



Appeal Decision

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/J0405/X/20/3247774

Hillesden Road Nurseries, Hillesden Road , Gawcott MK18 4JF

- 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 Stuart Parsons, of Sapphire, against the decision of Aylesbury Vale District Council.
 - The application Ref 19/01882/ACL, dated 16 May 2019, was refused by notice dated 9 January 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 site is a garden centre importing plants, shrubs, trees, compost and gardening landscaping products for onward sale to the public. The site has two main buildings for display, shop/tills a large polytunnel for display, outdoor display of trees/shrubs for sale along with patio slabs, stones and aggregates for sale. The site has ancillary facilities for tool sharpening, hanging baskets, general goods for retail. Two accesses serve the site, one for public sales and one ancillary for business only.
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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 extent of the existing use which is found to be lawful.

Procedural Matter

2. The Council has used a different description of the lawful use applied for, in the First Schedule of its notice of refusal to issue a certificate, from that given in the application form. I have used the latter in my banner heading. However, for the sake of brevity, I have used the term 'garden centre' in my reasoning, below. I wrote to the principal parties asking them for their views on using "garden centre (use class A1)" as the description in my formal decision, as this was used by both parties in their submissions. Neither objected and, as neither would be prejudiced, I have used it accordingly.
3. The application was made to, and determined by, Aylesbury Vale District Council (AVDC). Local government in Buckinghamshire was reorganised on 1 April 2020 through the merging of AVDC, three other district councils and Buckinghamshire County Council. The result was the establishment of Buckinghamshire Council, which has taken over the planning duties previously carried out by AVDC and the other disbanded authorities.
4. Given the nature of the application, and that it was acknowledged by both main parties that the site was not actively being used for the purposes that are the

subject of the appeal, it was determined that there was no need for me to visit the site, and this would not prejudice either main party.

Reasons

5. Under s191(1)(a) of the 1990 Act, if any person wishes to ascertain whether any proposed use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use in question. The onus is on the appellant to prove his case. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
6. The application for a certificate of lawfulness was made to the Council on the 16 May 2019. In order to prove his case, it is for the Appellant to show that the site was continuously used as a garden centre for a period of 10 years and that if that use ceased thereafter that it was not lost.
7. Broadly speaking the parties' positions are as follows. The Appellant claims that the use of the land as garden centre occurred for a period in excess of ten years and was not thereafter abandoned. For its part, the Council does not bring its own evidence forward to counter what has been claimed by the Appellant. Its position is that the case he put forward did not prove the case on the balance of probability.
8. From the submissions, the appeal site is a smallish, largely triangular area of land in the open countryside. It lies a short distance to the south of the village of Gawcott. It is bounded on two sides by roads and on the other by open land in the appellant's ownership.
9. The 1990 Act provides a definition of agriculture; this includes the use of land as "nursery grounds". An appeal decision¹ relating to land at Macclesfield put forward by the Appellant sets out the Concise Oxford English Dictionary (OED) definition as "a place where plants, trees, etc., are reared for sale or transportation". It cites a Court of Appeal judgement, *Wiggins v Arun DC* [1997] 74 P&CR 64, which determined that garden centres are a retail use within Use Class A1 of the UCO². Although not being provided with a copy of the judgement, as both parties refer to this finding I take it to be the case.
10. As the Macclesfield appeal decision suggests, the boundary between the use of land as a nursery and its use as a garden centre is often blurred. It is a case of materiality, based on fact and degree and this will differ in each case.
11. The businesses run from the site have not used the term 'garden centre' in their trading names. However, this does not militate against the case put forward by the Appellant, as it is a matter of assessing the use the land was put to, rather than the names of the businesses trading there.
12. It is agreed that the land has been used for business purposes from at least the early 1990s to 2016. At that the beginning of this period, it was run by the Wells family who sold it to Robert Turner in the late 1990s – the evidence variously refers to this as being 1997, 1998 or 1999. As set out below, he, however, puts the date that he purchased it as 1998. He owned it until 2016.

¹ APP/R0660/X/09/2115961

² Town and Country Planning (Use Classes) Order 1987 (as amended)

The evidence shows that the business use of the land ceased at that time, when it was bought by Stuart Pearson who owned it at the time of the application being made.

