



Appeal Decision

Site visit made on 9 June 2021

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 6 July 2021

Appeal Ref: APP/E2530/X/21/3270337

Bumblebee Cottage, Mill Lane, Pickworth, NG34 0TE

- 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 and Mrs Roy Knighton against the decision of South Kesteven District Council.
 - The application Ref S20/1013, dated 25 June 2020, was refused by notice dated 24 December 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 described in the application as "use as domestic garden land ancillary to and within the curtilage of the residential dwelling."
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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.

Procedural matters

2. Notwithstanding the description of the use in the application, the appellants acknowledge in their statement that "curtilage" is not a use of land for planning purposes and the planning unit and curtilage are not synonymous. The fact that land may have changed its use to domestic garden would not automatically mean that it has been legally incorporated into the domestic curtilage of the property. The extent of the curtilage can be important, for example, in determining the availability of permitted development rights, but I do not need to define the curtilage to determine the lawfulness of the use of the appeal site as garden land.
3. Against this background, the appeal form indicates that an LDC is sought for "use as domestic garden land and amenity space ancillary to the residential occupation of Bumblebee Cottage." That is an appropriate description.

Main Issue

4. The main issue is whether the refusal of an LDC was well-founded. This will turn on whether the appellants have proved on the balance of probability that the use of the land materially changed to use as domestic garden land and amenity space ancillary to the residential occupation of Bumblebee Cottage on

or before 25 June 2010¹ and that such use continued for 10 years thereafter without significant interruption. If so, the time for enforcement action will have expired and the use will have been lawful in terms of s191(2) of the 1990 Act, as at the time of the LDC application.

5. The planning merits of use as garden land and amenity space are not relevant to the issue of whether that use is lawful or not. Similarly, whilst I am also determining a separate appeal² against the refusal of planning permission for the erection of a dwelling on the same site, the existence of that appeal can have no bearing on my determination of this one.

Reasons

6. Bumblebee Cottage lies at the corner of Village Street and Mill Lane Pickworth. According to the sales particulars provided by the appellant, it dates to the 14th century. In 1977, the land now occupied by the appellants was sold to them through a single conveyance which described the land as comprising 3 parts. In summary, these were: (1) that piece of land with the dwellinghouse, garage and premises known as Bumblebee Cottage; (2) that piece of land having a frontage of 124 feet or thereabouts to Mill Lane with the bed of the stream and the bank on the north side of (1); and (3) that piece of land having a frontage of 154 feet or thereabouts to Mill Lane. I take it that piece (3) is the appeal site, which lies to the north of the stream.
7. During my site visit, I saw that area (1), includes the relatively small garden area immediately to the rear of the house. This is partly laid to lawn but incorporates a gravel driveway and parking area and a significant amount of shrub, flower, and small tree planting. To the northeast, beyond the garage, the plot then opens out into a larger garden area leading up to the stream. This is area (2), as described in the conveyance. It is also laid to lawn, but with trees shrubs and flowerbeds planted within the lawn and conifer hedging to the boundaries. There is also a summer house, timber outbuilding and a dovecote in this area. Areas (1) and (2) together form an irregularly shaped, markedly domesticated, formal garden area for Bumblebee Cottage.
8. The appeal site (area (3)) is accessed from area (2) via a wooden bridge over the meandering stream, which runs roughly east-west across the land. This area consists of a large open lawn, with no formal planting, just native hedges to the western and northern boundaries; trees along the bank of the stream; hedging along the northern section of the eastern boundary with Mill lane; and post and rail fencing and a gate along the remainder of that boundary.
9. At the time of my visit, the grass on the appeal site appeared to be kept to substantially the same standard as the other lawns in areas (1) and (2). There were 2 benches in the south-western and north-eastern corners of the site, though I have seen nothing to contradict a neighbour's statement that these are recent additions, from about 2020. Nevertheless, and notwithstanding the lack of formal planting, the appeal site provides an attractive amenity space, ideal for informal recreation, which contributes to the overall setting of the house and no doubt adds to its enjoyment.
10. I note the Council's reliance on dictionary definitions of "garden", which refer to the cultivation of flowers and other plants as well as grass. However, it is not

¹ Namely 10 years prior to the LDC application.

