



Appeal Decision

Site visit made on 14 April 2021

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2021

Appeal Ref: APP/J1535/X/20/3261435

Land to the north side of The Harvest, Mill Street, Hastingwood, Nr Harlow, Essex CM17 9JG

- 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 Colin Blayney against the decision of Epping Forest District Council.
 - The application Ref EPF/0990/20 CLD, dated 5 May 2020, was refused by notice dated 23 July 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 to establish that 'a parcel of land purchased in 2007 has and still is being used as our extended garden, title deeds enclosed confirm date of purchase and provides evidence of ownership'
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Decision

1. The appeal is allowed, and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Procedural Matters

2. The appellant refers to the description of the existing use by the Council in its decision notice being different from what he applied for. The description which the Council used is as follows:

'Certificate of lawful development for existing use of land as domestic garden'

The appellant is concerned that this description does not reflect earlier advice relating to the need to regularise the use of the land as part of the residential curtilage of The Harvest. However, residential curtilage is not a use in planning terms, whilst the description of use of land as domestic garden is accurate as it relates to the use of land for residential purposes. The appellant also makes it clear, in his appeal submissions that he is arguing that the land has been continuously used as residential garden. Consequently, I have determined the appeal on the basis of the description set out on the Council's decision notice.

3. In response to a question from me the Council confirmed that due to an administrative error the decision notice reasons did not copy over when the decision was issued. An amended decision notice has been sent to the appellant. The Council's delegated report which forms part of the appellants

submissions makes it clear why the Council refused to issue a certificate and the appellant has addressed those reasons in his appeal. Therefore, the appellant is not prejudiced by the submission of the complete copy of the decision notice and I have determined the appeal on the basis of the reasons set out in the notice.

Main Issue

4. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded and the onus is on the appellant to demonstrate that the development for which the certificate is sought was lawful at the date when the application for the certificate was made.

Reasons

5. The appellant has set out in his application form that he is seeking a certificate for an existing use as extended garden. Under the terms of section 171B(3) of the Act, where there has been a breach of planning control consisting of a change of use of this type, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
6. The application was made on 5 May 2020. This does not define the end date of the relevant ten year period, but the appellant must demonstrate that the use has been carried out for a continuous period of ten years and subsequently for no other use in order to show that the time for enforcement action had expired by that date.
7. The appellant says that he purchased the land for which the certificate is sought in 2007. He purchased more land in 2013 but this falls beyond the area identified in the application site plan and it does not fall to be considered as part of this appeal. The appellant has submitted a sworn affidavit which says that the land which is referenced by the land title number has been used continually as his garden land for more than 10 years. Furthermore, he has provided a letter from one of his neighbours who has lived in his house near The Harvest for 38 years. The neighbour confirms that the land was purchased in 2007 in order to extend the garden and that it has been used in this way ever since.
8. During my site visit I observed that there were a number of buildings on the land including sheds and a greenhouse and that vegetables and other plants were being grown. The land had the appearance of a domestic garden. There was no boundary feature between the land purchased in 2007 and the land purchased in 2013 and it appeared to me that some of the buildings straddled the boundary between these two areas. However, the appellant makes it clear that he sought a certificate for the use of the land only, therefore the lawfulness or otherwise of these buildings is not a matter before me.
9. The Council says that despite the sworn affidavit and the comments from the neighbour in support of the appellant, the appellant did not provide sufficient evidence to justify the grant of a certificate. Furthermore, the Council says that the earliest of its aerial photographs showing residential paraphernalia on the land is dated 2018.

10. The appellant has submitted further evidence which was not before the Council when it made its decision, however it could serve no public purpose for me to reject this information because the appellant could make a further application on the basis that evidence came to light after the Council's refusal. The Council has had the chance to consider the appellant's statement but decided not to comment.
11. The further evidence includes an aerial photograph of the site in 2009 which has been confirmed as taken on 23 June 2009 and which has been annotated by the appellant. This shows sheds, a greenhouse and vegetable garden on the site. This supports the description of the use of the site set out in the affidavit, by the neighbour and is consistent with my observations during the site visit.
12. In combination the evidence provided by the appellant in support of his application and the annotated aerial photograph are sufficiently precise and unambiguous to show that the use as a garden has taken place since 2009. There is no evidence to show that the use has not continued since that time or to contradict the appellant's version of events or make it less than probable.

Conclusion

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development was not well-founded and that the appeal should succeed in respect of the existing use of land as domestic garden at land to the north side of The Harvest, Mill Street, Hastingwood, Nr Harlow, Essex CM17 9JG.
14. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

FORMAL DECISION

15. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the use which is found to be lawful.

