



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 June 2021

Appeal Ref: APP/R0335/X/20/3257560

The Limes, Ranelagh Drive, Bracknell RG12 9DA

- 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 Mrs S Halford against the decision of Bracknell Forest Borough Council.
 - The application Ref 20/00275/LDC, dated 9 April 2020, was refused by notice dated 18 June 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is continued use of land as residential curtilage.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Preliminary Matters

2. The description of the use for which an LDC is sought given above is that used by the Council in its refusal notice. The description given on the application form was 'Existing use of the residential curtilage as residential garden space'. Curtilage is an area of land associated with a building not a use of land. The appeal will therefore be determined on the basis that the use for which an LDC is sought is 'use of land as residential garden space'.
3. The Limes is a detached dwelling in a large plot. The plot is the land that is the subject of the application but the Council disputes the use of only a part of the plot as residential garden space.

Reasons

4. The main issue is whether the land that is the subject of the appeal has been in use as residential garden space for the ten year period prior to the date of the application and is therefore immune from enforcement action against that use.
5. The residential plot has a west frontage to Ranelagh Drive and a north frontage to Buttermere Gardens; neither of the roads have pavements. The property was purchased by the Appellant and her now deceased husband in August 1985. A driveway off Ranelagh Drive leads to a parking area in front of the dwelling and another driveway off Buttermere Gardens leads to a parking area in front of a garage at the rear of the dwelling. A low hedge, which becomes higher at the side of the dwelling, separates land immediately adjacent to the house from a grassed area that extends up to the highway frontages. The Council refused the

application because they maintain that the grassed area has not been used as residential garden space for the ten year period prior to the date of the application.

6. Ranelagh Drive and Buttermere Gardens are shared surface roads used by vehicles and pedestrians. The Council claims that the land "...could be used by pedestrians accessing Buttermere Gardens should a car appear". But they would be doing so unlawfully because the land is in private ownership with no access rights granted to other parties. Residents and visitors do benefit from the visual amenity afforded by the undeveloped and well maintained land but it cannot be claimed that the land is in "...use as amenity land" (emphasis applied).

7. The Appellant's ownership does not include a strip along the Ranelagh Drive frontage but maintains this along with the land in her ownership. It is worth noting that this strip is excluded from what the Council maintains is the 'Area of disputed land' as shown on a plan appended to their appeal statement. This strip could be defined as 'amenity land' but there is no justification, on this point, to conclude that the whole of the grassed area is amenity land.

8. The Appellant has submitted a sworn and dated Statutory Declaration in which she states, amongst other things, that "The land...has been used continuously...as part of the residential curtilage serving The Limes". Winding through the grassed area and linking the two parking areas is a stepping-stone path. The path has clearly been in place for a long time and was probably installed when the plot was laid out for residential use. It was installed to facilitate residential use of the property and it is entirely realistic that residents of the property would want to move from one parking area to the other without walking through the house or the fenced rear garden. The grassed area has been used, irrespective of its maintenance and as claimed by the Appellant, for residential purposes probably since it was laid out as part of the residential property in 1985.

9. The Council has accepted that the Appellant's own evidence does not need to be corroborated by independent evidence to be accepted. The Appellant's evidence is clear and unambiguous whereas the Council's case is based on conjecture and is not substantiated by evidence. The land is not designated as 'amenity land' nor is it available for use as amenity land, and reference to the land as being amenity land in an Officer Report for a planning application submitted in 2017 does not at all justify a conclusion that the land is amenity land. The land is not amenity land and was in use as residential garden space for the ten year period prior to the date of the application and probably since 1985.

10. For the reasons given above and on the evidence now available, the Council's refusal to grant an LDC in respect of use of land as residential garden space at The Limes, Ranelagh Drive, Bracknell was not well-founded and the appeal thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

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 9 April 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black 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 is not amenity land and has been in use as residential garden space for the ten period prior to the date of the application.

Signed

John Braithwaite

Inspector

Date 22 June 2021

Reference: APP/R0335/X/20/3257560

First Schedule

Use of land as residential garden space

Second Schedule

Land at The Limes, Ranelagh Drive, Bracknell RG12 9DA

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. 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: 22 June 2021

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Scale: not to scale

