
Appeal Decision

Site visit made on 3 June 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

Appeal Ref: APP/P2935/X/21/3268634

Pine Lodge, Old Swarland, Swarland, Northumberland NE65 9HU

- 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 Miss Rachel Frazer against the decision of Northumberland County Council.
 - The application Ref 20/03241/CLEXIS, dated 1 October 2020, was refused by notice dated 9 February 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use or which a certificate of lawful use or development is sought is 'existing vehicular access to Pine Lodge off B6345'.
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Decision

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

Preliminary Matters

2. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The planning merits, for example, relating to highway safety or character and appearance, are not relevant in deciding an LDC application or appeal.
3. The burden of proof regarding decisive matters of fact rests on the appellant. The Planning Policy Guidance (PPG) states that, in cases relating to an 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 probability¹.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a certificate of lawful development was well-founded.

Reasons

What is being applied for and the relevant time limit

¹ Paragraph: 006 Reference ID: 17c-006-20140306

5. The LDC application sought to establish the lawfulness of an 'existing vehicular access to Pine Lodge off B6345'. I note the appellant's argument, at paragraph 7.8 of her statement of case, that because the formation of the access was an engineering operation and did not constitute a material change of use, the relevant time limit for immunity from enforcement is four years. Notwithstanding this, at paragraph 7.13 of the statement, she states that 'the description for the application subject of this appeal is 'Certificate of Lawful Development of an Existing Use for vehicular access to Pine Lodge off B6345 (resubmission of 20/00570/CLEXIS)', which is the wording in the appeal form.
6. The PPG² states that an application needs to describe precisely what is being applied for, and the precise description in the appeal form refers to a 'use'. Therefore, for the appeal to succeed, the appellant needs to show that the access was in continuous use for a period of ten years or more on the date of the LDC application. The relevant period is therefore from 1 October 2010 to 1 October 2020, which is the application date.
7. The appellant confirms that improvement works to the access, including the entrance gates and boundary fencing, are excluded from the appeal. These works were the subject of planning application ref: 19/03839/FUL (the 2019 application), which was withdrawn. The planning officer's report states that the works that have been undertaken to the access have effectively removed the previous access and created a new access leading onto a classified road. Using the submitted images, the Council contend that the new access is very different to the previous access and is tantamount to the creation of a new access.
8. The appellant has submitted two photographs taken from Google Streetview, dated December 2008. At two different angles, these show a wooden gate, flanked by wooden fencing, behind which there is a wooden bridge leading onto the land. The changes to the access include a close-boarded timber gate and fencing, and the widening of the opening.
9. There is no dispute that the works that were the subject of the 2019 application took place within the 10 year timeframe for a use and the four year timeframe for operational development. However, although the physical appearance of the mouth of the access has changed, it appears to be in the same location as that shown in the 2008 pictures, with the effect of joining the road at the same point. That being the case, I am not able to agree that the 2019 application works amount to a brand new access. I shall therefore consider the appeal on the basis that a use subject to a ten year time limit for enforcement has been applied for.

Assessment

10. The appellant contends that the access has been in use since May 1980. As noted above, the 2008 photographs show a vehicle access, albeit of a different appearance. Tyre tracks are visible in both images, although on zooming in, the tracks do not appear to lead directly to/from the wooden bridge, but rather by-pass it. Furthermore, there do not appear to be any tyre tracks in the grassed area between the gate and the road, which would suggest infrequent use at this time.