Sarah Dyer

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 5 May 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 land has been used as domestic garden for 10 years continuously prior to the date of the application and so the use is lawful under section 171B(3) of the above Act.

Signed:

Sarah Dyer
INSPECTOR

Date: 13 May 2021

Reference: APP/J1535/X/20/3261435

First Schedule

Use of land as domestic garden

Second Schedule

Land to the north side of The Harvest, Mill Street, Hastingwood, Nr Harlow, Essex
CM17 9JG

IMPORTANT NOTES – SEE OVER

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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

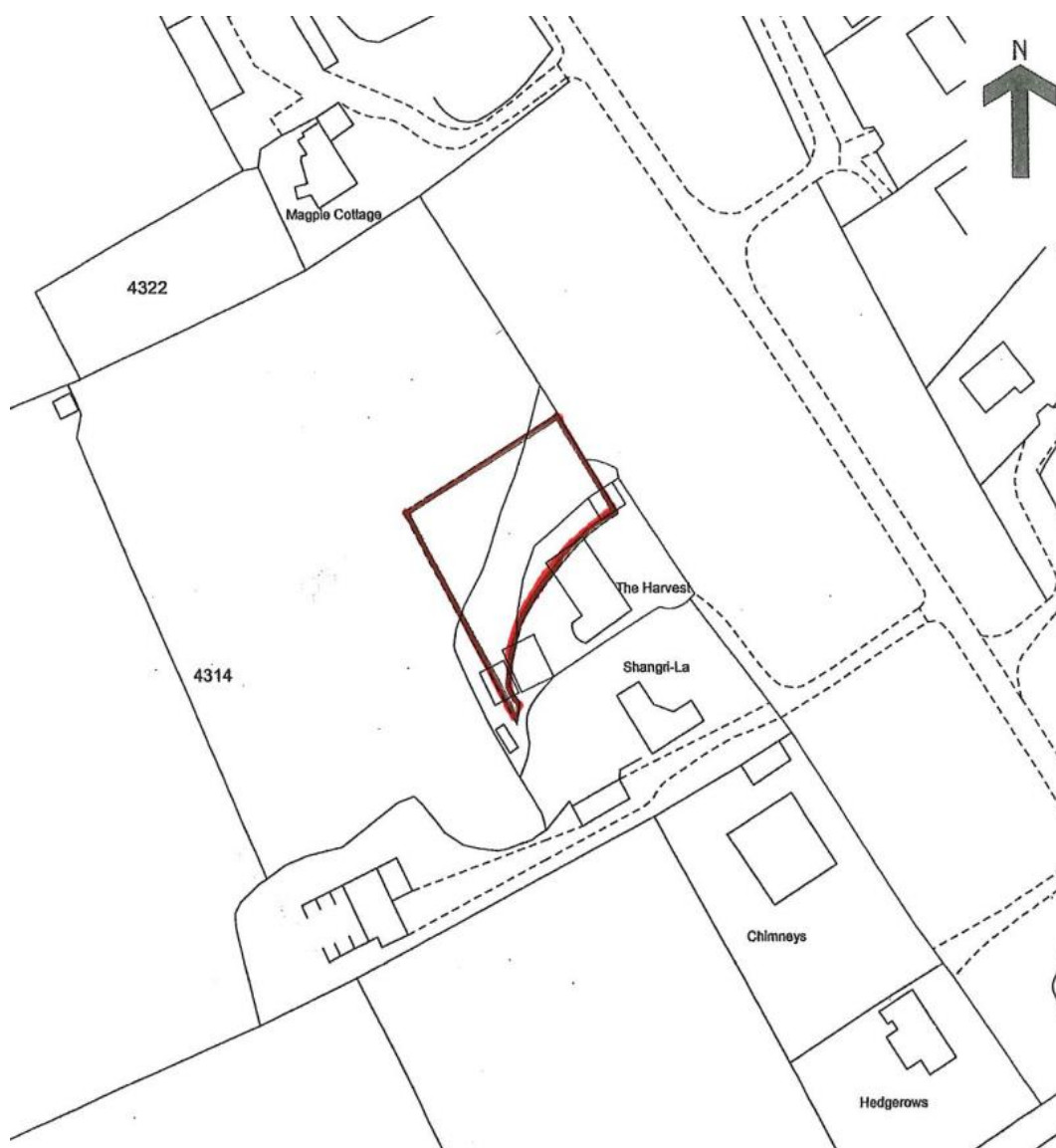
This is the plan referred to in the Lawful Development Certificate dated: 13 May 2021

By Sarah Dyer BA BTP MRTPI MCMi

At: Land to the north side of The Harvest, Mill Street, Hastingwood, Nr Harlow, Essex CM17 9JG

Reference: APP/J1535/X/20/3261435

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