13. The Appellant's evidence included statutory declarations and affidavits that were signed, dated and witnessed by a Commissioner for Oaths or Solicitor. These attract significant weight in my deliberations. Further submitted were what were written as statutory declarations or affidavits, but were not signed, dated or witnessed. They carry significantly less weight than completed statutory declarations, more akin to a supportive letter or email. Also submitted were excerpts from profit and loss accounts and a letter. These are all drawn together and expanded upon in the Appellant's statement of case.
14. Adrian Eames made a statutory declaration. He says that he worked for the Wells' family business, 'Quicksharp', from mid-1994 to 2010. Until the Wells family sold the land to Mr Turner, in 1998, he worked from the appeal site. He says that before he worked for them, the Wells family ran a "landscaping business" from the site. By the time that the site was sold, he says that Quicksharp had been "developing and diversifying" and it relocated to concentrate on tools and hardware from another site. He says that the purchaser of the appeal site, Robert Turner, bought the "plant sales, garden centre and landscaping supplies business".
15. This submission gives evidence, with sufficient precision and without ambiguity, that on the balance of probability the land was in use as a garden centre from at least the time of Mr Turner's purchase. Prior to this, on the balance of probability, the evidence does not show that the primary use of the land was as a garden centre.
16. Brian Eames made an affidavit. He was a manager at Beeches Nurseries, a business that provided hardy nursery stock to independent garden centres. His evidence states that this business ran until 2009, when Robert Turner at Gawcott Plant Centre and Tree Nursery bought the last of Beeches Nurseries' stock. His evidence shows an awareness of Mr Turner's business during the period, referring to Mr Turner's attempts to market the site from 2006. Whilst he does not attribute the term 'garden centre' to the appeal site, what he says was sold from the site are those commonly sold in garden centres.
17. He has not given evidence as to the proportions of plants sold that were grown on-site, as opposed to off-site, nor what proportion of business was taken up by the landscaping supplies. However, Brian Eames' evidence shows that he had knowledge of the site in the period from 2001 to 2009 and his description of Robert Turner's business is to my mind that of a garden centre.
18. Ross Wells made an affidavit. He confirmed that that he visited the site many times to buy trees and saw other goods being sold, similar to those referred to by Brian Eames. However, he gives no dates for these visits. and provides little firm evidence in terms of the use of the site in planning terms. He referred to the site as "Gawcott Nursery", a title not given elsewhere, but it is reasonable to accept this to be a shortening of the title of Robert Turner's business. I do not read his statement regarding the boss allowing him to look around the site as showing a restriction on who could do so. Comments from others show that the site to have been open to the general public.

19. The affidavit of Simon Wells confirms that he visited Gawcott Plant and Tree Nurseries, that was run by Robert Turner, on many occasions. He describes that the business bought in, cared for and sold on trees and plants and that he visited "to purchase trees, plants, paving slabs and decorative stone and shingle". He refers to a large selection of trees and mature shrubs for sale. The site, he said, could be quite busy with customers due to the comprehensive range of items for sale.
20. His evidence also points to the nature of the business being carried out from the site changed with Robert Turner's purchase. His description of the goods that were sold after this occurred accords with that given by Brian Eames. I disagree with the Council's assertion that this piece of evidence only points to a landscaping business running from the site. The items sold and the manner in which the business was said to have run is indicative of a garden centre use, and certainly points to some form of retailing being carried out. However, it does not demonstrate of itself that this was the primary use of the land.
21. The letter from Alan White sets out that he lived about 100 yards from the site for over 25 years. He gives a fairly detailed account of the use of the appeal site and I take his description of his observations as being "casual" as meaning that he did not visit on a professional basis. Living this close to the site, he would have a very good idea of the use of the site.
22. He said that there was no apparent on-site propagation of plants and that there were regular deliveries of stock, including from Europe. His view was that the amount of cars parked there "was clear evidence of the importance of the retail operation". He describes an "ever increasing stock of trees and materials associated with landscaping as well as bedding and seasonal plants" and regular deliveries. These, especially the former, indicates that he visited the site. Although he describes the site as being used as a commercial wholesaler for the landscaping industry as well as a garden centre for 12 years before it closed, I do not agree that this reads that the former was the main use.
23. What is set out as a declaration by Robert Turner, is unsigned and undated, and is described as a statement, by the Appellant. As he purchased the site and ran it until 2016, evidence from Mr Turner is particularly important. However, given its incomplete form, for the reasons given above I have to attribute significantly less weight to it than I do to the statutory declarations before me.
24. He said that he purchased the site in 1998 from Quicksharp. His evidence shows that the business that he ran differed from that of Quicksharp, taking on those elements that are akin to a garden centre use. That this served both the public and trade is not in my view unusual in a garden centre. The success of the business was undermined by a lack of parking and room for expansion. This led to a reduction in the range of spring plants and a focus on larger plants and specimen trees.
25. He states that plants were "mainly brought in from wholesalers", that he "grew some products on site" and that the business "relied on products brought in". This is not ambiguous and I do not see it as being indicative of a nursery use. It is a case of fact and degree, and, on balance, I find that Mr Turner describes a garden centre use under his tenure. It is not unusual for garden centres to grow some stock. The terms he uses show that this was a small part of what was sold.

