



Appeal Decision

Site visit made on 1 March 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29th March 2021

Appeal Ref: APP/W4325/X/20/3261118

Sandymount Broad Lane, Heswall, Wirral, CH60 9LE

- 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 Peter Rainer against the decision of Wirral Metropolitan Borough Council.
 - The application Ref LDC/20/01057, dated 6 August 2020, was refused by notice dated 6 October 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 the use of the land for domestic purposes ancillary to the enjoyment of the dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form described the existing use as "Residential curtilage to be extended to the site boundary" and the First Schedule of the refusal notice refers to the use of the land as domestic curtilage. Curtilage is the area of land around a building and not a use of land, and the application form and refusal notice are therefore inaccurate in this respect. However, the appeal form and the reason given on the refusal notice both refer to the use of the land "for domestic purposes ancillary to the enjoyment of the dwellinghouse". I shall therefore deal with the appeal on the basis that the certificate is sought is for "use for domestic purposes ancillary to the enjoyment of the dwellinghouse known as Sandymount".
3. Paragraphs 5.9 and 5.10 of Council's statement refer to Mr Barnes/Baines but I have not seen any evidence submitted either during the appeal or the application by Mr Barnes/Baines. The Council's evidence also refers to Google Earth 2D and 3D images but I have not been provided with copies of these images as part of the submissions.

Main Issue

4. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well founded. That turns on whether the appellant can show, on a balance of probability, that the land had been used for domestic purposes ancillary to the enjoyment of the dwellinghouse for a substantially

uninterrupted period of 10 years prior to the date of LDC application (6 August 2020).

5. The parties differ in their views as to whether the area identified in the LDC application is part of the curtilage of the dwellinghouse known as Sandymount, and has been used for domestic purposes ancillary to it. The appellant's case is that all of the land is in the same ownership (registered under title number MS499065) and is part of the curtilage of Sandymount whereas the Council does not accept that the land has one use but rather is a dwellinghouse with garden and with other areas in separate uses i.e. the orchard and paddock.
6. In summary, the appellant states that the land has been in use as a single plot since at least the 1970s. The evidence submitted on behalf the appellant is unsworn and contradictory in terms of dates of various uses and works on the site. The previous owner had lived in the house herself between 2014 – 2018 but had visited since 1970 as it was owned and occupied by other family members. She states that she and her daughter kept horses on the paddock area between 1970 and 2000, but her evidence is not clear about whether there were horses kept on in after that date. Mr Call, a neighbour since 2013 but who had undertaken maintenance at Sandymount since 1998, stated that there had been horses at the site until a few years before 2013. However no one has said that there had been horses kept on the site in the last decade or so.
7. It seems likely, based on the information submitted by the appellant, that extensive works were undertaken to the land and house in around 2014 immediately before and after the previous owner moved into the dwellinghouse. The appellant's case is that the fence between the lawned garden area of the land and the paddock area was erected around that time. The property and land had been unoccupied and had become overgrown and near derelict in the years immediately prior to 2014, but it is not clear from the evidence how long this period lasted. There are contradictions in the appellants' submitted evidence regarding the dates that various physical works took place on site but it does appear that a lot of work including the extension of the dwelling, the current fencing of the paddock area, the planting of the orchard and the provision and then relocation of the stables took place at various times between around 2014 and 2018.
8. The gist of the Council's case is that the appellants have not proven that the whole of the planning unit has been in use for domestic purposes ancillary to the enjoyment of the dwellinghouse. The Council accepts that the land identified in the LDC application has been in a single ownership for many years but do not accept that this is sufficient in itself to prove that the whole plot forms the curtilage to the dwellinghouse and therefore part of the residential use.
9. It is also not clear from the evidence the extent to which the curtilage extended historically, in part due to the extensive works set out above. However, the site overall is large and the paddock area had previously been used to stable horses belonging to people who did not live at the property (albeit relatives of the occupier) and had then been allowed to become extremely overgrown. These facts indicate uses other than residential. The appellant's evidence is that after 2014 the paddock area was mowed by a tractor several times a year at most, in contrast to the orchard and garden areas adjacent to the house

which were more tidily kept. It was clear from the evidence submitted and from my observations during the site visit that different parts of the land are currently laid out and used in varying ways including garden and field, and that this arrangement has been in place since at least 2016 and possibly even 2014. The evidence provided by the appellant shows that the overall site comprises two or more physically separate areas which have been used for different purposes, although the precise size and use of these areas has altered through time. It has not been shown that the use of the field/paddock in this case has been part and parcel of the dwellinghouse use for a substantially uninterrupted period of 10 years.

10. 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 land for domestic purposes ancillary to the enjoyment of the dwellinghouse 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.

Zoë Frank's

INSPECTOR