



Appeal Decision

Site visit made on 9 June 2021

by Roy Merrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2021

Appeal Ref: APP/J1915/X/21/3269842

5 Mayflower Close, Hertingfordbury, Hertford SG14 2LH

- 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 J Havard against the decision of East Hertfordshire District Council.
 - The application Ref 3/20/1009/CLXU, dated 29 May 2020, was refused by notice dated 2 September 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 Use of the land to the east of the existing dwelling house as residential garden land.
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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.

Application for costs

2. An application for costs was made by Mr J Havard against East Hertfordshire District Council. This application is the subject of a separate Decision.

Reasons

3. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development or require planning permission or because the time for enforcement action has expired (s191(2)). In this case, the appellant seeks to rely on the period of time over which the use has continued.
4. In cases where there is a dispute as to whether a material change of use has occurred it is necessary to ascertain the correct planning unit, as it is the planning unit against which the question of a material change of use would need to be judged. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes; the concept of physical and functional separation is key.
5. If I find that the dwelling and appeal site form a single residential planning unit, it is necessary to consider whether, on the balance of probability, the use

of the land within the appeal site for purposes incidental to the use of the dwelling, has continued for a period of ten years or more prior to the date of the application, therefore from at least 29 May 2010, so as to be immune from enforcement. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued for the aforementioned ten-year period.

The Planning Unit

6. From my visit it was evident that the appeal site constitutes an extensive and roughly rectangular parcel of land to the side and rear of the dwelling. It predominantly comprises a uniformly mown, open grassed area, with intermittent features including some garden furniture, a small vegetable garden and mature tree planting along the lengthy eastern boundary. There is a centrally placed shed which contains gardening equipment and machinery and there are some sporadic flowered borders.
7. The grounds of the property are demarcated by timber ranch-style boundary fencing. Whilst the part of the garden immediately behind the dwelling appears enclosed with the house by fencing and vegetation, this is not to the extent that it is completely segregated from the broader property. The appeal site is presented 'seamlessly' as part of this broader area of land, with which it has been mowed as a single entity and which can be distinguished from the rougher grass in the less well-maintained agricultural fields to the north.
8. A path leads from the immediate rear garden to the aforementioned shed. It seemed to me, from my visit, that there was an absence of any significant system of enclosures, sub-dividing areas within the property into clearly defined distinctive and different uses. The appeal land is easily accessible from the rear of the dwelling and there is a strong sense of continuity of the residential use over the appeal site.
9. In terms of the unit of occupation there is no dispute that the dwelling and appeal site fall within a single ownership. It seems to me, from my visit, that there is a functional relationship between the dwelling and the wider property, including the appeal site, for the enjoyment of recreation associated with the dwelling, including the growing of flowers and vegetables and general relaxation.
10. As a matter of fact and degree, the residential use appears to be physically and functionally integrated between the dwelling and the appeal site. As such I conclude that the appeal site and the broader property form a single residential planning unit.

Continuity of Residential Use

11. I therefore turn to the question of whether the residential garden use of the appeal site can be said to have continued for the requisite immunity period. In support of the application the appellant has submitted several statutory declarations, including from himself as the present owner of the property; from the previous owners and from neighbouring residents.
12. The appellant's declarations confirm that he has owned the property, including appeal site since August 2018; that when he purchased the land the appeal site was clearly a mowed and maintained garden with a vegetable patch and landscaped flower beds and that these works have since been maintained as such.

13. Declarations from the previous owners, confirm that they occupied the property between 1996 and 2018, having purchased the appeal site land around 2002, and also having maintained it before this time. They refer to the planting of wildflower areas and a vegetable garden and maintaining residual areas of land by mowing the grass, throughout the time that they owned it. Reference is made to one of the main reasons for the appeal land having been acquired as the provision of more space for children to play in, and also to trees on the land being maintained on an annual basis for safety reasons; to a regular supply of produce from the vegetable garden and to undertaking maintenance of the land to secure continued uninterrupted long range views. The land is claimed to have been used for regular family gatherings, and a 2009 photograph of a wedding reception being held there, with landscaping features apparent, is provided. Brambles along the eastern boundary of the site were apparently kept under control in order to aid fruit gathering.
14. The aforementioned actions are indicative of continued use of the land. The continuous use of the land as a garden for recreation purposes is also corroborated by declarations from neighbouring residents. Additionally three aerial photographs of the site, dating from 2001, 2008-10 and 2015/16 have been included with the appellant's and previous owners' declarations. The photographs, would appear to support the claim that mature trees have been present on the site, at least over the immunity period; also that historically, the appeal site was more unkempt in appearance than is the case today, and that over time the site has become progressively more manicured and looked after.
15. Given that any person who lies about the information contained in a sworn statement could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I give the information provided therein significant weight.
16. The Council's officer report referred to the site being used historically for allotments and suggested that part of the site is still 'designated' as agricultural land, although the nature of this designation is not made clear. The Council considered that the appellant's evidence did not meet the standard of proof required to demonstrate lawful use as garden land, on the basis of insufficient evidence of continuous use over the area in question.
17. I am mindful that planning practice guidance states *"In the case of applications for 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 probability."*
18. For the reasons given above, whilst the information provided is not as detailed as it could be regarding the historic use of specific parts of the site, I consider that a credible explanation for the purpose and continuity of use of the land has been set out. I consider it more likely than not that the appeal site has continued to be used for garden purposes over the requisite immunity period. I find the evidence to be sufficiently precise and unambiguous, in the absence of any significant contradictory evidence, to justify the grant of a certificate on the balance of probability.

19. I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land to the east of the existing dwelling house as residential garden land 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 Merrett

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 29 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:

On the balance of probability the land has continued to be used for garden purposes for the requisite 10-year immunity period and this is therefore the lawful use of the land.

Signed

Roy Merrett

Inspector

Date: 12th July 2021

Reference: APP/J1915/X/21/3269842

First Schedule

Use of the land to the east of the existing dwelling house as residential garden land.

Second Schedule

Land at 5 Mayflower Close, Hertingfordbury, Hertford SG14 2LH

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: 12th July 2021

by **Roy Merrett Bsc(Hons) DipTP MRTPI**

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Scale: Not to scale

