



Appeal Decision

Site visit made on 19 May 2022

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2022

Appeal Ref: APP/G2245/X/21/3284725

Land west of 1 Wood Street, Swanley BR8 7PA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Hilden against the decision of Sevenoaks District Council.
 - The application ref 21/02349/LDCEX, dated 7 July 2021, was refused by notice dated 10 September 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 the use of land as garden.
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Decision

1. The appeal is dismissed.

Reasons

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests. The appellant must show, on the balance of probabilities, that the development was lawful at the date of the application.
3. The Planning Practice Guidance (PPG) in paragraph 005¹ advises that an application for an LDC needs to describe precisely what is being applied for. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. Paragraph 006 states that if there is no evidence 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. An LDC needs to be sufficiently precise to act as a baseline against which to assess any future changes in use.
4. The appellant is seeking confirmation that the use of the land as garden was lawful at the date the application was made. If a material change of use has taken place, it would need to be demonstrated, on the balance of probabilities, that the change of use occurred at least ten years prior to the date the application was made, that is on or before 7 July 2011, and was sustained for a full ten year period. The Council refused the application on the grounds that the

¹ Paragraph: 005 Reference ID: 17c-005-20140306 Revision date: 06 03 2014

evidence was not sufficiently precise and unambiguous to confirm that, on the balance of probability, the use was lawful.

5. The term 'garden' is not defined in the 1990 Act and the application does not clearly specify the type of garden use that is claimed to be lawful. I note that the application form indicates that the use is described as C3 Dwellinghouse, but the appellant argues that it is not necessary for a garden to be used in association with a dwelling, and that a garden will not always be in a 'residential curtilage'². The site is separated from the neighbouring dwelling by a boundary fence and the appellant does not state that its use has been associated with this or any other nearby dwellinghouse.
6. In support of his case, the appellant refers to the Collins English Dictionary (CED) and Oxford English Dictionary (OED) definitions. He gives an extract of the definition in the OED as 'a piece of ground used for growing flowers, fruit or vegetables'. The extract given by the appellant from the CED is: 'an area of land normally planted with grass, trees, flower beds etc. 2. An area of land used for the cultivation of ornamental plants, herbs, fruits, vegetables, trees, etc'. The appellant argues that the term indicates the growing of plants/fruit/vegetables as a hobby or small enterprise.
7. However, the full definition in the CED is 'an area of land, usually planted with grass, trees, flowerbeds, etc, adjoining a house.' The OED defines it as a 'a piece of ground, usually enclosed, where flowers, fruit, or vegetables are cultivated. In later use chiefly (esp. British): a piece of ground adjoining a building (esp. a private property), often with grass, flowers, trees, etc., and generally used for recreation.' Both definitions indicate that a garden is associated with a house or private property.
8. I have considered whether the evidence assists to specify the garden use that is claimed to be lawful. The appeal site comprises a roughly rectangular area of land within a rural area, adjacent to the end of a terrace of bungalows facing onto Wood Street. It contains a building towards the rear of the site and is partially hard-surfaced, including a vehicular access from Wood Street. This is the extent of the planning unit. It has not been suggested that a planning permission³ gained in 1990 has ever been implemented. I note that a touring caravan was on the site at the time of my visit.
9. The appellant has provided copies of letters and photographs. Two undated but signed handwritten letters at Appendices L and N were written by the appellant's daughter (Dawn Rooke) and son respectively. They indicate that their father, Len Rooke, purchased the land in 1956 from Robb Sacks. He grew many types of vegetables and flowers, including chrysanthemums, which were sold to market, local villagers and passing trade for many years until he passed away in 1999. A large greenhouse was erected in about 1963. After 1999 the land was cleared with a JCB, including the greenhouse, by his son.
10. The letters are corroborated by a photograph with the handwritten date of 18/3/90, which indicates a large greenhouse with two men with young plants and seed trays. It is further corroborated by a letter from Norma Smith which is signed but undated, stating that she ran a florist and purchased chrysanthemums from Rob who owned the nursery and specialised in

² Including reference to Appeal Ref APP/R0335/C/16/3156893

³ Ref 89/01072 Proposed mobile home and detached garage approved 20/11/1990

chrysanthemums. The time period for this is not stated in the letter, but photographs of a flower shop have been provided. An aerial photograph from December 1990 indicates that the land was being actively managed, with rows of plants and a large greenhouse.

11. Two typed, unsigned and undated letters have been provided from John Clarke, who states that he has lived in the village all his life and supplied the owners with peat and fertilisers as one of his customers. The owners grew a combination of vegetables and flowers which were sold locally. It was not Mr Rookes' primary job, it was a side hobby that he did during the evenings and weekends and gained enjoyment from it. John Clarke helped with general duties such as watering, road and path maintenance.
12. A typed, unsigned and undated letter is provided from Benjamin Eastwood, who states that he was born in 1934 and has known the site for most of his life. There used to be concrete based greenhouses on the site and it was a bit like an allotment garden as Mr Rookes worked elsewhere full time. The land was regularly used for BBQs and family gatherings. A typed, undated and unsigned letter from Mr Edward-John Eastwood states that he was born in 1974 and has known the site all his life, it was a place to spend time with family and friends, including BBQs and games.
13. Aerial photographs indicate that from December 2001, after Mr Rookes had passed away, the land was laid to grass, until it was cleared and then partially hard surfaced, as shown in the aerial photographs from May 2018, June 2019, April 2020 and May 2020. The Street View images indicate the site laid to grass in September 2009 and May 2012, with hard surfacing evident in May 2019 and January 2021. The site is subject to an enforcement notice,⁴ relating to the clearing of the land and the laying of hardstanding, installation of services of water and electric, and excavation of land for a possible cesspit. The notice requires, among other things, the removal of all hardstanding, electric and water supplies, and the laying of grass.
14. The evidence therefore shows that the land has been used for various purposes, that could fall within a range of uses, including commercial horticulture, leisure use, or allotment falling within agriculture. The evidence does not serve to remove the ambiguity and imprecision regarding the use that is sought, bearing in mind the definition of agriculture in S336(1) of the 1990 Act, which includes horticulture and market garden. There is no requirement in the definition for agriculture to be profitable, intensive, large scale, or provide full time employment. Furthermore, there is no indication in the evidence of use as a residential garden. Although the Council has not put forward any contradictory evidence, the appellant's evidence is imprecise and ambiguous.
15. The appellant's evidence therefore falls short of discharging the burden of proof. I cannot conclude, on the balance of probabilities and as a matter of fact and degree, that use of the land as garden has taken place, nor that such a use has been sustained for a 10 year period.
16. Accordingly, for the reasons given above, I conclude that the Council's refuse to grant a certificate of lawful use or development in respect of the use of the land as garden was well-founded and the appeal should fail. I will exercise

⁴ Served on 2 October 2018 and coming into effect on 30 October 2018.

accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

N Thomas

INSPECTOR