² Appeal Ref APP/E2530/W/21/3270413.

uncommon for gardens to include different zones, some with more formal planting and landscaping and others which are more open and informal recreation areas. From what I saw on site, the appeal site now functions and is maintained as part of the large and varied garden of Bumblebee Cottage and its appearance is quite different to that of the rough pasture in the larger fields to the north of the site.

11. Observations from my site visit help me to contextualise and assess the evidence regarding the history of the use. However, it is that history which is crucial in this appeal, rather than the current position. The appellants' evidence comprises their appeal statement, Mr Knighton's statutory declarations and several statutory declarations and witness statements from others. The comment from the Pickworth Parish Meeting is brief, but they confirm that the appeal site "has been maintained as a mown lawn for at least 10 years."
12. The appellants' statement refers to the 1977 sales particulars, which described the property as having extensive gardens and they say it is not clear if the appeal site was ever used for any other purpose or if it was agricultural grazing. In his second statutory declaration, Mr Knighton said he assumed the appeal site was in use for domestic garden and amenity purposes when he purchased it in 1977. He says they would not have bought it had they thought it was anything other than garden land, as they had no use for it as grazing or agricultural land. However, in that declaration, Mr Knighton said the appeal site has been used as a garden area since at least the mid-1980s. This is consistent with his first statutory declaration, in which he said the land had been treated and used by him, his family and friends as part of the garden since 1985.
13. There is nothing to contradict Mr Knighton's sworn evidence that the bridge across the stream was in place when he purchased Bumblebee Cottage and the appeal site in 1977. However, it is apparent from the conveyance to the appellants that the appeal site was only conveyed to their purchaser in 1977. There is nothing to indicate that the appeal site was in use as garden land prior to 1977 and indeed Mr Knighton's own evidence is that the appellants only used it in this way from around 1985. It seems probable that the previous use of the appeal site was not as garden land, so there has been a change and the appeal site has been brought within the planning unit of Bumblebee Cottage. I am satisfied as a matter of fact and degree, that this altered the character of the use and amounted to a material change of use.
14. Mr Knighton says the appeal site has been maintained continuously since 1985 in the same way as the garden area immediately adjacent to the house, by way of lawn cutting, to keep it at a manageable length commensurate with domestic garden use, weeding and general gardening. Furthermore, he says the lawn was reseeded in 2000. A photograph exhibited to his first statutory declaration purports to show part of the appeal site, just after reseeding.
15. Mr Knighton also says the appeal site has been used frequently by his grandchildren for recreation and games since 2000. He explains that they purchased a second home in France on his retirement in 2003 and spent up to five months of each year there, in six week intervals, but otherwise lived at Bumblebee cottage. Since the sale of the French house in 2011, Bumblebee Cottage has been their only residence. Between 1979 and 1991 Mr Knighton says he travelled to and from Washington DC, although

Mrs Knighton remained at home for much of this time, where children were in school.

