appellant.
 8. It is said by the appellant that he was made aware when purchasing the property that previous owners made use of land to the north of the lake for residential amenity use. This is however a vague and ambiguous statement that I afford little evidential weight. It is also said that there were already a number of structures located on the site and that it was overgrown. The site was then cleared of vegetation and the lake dredged along with fencing erected to separate paddocks from the lake and what he considered to be the residential amenity area.
 9. It is then said that since the purchase the appeal site has been maintained as such and used on an almost daily basis in the summer months as the principle garden to 10 Kings Hill and for family parties and events with friends. This however amounts to broad as opposed precise descriptions of use, which are accordingly vague and ambiguous.
 10. Over the years, additional structures have been erected which are said to be of a residential nature. I could see during my site visit that there are indeed a number of such structures as well as a hardstanding at the site. The lawfulness of the specific operational development is not a matter before me, however, details of when building works were undertaken have been provided by the parties and these are instructive in assessing the evidence pertaining to the use of the site.
 11. It is therefore said that a toilet building was erected in 2008/9 and a BBQ structure in 2013. I could however see during my site visit that the toilet building amounted to an extremely small prefabricated metal structure. There is what is said to be a caravan, referred to as a lodge, which has been stationed at the site since 2017. A yurt on top of decking was then also erected in February 2018, although the yurt was not present at the time of my site visit. There is no evidence that the Council has taken any enforcement action against the operational development or caravan at the site.

¹ Council Ref 30797/018

12. The evidence of the appellant describes some residential use being made of the appeal site. However, many of the activities are transient in nature as the Statutory Declaration of Mr Allen Taylor demonstrates on the balance of probabilities that these only took place during the summer months. This therefore casts considerable doubt in my mind as to the continuity of the claimed residential use.
13. Moreover, aside from the extremely small toilet structure from 2008/9, the evidence of building works relates to the period from 2013. In my view, this evidence demonstrates on the balance of probabilities a material change in the presence of residential structures and with it the associated residential character of the site, from that of the transient summer uses broadly described. The appellant has therefore not discharged the necessary burden of proof in terms of a material and continuous use of land for a relevant period of at least 10 years.
14. There are four further Statutory Declarations provided but these are very similar in structure and content; and some contain the same typographical error. They therefore do not materially contribute towards the quantum or weight of evidence before me, other than to corroborate the broad assertions.
15. In addition, the evidence demonstrates on the balance of probabilities that a caravan, referred to as a lodge, was stationed at the site in 2017 and which is occupied by the appellant's father, Mr B Taylor. The evidence concerning the nature of this occupation is very limited, but even if I were to accept that the caravan was part and parcel of the same residential land use, it has in itself not been stationed at the site for a relevant period.
16. That the Council is unable to directly refute the appellants assertions does not add weight to them. It remains the case that his evidence alone must be sufficiently precise and unambiguous to justify the grant of a certificate. Based on the totality of the appellants evidence, which also includes aerial photographs and other correspondence, I am not satisfied on the balance of probabilities that the appellant has demonstrated the claimed use for a relevant continuous period.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use 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.

Formal Decision

18. The appeal is dismissed.

Paul T Hocking

INSPECTOR