² Paragraph: 005 Reference ID: 17c-005-20140306

11. I have had regard to the Google Earth image of 13 May 2009, but due to the tree cover and the blurriness of the image, it is difficult to discern anything of relevance from this picture. However, at her Appendix D, the appellant submits photographs that clearly show gravel tracks leading from the same wooden gate towards the dwelling. The gravel track looks well-kept and clear of weeds, suggesting regular use. Although they are not dated, she estimates that these photographs were taken in 2016.
12. In a statement that is signed, but not dated, the appellant says that she has used the access since she purchased the house in December 2017. Of the signed statements made on behalf of the appellant, two do not cover the full ten year period in question. The statement of Mr Jamie Grant says that as a delivery driver, he has delivered parcels in the area for the past seven years. He confirms that there has been a gate and a drive at the appeal site during that time, and he has also used the access to deliver parcels to the property.
13. The statement of Steven Gibson states that the gateway and access existed and were in use at least six years ago. Whilst he was building his house nearby, Mr Gibson was allowed by the previous owner, Mr Victor Taylor, to store building materials on his land and he used the gateway to gain vehicular access to the land. In addition, he attests that Mr Taylor used the access on a regular basis.
14. David Weatherhead says that Mr Taylor lived in Glen View for at least 16 years. Mr Weatherhead refers to the 'four bar farmer's gate', which Mr Taylor had to open to drive his car off the road onto his property. This detail is consistent with the style of gate shown in the photographic images of the entrance prior to the later works.
15. William Batey states that he visited Mr Taylor at his house on at least a weekly basis from summer 2004 until December 2016. He says that Mr Taylor used the access during that time, and requested that Mr Batey do the same on his visits. Mr Batey also makes reference to the laying of the gravel, saying that this was done in 2012 to keep the ground from getting too muddy.
16. In her letter, Julia Davidson explains that she has passed the appeal site on her way to work for the last 15 years. She confirms that there has been an entrance with a gate there during that time. She also refers to a car parked on the land, but she is not specific as to the exact location of this vehicle.
17. David Wilkinson's letter says that he visited Mr Taylor from around 2007 onwards. He was requested by Mr Taylor to drive through the access to get to the property, and he reiterates the information that Mr Taylor laid the gravel because of mud in the winter. Finally, local resident, Bernard Allan states that there has been an access to the south of Pine Lodge since 1980, and that Mr Taylor used this access to drive to his house.
18. These statements cannot attract the same weight as would statutory declarations. Nevertheless, the respondents give credible, clear and unambiguous accounts that are specific to what needs to be demonstrated. The details are consistent across the range of statements and with the other available evidence.
19. The Parish Council have submitted a representation confirming that some form of gated access has been present at the appeal site for many years. However,

they go on to say that, following enforcement action in the 1990s, the access has not been in regular use. They do not elaborate as to the nature of this enforcement action, and little information about it is before me. Moreover, the Parish Council provide no further facts or observations that have led them to assert that the access has not been in regular use for a period of time that now runs to decades.

20. Therefore, given the evidence and representations on behalf of the appellant, there is nothing of sufficient detail or weight in the Parish Council's brief submission that strongly contradicts the appellant's case or that makes it less than probable.

Conclusion

21. In the absence of substantive evidence to the contrary, or reasons not to accept the statements submitted, I consider that, on balance of probabilities, the access has existed and been in continued use for a period in excess of ten years prior to the date of the LDC application, and is therefore lawful. It should be noted that this lawfulness does not extend to any operational developments relating to the access that are subject to planning control.
22. 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 in respect of the use of the existing vehicular access to Pine Lodge off B6345 was not well-founded, and that the appeal should succeed.

Elaine Gray

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 1 October 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 available evidence demonstrates that, on the balance of probability, the use of the land for vehicular access to Pine Lodge off B6345 began more than ten years before the date of the application and continued without material interruption thereafter.

Signed

Elaine Gray

Inspector

Date: 18 June 2021

Reference: APP/P2935/X/21/3268634

First Schedule

Existing vehicular access to Pine Lodge off B6345

Second Schedule

Land at Pine Lodge, Old Swarland, Swarland, Northumberland NE65 9HU

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: 18 June 2021

by Elaine Gray MA(Hons) MSc IHBC

Land at: Pine Lodge, Old Swarland, Swarland, Northumberland NE65 9HU

Reference: APP/P2935/X/21/3268634

Scale: Not to scale