16. Though he has been away for periods of time Mr Knighton says he employed four different gardeners to assist with maintaining the appeal site, and the rest of the gardens, continuously between 1985 and the present date. They are Mr W Sutton from 1985 to 1991; Mr M Redding from 1991 to 1999; Mr T Barnes from 1999 to 2003; Mr M Suddaby from 2003 to 2013; and Mr Redding again from 2013 onwards. Mr Knighton says these people have become friends and indeed, all but Mr Sutton, who has sadly died, have provided unsworn witness statements.
17. Mr Barnes says he maintained all the garden area, including the appeal site, Which involved weekly lawn cutting, weeding and general gardening. He also says there was never a fence between the appeal site and the rest of the garden during the period of his involvement. He adds that the appeal site was used by the appellants and their family and friends for general recreational use, such as games and exercise.
18. Mr Redding's account is similar, though he says, during his involvement, the appellant did most of the lawn cutting himself. Mr Suddaby's account is also like that of Mr Barnes' and refers to his weekly lawn cutting. He adds that, though the appellants spent some time abroad during his period, they always spent more than half the year at the property, and they used the appeal site as additional garden land during those periods. (His time as a gardener overlaps with the period when Mr Knighton says they had a holiday home in France).
19. The gardeners' evidence is unsworn and light on detail, but it does corroborate Mr Knighton's sworn evidence. In any event, there are additional statutory declarations from other residents, or former residents.
20. These statutory declarations include one from Mr Thompson, who lived in the neighbouring dwelling at Home Farm, Village street from 1979 to 2006. The rear of the Home Farm plot adjoins the western boundary of the appeal site. Though Mr Thompson now lives some 3 miles away, he says he has kept in contact with the appellants and visited regularly, including over the last 10 years. He still regularly passes by the land in his car.
21. Mr Thompson confirms that, since the mid-1980s, the appeal site has been maintained continuously in the same way as the immediate garden, by way of regular lawn cutting, weeding and general gardening. Furthermore, it has been used continuously by the appellants, their family, and friends in conjunction with the immediate garden, specifically for general recreational use, such as games and entertaining. Mr Thompson recalls enjoying a drink or a walk on the appeal site, before or after dinner. Whilst he cannot remember specific dates, he has seen the appellant and his family and friends using the appeal site for games and activities, as one would expect with the usual domestic occupation of a dwelling. He also remembers one particularly large gathering when they all enjoyed the appeal site for recreational purposes on Mrs Knighton's 50th birthday in 1993. Mr Thompson adds that, in all these years, including the last 10 years, he cannot recall the appeal site being used for any purpose other than as a domestic garden and for recreational purposes.
22. In his statutory declaration, Mr Ktori says he has lived in the village for 13 years and the appeal site has been laid out and used as a garden for as long

- as he can remember. He has seen the appellant regularly mowing the lawn and has seen the appellant and his family using the appeal site for relaxation and recreation.
23. There is also a statutory declaration from Mr Thomas', who has lived in the village for 29 years. He says he knows the appeal site well and regularly walks his dog along Mill Lane. He states that the appeal site forms part and parcel of the garden and amenity space of Bumblebee Cottage. He has seen the appellant and his gardeners regularly maintaining the appeal site and has seen the family using it for recreational purposes. Indeed, he has not seen the land used for any other purpose; certainly not in the last 10 years.
24. Although key parts of these statutory declarations are similarly phrased, such that they are not necessarily in the deponents' own words, they will have been made aware of the serious consequences of giving false information under oath and I give these sworn statements due weight. Furthermore, whilst the declarations and unsworn witness statements do not include extensive details or dates, it may be unrealistic to expect people to recall the dates, frequency or detail of the routine maintenance and use of a domestic garden.
25. The Planning Practice Guidance (PPG) advises that 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 probability. I must consider any contradictory evidence.
26. The officer's report on the LDC application referred to 2 letters of representation. These suggested that: the appeal site is a "separate paddock" and not garden land; this land has been increasingly mown and garden furniture added in the last few months; and there is no evidence that the land has been used as a garden. It may be that the appeal site has been used for the keeping of horses or other animals at some stage in the past, but there is no evidence that it has been used as a paddock by the appellants since 1977. I accept that the garden benches are a recent addition, but they were not crucial to my conclusion that the appeal site was in use as a garden/amenity area at the time of my visit.
27. More detailed objections were set out by the current occupiers of The Old Barn, on the east side of Mill Lane, in their response to this appeal. In short, they say they have walked their dog past the appeal site twice daily from 2014 to 2018 and daily from 2020 and have driven past the site several times a week. Their main points are that:
- there has been no new planting on the appeal site and there are no ornamental trees or plants;
 - although 2 benches were placed on the land in June 2020, they have only once seen a bench in use;
 - they have not seen the appellants using the appeal site, though their grandchildren might have played on it during annual visits;
 - regular weekly mowing did not commence until June 2020;

