



Appeal Decision

Inquiry Held on 8 December 2020

Site visit made on 9 December 2020

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 15 January 2021

Appeal Ref: APP/X1165/X/19/3234809

Labrador Lodge, Rock House Lane, Maidencombe, Torquay TQ1 4SX

- 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 Christian-Frederick Von Conzendorf-Mattner against the decision of Torbay Council.
 - The application Ref P/2016/1128 dated 12 October 2016, was refused by notice dated 10 April 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 for residential dwelling (C3), access drive and garage pad.
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Procedural Matters

1. It was agreed at the opening of the inquiry that the description of the development should be for a certificate of lawfulness for use of the land for the siting of a mobile home for residential purposes and use of associated curtilage and access drive. It was also common ground that the siting of the mobile home has an extant certificate and in itself is not an issue for this appeal.
2. Subsequent to the issue of the LDC for the mobile home, enforcement action was taken by the council relating to the use of the land around the mobile home. Unfortunately, for reasons explained by the appellant there was no valid appeal made in relation to this and those notices are now extant.
3. However, this appeal is in relation to the LDC and the relevant date is before those enforcement notices, so they have no effect upon the actual appeal decision, which is decided on the date of application, but it is a matter to be considered in the costs application.

Decision

Application for costs

4. At the Inquiry an application for costs was made by Torbay Council against Mr Christian-Frederick Von Conzendorf-Mattner. This application is the subject of a separate decision.

Reasons

5. There was a licence agreement made in 1985 between the appellant and Mr Hunt for the purpose of a private garden, and non-permanent fences were to be erected; this continued until 2015. However, a licence agreement does not itself give planning permission for that use, nor does it demonstrate that use has taken place; it only shows intent. An instance is that a fence required by the licence was not in place to divide the field for most of the time, so because it is written down does not mean it has taken place.
6. The licence agreement also has a plan to show the extent of the land that was included within the agreement. The new boundary line approximately lines up with a shown boundary a little to the side of Ferndale. The line appears to be approximately an extension of the shown Ferndale boundary across the appeal site. The field the licence land is separated from has its own access at the top end from Rock House Lane.
7. In terms of 'Burdle' the land ownership has remained the same since the appellant purchased the property in the 1980s and the licence was by Mr Hunt the licensee for its duration until about 2015.
8. Google Earth aerial photographs of January 1999 suggests that boundary was roughly adhered to with the ploughed field area having a different appearance from the appeal site. There appear to be what has been described as poly tunnels on the agricultural land.
9. The Google photograph of 2006, which is a little before the latest 10 year period before the certificate application, shows that this boundary now seems to be more vague with some encroachment over the licence boundary line, but not significantly so. There is still evidence of the polytunnels which appear to be mainly on the land outside the licence site area.
10. The next aerial photograph dated April 2007, which is a little after the latest 10 year period before the application date, shows that there appears to have been some more encroachment outside of the licence area. The poly tunnel has been moved but appears to still be on the land outside of the licence area.
11. The aerial photograph in August 2016 show a considerable change. There is a greater amount of encroachment into the adjacent land from the licence area, which is reasonably defined in part by the difference in surface texture, but the 'boundary' away from the mobile home, where the polytunnels were sited, is still vague.
12. Firstly it is evident, on the balance of probability, from the sequence of events that much of the land included within the redline application has not, even on the appellant's evidence, been in a residential use for 10 years. Much of it has been encroached upon after 2006, as can be seen from the later photographs. Secondly the boundary between what is claimed as residential land and the agricultural land has not been well defined.
13. Secondly the appellant noted that whenever he had an issue with the way Mr Hunt was using the land, such as not maintaining hedgerows or using his field without permission, he or his agents would contact Mr Hunt to rectify matters relating to non-compliance. This clearly indicated that the use of the land at least outside the licence land varied with the land beyond and was not fixed. It is noted the fence was not provided even though requested.

