

Appeal Decision

Site visit made on 25 May 2022

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 27 June 2022

Appeal Ref: APP/P0240/X/22/3292606

Land at Alma Farm, Alma Farm Road, Toddington, Dunstable, Bedfordshire LU5 6BG

- The appeal is made by Tony Courtenay under section 195 of the Town and Country Planning Act 1990 against a refusal by Central Bedfordshire Council to grant a lawful development certificate.
 - The application Ref: CB/20/03617/LDCE, dated 7 October 2020, was refused by notice dated 22 December 2021.
 - The application was made under section 191(1)(a).
 - The development for which the certificate is sought is described in the application as "The continued use of the land outlined in red as residential garden serving Alma Farm in excess of 70 years".
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Application for costs

1. The appellant's application for costs against the Council is dealt with by a separate decision.

Appeal decision

2. The appeal is allowed and attached to this decision is a lawful development certificate relating to the use described in the application, which I consider to be lawful at the time of the application.

Reasons for the appeal decision

3. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the use at the time of the application. The planning merits of the use are not relevant to the appeal and there is no planning application before me.
 4. The Council refused the application for the following reason: -

"1 There is an existing enforcement notice with a red line plan which falls partly within the red line plan for the application for a certificate. The enforcement notice states that the breach consists of a change of use from an allotment to a residential use of land. Given the above it is considered that it has not been proved on the balance of probability that the land was used as residential garden land for the period of 10 years or more required to establish a lawful
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use of the land. The application is therefore refused as not proven on present evidence.”

5. A use of land is not lawful for the purpose of section 191(1)(a) if the use constitutes a contravention of any of the requirements of an enforcement notice that is in force (see section 191(2)(b)). The breach of planning control alleged in the notice in question is “the change of use of land from allotment to residential use and the siting of an agricultural workers mobile home (log cabin, shown in black) on land shown edged red on the attached plan, (‘the land’). The requirements of the notice are “1. Cease the residential use of the mobile home (log cabin) and the land. 2. Remove the mobile home (log cabin) from the land. 3. Demolish the concrete hardstanding area of the rear patio area and all of the concrete rails constructed to support the mobile home (log cabin); remove all of the resultant debris from the land and restore the land to its former condition”.
6. As the refusal set out in paragraph 4 above indicates, the land the subject of the notice is not identical to the land comprised in the application. The notice also highlighted the siting of the mobile home within the land. When the notice was appealed, the Inspector defined the appeal as seeking “a fresh planning permission, retrospectively, to retain the log cabin for residential purposes in its current location by the appeal on ground (a) and the application deemed to have been made under s177(5)”. The notice was not corrected or varied, however, and the requirement “1. Cease the residential use of the mobile home (log cabin) *and the land*” (my emphasis) still stands. The question therefore arises as to whether section 191(2)(b) precludes the application now being made for a lawful development certificate for “residential garden”. I do not consider that it does, because when requirement 1 is read in context it is clear that it is directed at the removal of the mobile home and the residential use associated with the mobile home and not at an alleged residential garden use serving the Farm.
7. The Council appear to be claiming that because the notice described the breach of planning control as “the change of use of land from allotment to residential use” when it was issued in 2019, the land must have been an allotment before the date of the breach. The Council themselves wrote this description after examining aerial imagery taken over a period of several years. The description seems not to have been queried by anyone at the time. In fact, the images are not sufficiently detailed to show what the land was being used for; but they do show that the boundaries between the land and the adjacent farmland were defined and that the land adjoins a garden area next to the farmhouse the status of which is not in dispute. The Inspector who visited the land in March 2020 described the land as “land where previously there was no built development”; no mention was made by the Inspector of its use either as an allotment or as residential garden or for any other purpose apart from the re-siting of the mobile home.
8. The Council have explained that the term “allotment”, as used by them in the notice and in the refusal set out in paragraph 4 above, means “private allotment” in contrast to “residential garden land use”. The distinction the Council are making between a so-called “private allotment” and a residential garden is not understood; the normal case of a resident using part of their garden for horticultural production would not amount to development.

9. The appellant is the owner of the Farm; he was born in the farmhouse and is now over 70 years of age. He states that the land has always been used as residential garden serving the Farm, for normal domestic purposes such as hanging out washing, a vegetable patch and a safe recreational area away from the farmyard where there are guard dogs and a knacker's yard. His statement is supported by statutory declarations from three persons who have detailed knowledge of the land extending over very long periods of time.
10. It is not disputed that the land has always been part of the Farm. There is no indication that it has ever been used by the public as an allotment or by a third party for their own use as an allotment. The re-siting of the mobile home on the land was consistent with its use as residential garden, a point that was made to the Council by the appellant's agents in 2016 before the mobile home was re-sited. The Council have not produced any material other than the unconvincing arguments set out above that could cast any doubt on the evidence provided by the appellant. This evidence is sufficiently precise and unambiguous to justify the grant of a lawful development certificate on the balance of probability.
11. I have therefore concluded on the evidence available that the use described in the application was lawful at the time of the application for the certificate. I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), the appellant has been granted a lawful development certificate under section 191.

D.A.Hainsworth

INSPECTOR