



Appeal Decision

Site visit made on 12 October 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 26 October 2021

Appeal Ref: APP/Z4718/X/21/3276958

7-8 Park Gate, Skelmanthorpe, Huddersfield HD8 9BB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Martin Woodcock against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2020/CL/94272/E, dated 11 December 2020, was refused by notice dated 23 February 2021.
 - The application was made under section 191(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is described as - "The land to the rear of the dwelling at 7-8 Park Gate, which has been in domestic garden use in excess of 10 years and forms part of the residential curtilage of the property".
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Decision

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

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
3. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. My decision is based on the facts of the case, and on relevant planning law and judicial authority.
4. The appellant's description of the development for which an LDC is sought states the land has been used as a domestic garden [residential use] for a period in excess of 10 years. However, the additional reference to curtilage is misleading since this is not related to a use of land. It is a legal term and is not relevant to the matters at issue here. Although it is not open to me to modify the terms of an LDC application such as this, I can proceed to a determination on the basis of the use, which is described clearly, while excluding the reference to curtilage, and any associated analysis, from my considerations.

5. My findings below do not indicate that the appeal land is within the curtilage of the dwellinghouse, nor vice versa. Any conclusion on this matter would require a separate assessment of the facts, which is not appropriate for this decision.

Main Issue

6. In order to succeed in this appeal, the appellant must show on the balance of probability, that a material change of use of the land to domestic garden, which is classed as residential use, occurred ten years or more prior to the date of the application and that use continued after the date of change without significant interruption.
7. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

8. The appeal property is a detached house, which is set back from the road within relatively large grounds. There is an area of garden to the front of the house which has a lawn, defined seating areas and well-stocked borders. At the rear, there is a driveway and garage. Beyond that, there is a further area of land, which is the subject of this appeal. The land is irregular in shape and is accessed either from the driveway to the house or via the roadway, which runs along the northern boundary. The land comprises a well-maintained lawn, some scattered trees and is enclosed with a post and rail fence. This area is separated from the driveway by a wall.
9. The appellant states that the land has been used continuously as domestic garden since he purchased the property in 2012, and it was also used as such by previous owners, dating from 1977. Evidence in support of the application includes aerial photographs dated 2002, 2009, 2016 and 2019. There is also a photograph taken from a sales brochure and some further photographs of the land. A Statutory Declaration submitted by a former owner of the property, dated 29 November 2020, has been made in accordance with the provisions of the Statutory Declarations Act 1835. This states that the signatory occupied the land from 1977 to 1985 and during that time they used the appeal land as garden. The sworn evidence also states that they witnessed the subsequent owners using the land as garden.
10. The aerial photographs are afforded significant weight since they clearly relate to the land in question and include embedded dates. The images show the appeal land was largely grass in 2002. There was an area of lawn and what appear to be outbuildings sited towards the southern boundary. In 2009, the image is similar although only one outbuilding is present and the post and rail fence on the northern boundary is visible. In 2016, the lawn is more established (although this may be attributed to the improved image quality) and the wall along the eastern boundary can be seen. The 2019 image is similar. The sales brochure and the other photographs do not have embedded dates and I can only give them limited weight. However, the Statutory Declaration carries considerable weight as sworn evidence.
11. The concept of a material change of use is not defined in statute or statutory instrument. The basic approach is that, for a material change of use to have occurred, there must be some significant difference in the character of the activities from what has gone on previously, as a matter of fact and degree.

12. The Council acknowledges that their own aerial images do not show substantially different images than those provided by the appellant. Nonetheless, it is argued that there has not been a material change in the use of the land as its appearance as paddock land has remained largely unchanged. However, it is unclear from what point the Council is making its assessment since there is limited evidence of the condition of the land prior to 2002, that being one photograph which the appellant describes as pre-1980s.
13. It is the appellant's case that the residential use has subsisted since at least 1977 and, prior to that the land was unkempt and overgrown. During my site visit I saw that the land is laid out and used for residential purposes. It has the appearance of residential garden rather than an area of overgrown land. The photographs show the land has been maintained in a similar manner for a number of years. In addition, there is sworn evidence describing the character of the land and its use. The totality of the appellant's evidence carries significant weight and there is limited contradictory information that gives an alternative version of events or makes the appellant's evidence less than probable. As such, I am satisfied that the appellant's evidence is sufficiently precise and unambiguous.

Conclusion

14. I conclude that the appellant has shown, on the balance of probability, that a material change of use of the land to a residential use occurred on or before the 11 December 2010 and that use continued for a period of ten years after the date of change without significant interruption.
15. 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 use of the land to the rear of the dwelling at 7-8 Park Gate, Skelmanthorpe, Huddersfield HD8 9BB for residential purposes 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

16. 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.

Debbie Moore

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 11 December 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 appellant has shown, on the balance of probability, that a material change of use of the land to a residential use occurred on or before the 11 December 2010 and that use continued for a period of ten years after the date of change without significant interruption.

Signed

Debbie Moore

Inspector

Date: 26 October 2021
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First Schedule

Domestic Garden [Residential] Use

Second Schedule

Land at 7-8 Park Gate, Skelmanthorpe, Huddersfield HD8 9BB

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: 26 October 2021

Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

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Scale: NTS