14. Thirdly, there is little evidence as to the use of the land. The polytunnel use, and area round about, in particular, has not been fully identified. These appear not to be on the licence land but the adjacent agricultural land in the beginning, which would seem logical for poly tunnel structures. Latterly they would be within the red line area claimed by the appellant. In that case much of the land claimed is likely to have remained agricultural for well into the 10 year period.
15. I appreciate that there have been difficulties between the appellant and Mr Hunt and that the appellant has been unable to obtain the names of various occupants of the mobile home and hence the lack of evidence related to actual usage of the land. However, it is not for the Council to call witnesses on the appellant's behalf. It is for the appellant to prove his case on the balance of probability.
16. At the site visit and looking at some of the photographs, it is clear that the entrance from the steps up from Rock House Lane was a major entrance. There is a bell and post box. Looking at the older photographs the route to this entrance is well worn, indicating considerable traffic. Conversely the route from the other entrance at the bottom end of the site is not well used. The first aerial photograph with any sign of usage is in 2010 and that is only into the site up to about the poly tunnel position.
17. There is an undated photograph that shows the lower entrance with a wooden gate prior to the current entrance being formed. It is not a good vehicular entrance. There is a worn track that is more the width for pedestrians or animals, it is quite steep up into the site, but more importantly is steep from both sides down to the width of the track, forming a very complex surface for a vehicle. On the balance of probability this is not an access readily used by vehicles normally associated with residential use. In my opinion, it would even be difficult for use by a four wheel drive off-road vehicle. It is much more likely to be associated with agricultural use for animals or tractors and there is little indication of regular use on the early aerial photographs. It is my view on the balance of probability that this only became suitable for normal residential use after the works by the appellant, which would have been much more substantial than simply adding some form of aggregate.
18. I have taken into account the fact that the appellant or his agent went to the site most years and saw some vehicles. That is a limited number of times and there is no evidence of this in photographs indicating that it might be usual, and we do not know the reasons such vehicles would have been on site, so I attach little weight to that.
19. There was some discussion about parking for the mobile home, but there is no real evidence to form a view on. It seems, as the pedestrian entrance was at one time the major entrance, that parking would be near here and possibly on land associated with Ferndale. However, even if there were no parking, it does not mean the other entrance was a vehicular access associated with the appeal area.
20. I have considered the argument that effectively there must have been an area around the mobile home that was used by it in association with the use of the mobile home. I think that is a valid argument, and particularly land between it and the steps and pedestrian access must have been associated with it. However, what has not been demonstrated is that all of the red line area has

been associated with it including the area of the red line beyond the licence area and the land at the lower part of the site. When it is a matter of law it is not reasonable to have to effectively guess where the residential boundary should be, it is for the appellant to demonstrate on the balance of probability where it should be.

21. However, I consider on the balance or probability, on the evidence of usage, position of steps and post boxes etc, the appellant has demonstrated it is reasonable to extend the residential area to include access to the steps and a small area by the mobile home. The appellant argues that he can put a larger structure on the site, that would still be classified as a mobile home, and that would extend the size of the site permitted in the LDC. I have some difficulty with that argument, where the use of the land is related to the actual use that can be demonstrated to have taken place, if that usage did not allow siting of such a structure.
22. The pad to the side of the mobile home is located on the area of land possibly a little on the licence land area and on the land beyond the licence area. It is on the land where the usage is vague and not established on the balance of probability for 10 years.
23. I acknowledge and sympathise with the appellant's medical condition, but an LDC is a matter of law and not a situation where planning judgements can balance such matters.
24. There is also some argument about the works forming the pad and access improvements and surfacing being permitted development. The formation of a pad or works to the access would be identified, because of the extent of operations, as engineering works that would require planning permission. The area even if accepted as being associated with the mobile home would not have the usual permitted development rights of a dwelling house. It was also put in relation to agricultural land, but for that the land would have to be over 0.4 hectares and there would have to be a need demonstrated. I do not accept the argument of permitted development.
25. Overall, in terms of the planning unit, considerable weight is given to the occupation of the unit, but the physical definition of the unit is not reasonably precise, with the boundary to the field not being at all well defined. The use of the land is also not well described. Overall, it is not possible to conclude that the whole of the red line area should be the 'planning unit', or used residentially, but that a much smaller area is likely, based on the evidence and on the balance of probability. However, it is not possible from the information presented to reasonably decide where the extent of the planning unit should be, apart from a small extension to allow for the pedestrian access from Rock House Lane.

Graham Dudley

Planning Inspector



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 date of application the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown hatched 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 appellant has demonstrated on the balance of probability that the land shown hatched on the plan attached to this decision has been used for the siting of a caravan/mobile home and used for residential purposes, for more than 10 years prior to the date of application.

Signed

Graham Dudley

Planning Inspector

Date 15 January 2021

Reference: APP/X1165/X/19/3234809

First Schedule

Use of the land for the siting of a mobile home for residential purposes

Second Schedule

Land at Labrador Lodge, Rock House Lane, Maidencombe, Torquay TQ1 4SX

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan at the time of application. Any use 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: 15 January 2021

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

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Scale: nts

