



Appeal Decision

Site visit made on 22 November 2021

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal Ref: APP/R3325/X/21/3278682

**Land to the north west of Le Meridian, Foxdon Hill, Wadeford, Chard
TA20 3AN**

- 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 Ms M Lane against the decision of South Somerset District Council.
 - The application Ref: 21/01048/COL, dated 26 March 2021, was refused by notice dated 24 June 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 as residential garden.
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Decision

1. The appeal is dismissed.

Main Issue

2. Under s191(2)(a) of the 1990 Act, uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time limit for enforcement action has expired or for any other reason). The time limit relevant to the use in this appeal under s171B(3) of the 1990 Act is the end of the period of ten years beginning with the date of the breach. Consequently, the appellant needs to show that there has been a material change of the land to residential garden use and, if there has, whether that use continued substantially uninterrupted for at least 10 years by the date of the LDC application. Findings on these issues will determine whether the Council's decision to refuse the LDC was well founded.
3. The consideration to be given to the appeal is a legal determination that does not have regard to matters of planning merit. The onus to make out the case in legal grounds of appeal rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

4. Whether there has been a material change of use, in terms of the meaning of development set out under s55(1) of the 1990 Act, depends on there being a

significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.

5. The land is a sloping area of ground defined by hedges and trees that is diagonally opposite the appellant's property on the other side of a narrow lane. The Council asserts that the land's original use would have been agricultural which has not been disputed. The land was acquired by the appellant in 2003 and it has been in the appellant's sole use and maintained by them since then. Although I do not have any images of what the land looked like in 2003, there are photographs taken in various years starting in 2004 and a series of aerial photographs start from 2005. 2004 and/or 2005 are years well over ten years prior to the date of the LDC application and they provide a visual baseline from which to assess any changes to the character of the use of the land.
6. The 2005 aerial photograph shows the upper (south) approximately half of the land with probably about a dozen fruit trees with grass cut rougher than more maintained and shorter grass on the lower (north) part of the land. A wavy path defined by more closely cut grass runs through the trees. Similar cut paths run around the edges of the land on this part of the site. Site photographs taken the year before in 2004 show a very similar situation. Moreover, the further aerial images from 2006, 2010, 2016 and 2020 consistently show the same arrangement and use of this part of the land. Albeit that my site visit was inevitably after the date of the LDC application, I observed that the character of this part of the site was still the same.
7. Also, on the land, primarily towards the bottom corner, there are vegetable beds, fruit bushes and a polytunnel. There are also two sheds/summer houses, one towards the lower end and one at the top which has a covered area to one side of it. These appear to have a mix of storage uses, some of which could be described as domestic and some as for gardening purposes. There are a few benches and seats dotted around and I saw what could be called some garden trees. Other evidence states and shows that the lower area of the site, primarily where the shorter grass is, is used for dog training/agility which can involve using moveable apparatus.
8. Based on the above, the arrangements on the land have not changed appreciably since 2004/2005 and across a significant part of the site the use is for fruit and vegetables growing. The rougher grass area with the fruit trees also has an orchard appearance. Whilst the edible produce may be grown and consumed by the landowners who live in the house opposite, s336(1) of the 1990 Act interprets agriculture as including horticulture and fruit growing. Under s55(2)(e) of the 1990 Act, the use of any land for the purposes of agriculture and the use for any purposes of any building occupied together with the land so used, shall not be taken to involve development of the land.
9. Whilst the way the land has been laid out by different levels of grass cutting and the planting of trees may have changed the way the land looked prior to 2003, the character of the use for agricultural/horticultural purposes has not altered, in the same way that the character of the use does not change and development does not occur when any other agricultural fields are cultivated for different crops or grazing for example, even though they may look different.
10. As for the lower part of the land, the dog agility/training equipment is mobile and changes, and sometimes it is not there. Whilst some was out when I visited, there was a lot of the apparatus stored in the lean-to at the back of the

lower summerhouse/shed. There is no information about the regularity that such training occurs, but what appears to be occasional activity would not mean that the character of the whole site, which the LDC application covers, has materially changed.

11. Minor elements of domestic storage in the sheds and relaxing on the land between work to maintain and keep it, such as sitting out eating or reading, could equally take place on any land without necessarily causing development to happen. Changes in the context of this appeal must lead to a material change of use which, as a matter of fact and degree, is not the case here. The two submitted statutory declarations both support the view that the site is residential garden land based on what the persons have observed since 2003. However, whilst the occupiers of the appellant's property have owned, used and maintained the land, for the reasons given I am of the view that the land is not in residential garden use. While I have inevitably looked over time to see if there has been a material change of use, it is not necessary for me to rigorously examine the continuity of the use.
12. I acknowledge that the Council did not introduce its own evidence as such, or from others to contradict or otherwise make the appellant's version of events less than probable. Nevertheless, it did make its own assessment and taking the evidence in the round, I find that the appellant's evidence alone is not sufficiently precise and unambiguous to show on the balance of probability there has been a material change of use of the land to residential garden.

Conclusion

13. In view of the above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of residential garden was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Gareth Symons

INSPECTOR