- a large proportion of supporting statements were made by people presently or previously employed by the appellants;
 - the appellants only permanently lived at Bumblebee Cottage from 2010, as they previously lived in France, America and Africa and their children attended boarding school;
 - whilst the 1977 sales particulars refer to extensive gardens, the appellant said the appeal site was bought later in the hope of gaining planning permission to develop it;
 - the appeal site may have been maintained by cutting the area for the past 10 years, but it is not a lawn;
 - they are aware the appellant has been in regular contact with Mr Thompson, but not as a visitor and they have never seen Mr Redding on the appeal site; and
 - the appellant's garden is bordered along Mill Lane with a wooden panel fence, which continues at right angles along the stream, demonstrating a definite distinction between the garden and the "paddock".
28. A first, and important point is that these neighbours say their statement is based on observations and conversations with the appellants since July 2014. It appears that they have no knowledge of the situation prior to that. Having regard to *Panton v SSETR* [1999] 1 P.L.R 92, if the use of the land had changed to garden use more than 10 years prior to 2014 and that use had continued for 10 years, it would have become lawful prior to 2014. Those lawful use rights could have been lost in certain circumstances, for example if there had been a further material change of use, or if the garden use was abandoned, but there is no evidence that such circumstances have arisen. (For the same reason, comments in the Council officer's report that evidence, such as that of Mr Barnes, relates to a time "outside the period of 10 years" are misguided).
29. For the reasons given, the lack of ornamental planting does not prevent a conclusion that the appeal site is in use as garden land and the presence of garden benches is not essential.
30. The greater weight of evidence, including sworn evidence from the appellants and others who have been familiar with the appeal site since long before 2014 is that it has been used as a garden/amenity area since the mid-1980s and regular, if not weekly, mowing has taken place since then. Although some of the supporting witness statements were made by people presently or previously employed by the appellants, that is not sufficient reason to conclude they are false or inaccurate, especially since they are broadly consistent with sworn statement from others, including Mr Thomas, who has lived in the village and known the appeal site for 29 years.
31. The period when the appellants, and in particular Mr Knighton, spent time abroad is well before 2014, when the personal knowledge of the occupiers of The Old Barn began. I must prefer Mr Knighton's own sworn evidence relating to this. In short, although Mr Knighton travelled to and from Washington DC from 1979 to 1991, Mrs Knighton generally remained at Bumblebee Cottage. There was then a period of some 12 years before the family started spending time at a second home in France. That period ended in 2011 and, in any event

- the evidence of Mr Knighton, broadly corroborated by Mr Redding, is that the appellants spent more than half of each year in Pickworth, and the visits to France were at 6 week intervals. Furthermore, during the appellants' absences, the appeal site was maintained through regular mowing. Garden use is commonly less intensive, or more sporadic, than use for example of a house or other building, particularly during winter months. As a matter of fact and degree, I am satisfied on the evidence that the appellants' absences did not constitute a significant interruption to the continuity of the garden use.
32. If the appellant purchased the appeal site with a view to obtaining planning permission to develop it, that would not be a reason for dismissing this appeal. In any event, it is clear from the 1977 conveyance, that the appeal site was purchased together with and at the same time as Bumblebee Cottage and the gardens immediately adjacent to it.
33. This is a matter of judgement but, at the time of my site visit, I was satisfied that the appeal site was being maintained as a lawn and the thrust of the evidence is that it has been maintained in the same way as the garden area immediately adjacent to the house since the mid-1980s. Indeed, there is nothing to contradict Mr Knighton's evidence that this area was reseeded in 2000 and, as I have indicated, the appeal site contrasts markedly with the rough pasture to the north; in short, it looks like a garden.
34. As far as the extent of contact between the appellants and Mr Thompson and Mr Redding is concerned, I must prefer their own evidence on this. I have no good reason to doubt the evidence of Mr Thompson and Mr Redding, particularly that of Mr Thompson, as it was given under oath.
35. I note the March 2021 photograph, provided by the occupiers of The Old Barn, which shows the fence along the boundary of Bumblebee Cottage and Mill Road, together with a return section along the southern bank of the stream. That photograph only shows a few panels on that return section. The fence appears to be quite new in that photograph, but the return panels were not there by the time of my site visit and it is not clear how far along the stream that fencing ever extended. I note Mr Barnes' specific comment that there was never a fence between the appeal site and the rest of the garden during the period of his involvement. In any event, the existence of a fence along the southern bank of at least part of the stream for some time up to March 2021 does not mean that the appeal site, which has been accessed from Bumblebee Cottage via a bridge, since at least 1977, has not been in use as part of the garden. Gardens are often divided into different zones.

