



Appeal Decision

Site visit made on 3 May 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Appeal Ref: APP/N4720/X/22/3292731

Orchard Farm, Lairum Rise, Clifford, Wetherby LS23 6HG

- 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.
 - The appeal is made by Debbie Dale against the decision of Leeds City Council.
 - The application Ref 21/05424/CLE, dated 18 June 2021, was refused by notice dated 26 October 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 area.
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Decision

1. The appeal is dismissed.

Reasons

2. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force (s191(2)). I have not been told that there was any extant enforcement notice relating to the property at the time of this application. Accordingly it is necessary to consider whether, on the balance of probability, the use of the land as a domestic garden area has continued for a period of ten years or more prior to the date of the application, that being 18 June 2021, 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.
3. The appeal site adjoins a residential building that was formerly in agricultural use. It is undisputed that planning permission was granted for the change of use of this building to residential use in 2006. The appeal site is to the north and west of, and apparently being used in association with, this dwelling. It was apparent from my visit that the appeal site is subdivided into a number of distinct parcels. On the eastern side, directly behind the main dwelling, the site consists of a landscaped area with formally arranged plants and shrubs; there is a central grassed area, with trampoline present, and on the west side an allotment area with greenhouse. The surface area substantially comprises of uniformly maintained short grass. It seems to me that these 'sub-areas', which account for a majority of the appeal site, are probably being used for recreational or relaxation purposes, akin to a domestic garden.

4. There also appears to be residential accommodation, with its own adjoining small garden, present in the south-west corner of the appeal site.
5. The application form records that the use began in August 2008, apparently when the dwelling was completed. In support of the application the appellant has provided a series of historic aerial photographs of the site taken in 2006, 2008, 2013, 2016, 2017, 2018 and 2020. From this evidence, it seems to me that the present layout of the site has been in place since at least April 2020, and the formal landscaped part of the garden from at least June 2016.
6. Prior to this, the image taken in May 2013 is too blurred to provide a clear indication of how the site was being used at that time. Even if this did demonstrate garden use, it would not be determinative, because it would still be necessary to demonstrate use as a garden, on the balance of probability, going back approximately two more years to June 2011.
7. I acknowledge that the 2008 photograph appears to show a number of objects present on the land and possibly indicates the presence of a boundary fence and gate along the northern site boundary. This does not mean, however, the appeal site, either in part or as a whole, was in use as a garden and the boundary treatment could, for example, be intended to contain a specific use of the land to the north or simply define a change in land ownership. Indeed this image and the earlier one from 2006 do not tend to indicate garden use, with the surface of the land in question largely appearing indistinguishable in character from that of the adjoining land to the north.
8. The appellant claims that some of the exotic plants in the garden, installed in 2008, have now reached maturity, and because this takes a period of some 10 to 20 years, this provides a reliable measure of when the garden was initiated. However I agree with the Council that planting may occur at various stages of maturity and that accordingly this is not a reliable indicator of the age of the garden itself.
9. The appellant also claims that the level of decay of tanalised timber, used in association with the planted areas, is indicative of the life span of the garden. However, whilst information has been provided regarding how long tanalised timber may last and I was able to see the timber in question during my visit, there is no information before me to provide a reliable indication of the age of the wood in question.
10. With regard to the original planning permission for the conversion of the agricultural building to residential use, the appellant states that the external parts of the property, to the south of the building, would not have been suitable for use as a garden area. It is therefore suggested that this would naturally have led to the appeal site being used for garden purposes from the outset. Whilst I agree that the appeal site provides substantial space for outdoor relaxation and recreation, I am not persuaded that this equates to the land being used as such, on the balance of probability, for the requisite immunity period. It seems to me that it would have been possible to use space immediately adjacent to the front of the building for external amenity purposes, albeit that the space available there is far more limited. Nonetheless I do not agree that it means that the use of the appeal site as a garden from the outset was inevitable.

11. The appellant's representations regarding commencement of the use are not supported by any 'sworn' statements, such that sanctions would apply if found to be incorrect. This serves to reduce the force and conviction behind the claim. Given that I do not find the appellant's case to be corroborated by the aforementioned supporting evidence, I afford the claim only limited weight. Furthermore, even if I was to accept that the formally planted part of the garden was begun in 2008 (which for the aforementioned reasons I am unable to), there would still be insufficient evidence to demonstrate, on the balance of probability, that the entire appeal site had been used continuously as a garden, for recreational or relaxation purposes, for the requisite ten-year period.
12. 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.*" I am not persuaded that the appellant's evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probability, continuous use of the land in question over the requisite timescale. As such there is no need for me to go on to consider what effect the apparent residential buildings (referred to in paragraph 4 above) should have on the question of lawfulness of the garden.
13. Therefore for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of domestic garden area at Orchard Farm, Lairum Rise, Clifford, Wetherby LS23 6HG 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.

Roy Merrett

INSPECTOR