



Appeal Decision

Site visit made on 3 August 2021

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2021

Appeal Ref: APP/H1705/X/20/3259670 3 Church Brook, Tadley RG26 4AY

- 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 David Lenton against the decision of Basingstoke & Deane Borough Council.
 - The application Ref 19/00964/LDEU, dated 4 April 2019, was refused by notice dated 19 March 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 as: Garden land with vegetable plot used for family domestic use as per normal family use for longer than 10 years.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

2. The parties opted for the appeal to be determined by means of written representations and did not identify any injustice that would otherwise arise. I am content to determine the appeal on the written evidence that is already before me and do not consider that injustice would arise.

Main Issue

3. The main issue is whether the Council's refusal to grant a certificate of lawfulness for the use as garden land is well founded.

Reasons

4. In cases such as this the onus is on the appellant to demonstrate his case on the balance of probabilities.
5. The site consists of two parts, described as 'garden land' and 'garden land veg plot'. They form part of a wider site involving a dwelling with associated garden and outbuildings, as well as a storage area for landscaping materials.
6. The appellants principal evidence is in a covering Statutory Declaration which then contains his bundle of evidence. Further supporting evidence has then been produced in response to correspondence from the Council and for the

purposes of lodging this appeal. In summary, the appellant purchased the site in December 2003 and states that his family have 'used the "garden land" for the enjoyment of our property as per any other normal house owner.' A number of specific activities are then described and how the land has been used since its purchase. In total, some 90 pages of evidence is provided in the bundle, which includes signed letters from various third parties, which supports the appellants factual evidence, as well as photographs.

7. The Council states that it holds contradictory evidence. It then provides an assessment of the planning history. However, in doing so that assessment provides very little evidence to demonstrate contradictory evidence. Rather, it is a critique which raises a number of questions/points which may have indicated that the appellant's evidence is imprecise or ambiguous. In lodging this appeal, the appellant has then responded to those questions/points and in my view provided detailed precise answers. These do not then contradict the appellants Statutory Declaration bundle and thus version of events. The Council then had the opportunity to provide final comments on those responses should it have felt these to be inaccurate but has not done so.
8. Even within its critique, it is acknowledged that some of the evidence could indicate a residential use, albeit it was contended that some activities do not show this. An example of horses being fed was cited, but the appellant then confirms that these horses were on adjoining land, being fed from the appeal site. However, matters such as this, even if not explained, do not then undermine the significant bundle of evidence provided by the appellant pertaining to overall use, or make his claimed use less than probable.
9. Whilst I appreciate that cutting grass is not in itself restricted to being a domestic activity, the act of doing so on a twice weekly basis during the summer months is consistent with a garden use of land, as opposed maintaining a paddock or managing it for productive agricultural purposes.
10. There was an enforcement investigation into the use of the site in 2005. The Council state that the appellant was told that he should not be using what they described as a paddock area for residential purposes, albeit no breach of planning control was identified at that time. The investigation however does not demonstrate on the balance of probabilities what the land use was in 2005, other than the Council considered it to be a paddock area. There are also submitted plans edging the site in blue, but I do not find such matters to be determinative as it neither demonstrates deliberate concealment nor undermines the appellant's evidence pertaining to actual use since he purchased the site. I also would not expect an Inspector who previously visited the site on an unconnected matter to have been expected to describe the site as in residential use, and then for this to be used against the appellant.
11. The appellant advises that a drafting error led to the submission of an incorrect plan for a previous application for lawfulness, and that he was happy to correct that at that time. I have no reason to dispute this.
12. I appreciate that some of the photographs before me may not show residential activities occurring. However, photographs represent a snapshot in time and in the case of those before me do not cast doubt in my mind as to the appellant's version of events. This is because there remains clear evidence of mature domestic planting and in particular, structures in the vegetable plot area.

13. My own site visit also only represents a snapshot in time and is outside of the period to be considered for the purposes of this appeal. Nevertheless, it reaffirms the appellants version of events in that the character of the primary use of the appeal site was that of mature garden land, as opposed a paddock/agricultural land.
14. There have been a number of planning applications at the wider site since the appellant purchased it. That the Council did not take enforcement action arising from those applications does not demonstrate on the balance of probabilities that the garden use was not taking place. The test for lawfulness is not then whether the use would have been apparent to any visitor at any time during a relevant period, but one on the balance of probabilities.
15. In considering the evidence in the round the appellant has provided a significant bundle of evidence that is precise and unambiguous. The character of the primary use identified, and evidenced, is that of garden land for a relevant and uninterrupted period of at least 10 years. Whilst the Council seeks to critique this, as a matter of fact and degree the planning history for the site does not amount to contradictory evidence that undermines the appellants version of events and the weight that should be afforded to this. Neither does it cast significant doubt in my mind that leads me to conclude that the appellant's evidence is insufficiently precise or ambiguous.
16. As a matter of fact and degree the appellant has therefore demonstrated on the balance of probabilities the asserted use as garden land for a relevant period and so has discharged the necessary burden of proof. The Council accordingly would have been in a position to have previously taken enforcement action against a material change of use, and so a certificate of lawfulness should now be granted.

Conclusion

17. 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 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.

Formal Decision

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

Paul T Hocking

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 4 April 2019 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 appellant has demonstrated the lawful use of the appeal site as garden land on the balance of probabilities.

Signed

Paul T Hocking
Inspector

Date: 12 August 2021
Reference: APP/H1705/X/20/3259670

First Schedule

Use of the land edged red on the enclosed plan as garden land

Second Schedule

Land at: 3 Church Brook, Tadley RG26 4AY

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: 12 August 2021

by **Paul T Hocking BA MSc MRTPI**

Land at: 3 Church Brook, Tadley RG26 4AY

Reference: APP/H1705/X/20/3259670

Scale: DO NOT SCALE

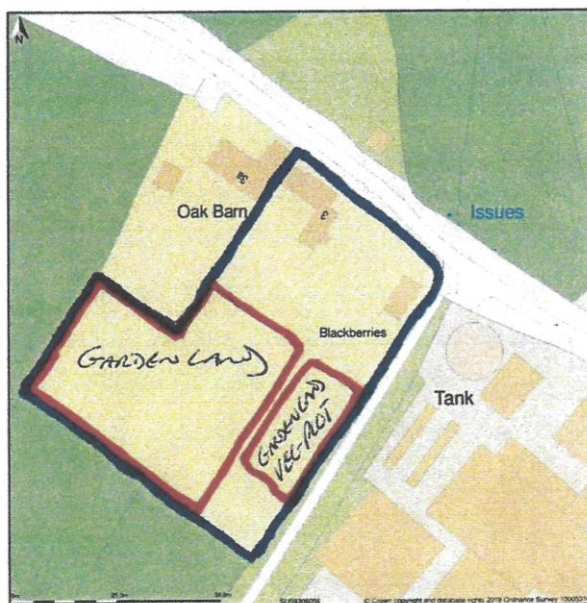


LOCATION PLAN.

Ref 19/00964/LDEU.



3, Church Brook, Tadley, Hampshire, RG26 4AY



Site Plan shows area bounded by: 459235.08, 160493.81 459378.5, 160635.23 (at a scale of 1:1250), OSGridRef: SU59306056. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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