Conclusion

36. Whilst the appellants' evidence does not include extensive, highly precise details of the occasions on which the appeal site was used for specific recreational purposes, the PPG does not require absolute precision. In terms of the PPG, I am satisfied that the evidence is "sufficiently" precise and unambiguous and is not undermined by substantial contrary evidence.
37. For all the reasons given, I am satisfied on the balance of probability, that the use of the land materially changed to use as a domestic garden and amenity space ancillary to the residential occupation of Bumblebee Cottage on or before 25 June 2010, and indeed probably as early as the mid-1980s, and such use continued thereafter without significant interruption. Accordingly, 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. I will grant a certificate but, as discussed at the start of this decision, I shall modify the description of the use to delete reference to the curtilage.

J A Murray

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 25 June 2020 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 materially changed to use as a domestic garden and amenity space ancillary to the residential occupation of Bumblebee Cottage on or before 25 June 2010 and such use continued for 10 years thereafter without significant interruption, so that the time for enforcement action expired.

Signed

J A Murray

Inspector

Date 6 July 2021

Reference: APP/E2530/X/21/3270337

First Schedule

Use as domestic garden land and amenity space ancillary to the residential occupation of Bumblebee Cottage.

Second Schedule

Land at Bumblebee Cottage, Mill Lane, Pickworth, NG34 0TE.



Plan

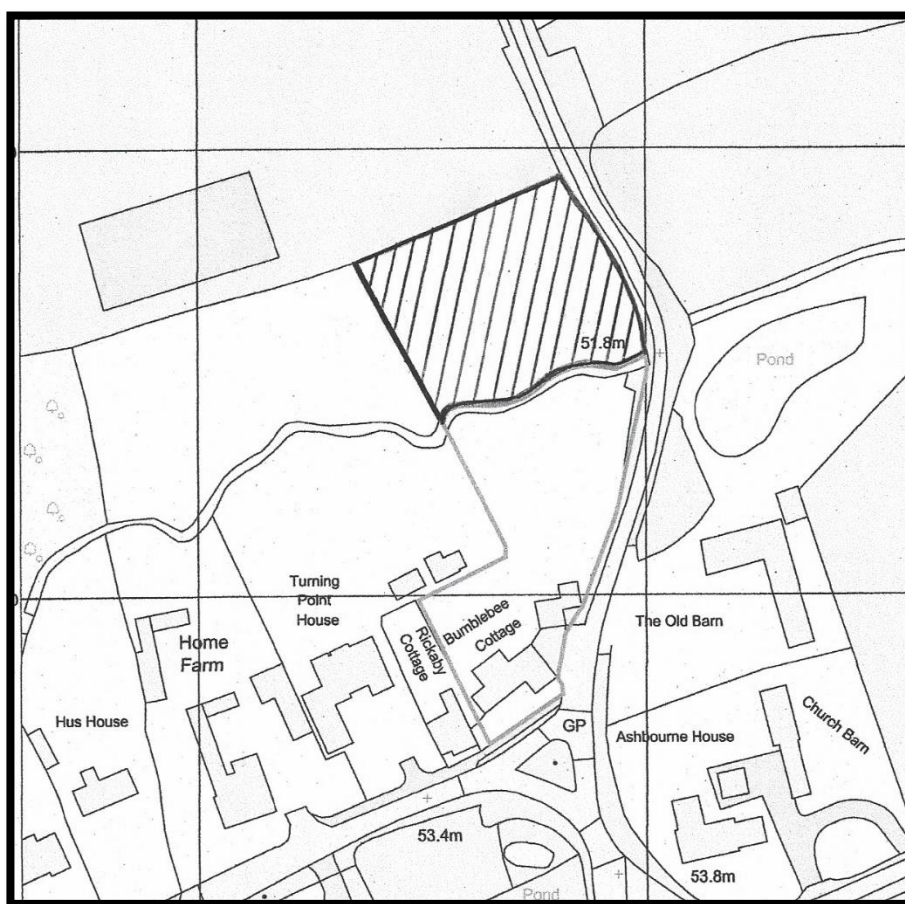
This is the plan referred to in the Lawful Development Certificate dated: 6 July 2021

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

Land at: Bumblebee Cottage, Mill Lane, Pickworth, NG34 0TE

Reference: APP/E2530/X/21/3270337

Scale: DO NOT SCALE



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.