26. His evidence shows the business reached a peak turnover in 2005/6, after which there was a decline to 2015 when some 10% of the 2005/6 turnover was achieved. He sold the site to the Appellant in January 2016.
27. There is an unsigned, undated and unwitnessed declaration from Daniel Wells. This mainly provides evidence of the use of the land prior to Robert Turner's purchase. He did, however, state that Mr Turner "developed the business massively with a big focus on buying and selling mature trees along with shrubs etc".
28. A number of Profit and Loss (P and L) accounts for Quicksharp were provided. However, I found, above, that the evidence does not show that this business was a garden centre. There is nothing in the P and L information to lead me to find otherwise.
29. Taken individually, none of the pieces of evidence that were submitted by the Appellant are sufficient to prove the use of the land as a garden centre for a 10-year period. However, when read as a whole, the evidence shows that, on the balance of probability, from the time of Robert Turner's purchase of the site to when he sold it to the appellant, this was the case. I find that this evidence is sufficiently precise and unambiguous.
30. In its case, the Council raise the question of whether the use was abandoned between the cessation of the Robert Turner's use in 2015 and the date of the Council's decision. However, it does not definitively specify its position on the matter. Established case law sets out four criteria to be used in the assessment of abandonment: the period of non-use; the physical condition of the land; whether there had been any other use; and the owner's intention to suspend the use or cease it permanently.
31. Here, on the first three criteria, the evidence shows that: the use of the land had only ceased for some 4 years; relatively little work would be required to resurrect the use; and there has been no other use of the land. Although the Appellant has made an application for residential development on the land, I do not see this as showing definite intention to cease the use. I see it, rather, as displaying an option for the use of the land. Read as a whole, paragraph 4.47 of his statement of case shows that he would intend to use the site as a garden centre, should that application fail. The weight to be attributed to each of the four criteria is a matter for the decision-maker³. Taking the four together, I find that the use has not been abandoned.

Other Matters

32. Comments were made by the Appellant relating to the time that it took to determine the application and the actions of the Council. This appeal is solely concerned with the use of the land and, as such, those comments have played no part in my decision. Photographs were submitted by both parties were taken into account, but I found them to be inconclusive with regards to the use of the land and they have had little weight in my assessment.

Conclusion

33. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use in respect of use of land

³ *Bramall v SSCLG* [2011] JPL 1373

as a garden centre (use class A1) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Roy Curnow

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 16 May 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and 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 use of the land as a garden centre (use class A1) was undertaken continuously for a period of at least ten years and this use was not thereafter lost.

The operations do not contravene the requirements of any enforcement notice in force.

Signed

Roy Curnow

Inspector

Date: 25 June 2021

Reference: APP/J0405/X/20/3247774

First Schedule

Use of land as a garden centre (use class A1)

Second Schedule

Land at Hillesden Road Nurseries, Hillesden Road , Gawcott MK18 4JF

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: 25 June 2021

by Roy Curnow BSc(Hons) MA MRTPI

Land at: Hillesden Road Nurseries, Hillesden Road , Gawcott MK18 4JF

Reference: APP/J0405/X/20/3247774

Scale: Not to scale

