
Appeal Decision

Site visit made on 23 August 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 28 September 2021

Appeal Ref: APP/W4705/X/21/3271819

Fieldgate Farm, Outside Lane, Oxenhope, Keighley BD22 9QY

- 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 Sheena Doherty against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 20/04822/CLE, dated 22 September 2020, was refused by notice dated 18 February 2021.
 - 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 domestic garden.
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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.

Main Issue

2. The main issue is whether the appellant has proved on the balance of probability that the use of the property has changed to use as domestic garden on or before 22 September 2010 and that the use then continued for 10 years after the date of the change.

Reasons

Legal Basis for Determination

3. When dealing with a case such as this, the burden of proof is on the appellant and the standard of proof is the balance of probabilities. Following the judgement of *Gabbittas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
4. It is not sufficient that something may have occurred or is capable of having occurred or even that it could be assumed that something has occurred. It must clearly be demonstrated that it was more likely than not that the use actually occurred. In addition, in accordance with case law² the question is

¹ *Gabbittas v SSE & Newham LBC* [1985] JPL 630

² *LB Islington v SSHCLG* [2019] EWHC 2691 (Admin), *Thurrock BC v SSE* [2002] EWCA Civ 226, [2002] JPL 1278 and *Swale BC v FFS & Lee* [2005] EWCA Civ 1568; [2006] JPL 886

whether the site has been used throughout the ten year material period so that the Council could have taken enforcement action in respect of that use at any time and furthermore, it is insufficient to start the use, but the use must have taken place over the whole period.

5. These represent the legal principles against which I have determined this appeal.

Use of the Land

6. The appeal site is an area of grassland and landscaping of approximately 0.3 hectares in area situated immediately to the west of Fieldgate Farm, which is a residential dwellinghouse. To the immediate rear of the dwelling is a conservatory which opens up onto a patio area, beyond which is an extensive well-manicured grass lawn area that is not physically separated from the patio. At my site visit I observed other features of note including evidence of a former vegetable cultivation area and dismantled greenhouse with remnants of a drainage membrane used for draining the land used for growing fruit and vegetables. I also noted other significant features including the mature coniferous boundary to the land, mature dry stone wall along part of the boundary, ornamental trees close to the boundary, goal posts, chairs and seating, planting/flower beds and shrubberies.
7. The evidence submitted in support of the appellant's case includes:
 - Google earth imagery;
 - Statement and plan from a neighbour;
 - Statement and plan from a former owner of the property; and
 - Sales particulars from 2012.
8. The Council states that there are very few specifics about how the land has been used but agrees that the lawn has been mowed and some trees have been planted around the perimeter. The Council goes on to state that it is necessary to consider whether there would have been manifestations of a garden, for example the erection of domestic structures or the planting of domestic plants, such that the appearance of the land is akin to a garden rather than an agricultural field, or a level of domestic activity that would change the character of the land.
9. The neighbour's statement clearly identifies the land in question and states that the land has existed in the form of a domestic use outside Fieldgate Farm for at least 20 years. The neighbour also states that the garden was developed and a greenhouse erected around 2000, referring to the land being 'in that form' for at least 20 years and it is clear to me that 'that form' refers specifically to the domestic use of the land. Although not specifically stated there is a clear inference that the outside domestic space has existed and has been continually used for at least 20 years.
10. The former owner also confirms that during the period of his ownership between June 1993 and September 2015 the land in question was used as domestic garden. This does not cover the entire material period but is a clear indication that the land has existed a domestic garden since at least 1993. The statements are not in the form of affidavits and therefore attract less weight

than sworn statements, but nonetheless, they provide consistent evidence of use of the land as domestic garden during the material period of at least ten continuous years.

11. There are clearly features consistent with domestic use such as seating areas, planted flower beds and shrubberies, extensive well-manicured garden, a former vegetable patch and evidence of there having been a green house. These are clearly features that would be expected in a domestic garden setting rather than being associated with agricultural or other use.
12. The 2009 google image shows a number of domestic features that are evident on the ground at present, including the vegetable planting area, lawn, trees and shrubs, the patio, boundaries and other planting. The greenhouse has been removed but remains on site in its dismantled form. I agree with the Council's comment that having a greenhouse in the corner of the site does not mean that there has been a material change in use of the whole site in question, but it does show that there has been domestic use of that part of the land during part of the material period. In my judgement there is sufficient evidence that during the material period the Council could have taken enforcement action against the material change of use that has occurred. The Council has presented insufficient evidence to contradict that submitted by the appellant whose evidence is sufficient to allow the appeal.

Conclusion

13. The appellant has presented a range of evidence as set out above and I have taken account of the Council's concerns and the evidence they have presented. However, in my judgement the evidence submitted by the Council is insufficient to contradict the appellant's evidence or make her version of events less than probable. Consequently, I conclude overall that the appellant's evidence is sufficiently precise and unambiguous evidence that on the balance of probabilities the land has been continuously used for purposes ancillary to the use of the dwellinghouse for a period of ten years or more prior to the date of the application which is 22 September 2010.
14. For the reasons given above I conclude that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act as amended.

Formal Decision

15. 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.

A A Phillips

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 22 September 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:

The land has been in continuous use as domestic garden for a period in excess of ten years prior to 22 September 2020 so as to be immune from enforcement action.

Signed

A A Phillips
INSPECTOR

Date: 28 September 2021

Reference: APP/W4705/X/21/3271819

First Schedule

Domestic garden

Second Schedule

Land at Fieldgate Farm, Outside Lane, Oxenhope, Keighley BD22 9QY

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: 28 September 2021

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Scale: Do not scale

