

Appeal Decision

Site visit made on 28 July 2022

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

Decision date: 30 August 2022

Appeal Ref: APP/N4720/X/22/3295691

Land to the north-west of 1 Wetherby Road, Walton, Wetherby LS23 7BG

- The appeal is made by Alan Morrell under section 195 of the Town and Country Planning Act 1990 against a refusal by Leeds City Council to grant a lawful development certificate.
 - The application Ref: 21/07927/CLE, dated 22 September 2021, was refused by notice dated 17 November 2021.
 - The application was made under section 191(1)(a).
 - The development for which the certificate is sought is "Use of land for the purpose of domestic garden area".
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Decision

1. 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 decision

2. 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.
 3. The Council refused the application for the following reason: -
"The evidence submitted with the application is not sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability. The Council considers that the land in question is incapable of being considered to be in use as 'domestic garden' due to its lack of association with any residential property. Furthermore, the evidence suggests that the activities which have taken place on site over the relevant period do not demonstrate, on the balance of probability, that the land has been used as 'domestic garden' continuously for a period of ten years, even if the aforementioned were not the case, due to the nature of activities which have taken place."
 4. The Council's decision was made in the erroneous belief, as set out in the Planning Officer's report, that the access to the land was by way of a track connecting the land to School Lane at its northern extremity and that there did
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not appear to be any direct access at the southern end between the land and the appellant's house, 1 Wetherby Road. The Council have maintained their stance regarding the use of the land, despite accepting during the course of the appeal that the access to the land is in fact at its southern end

5. Further information has been provided in the Planning Officer's report and in the Council's appeal statement. The Council maintain that the house has its own garden next to it and that the land is not capable of being used as a 'domestic garden' because it is detached and off-set from the house. Their view is that the land is more akin to a smallholding or allotment, which is used less frequently than a garden, and that its allotment area, chicken sheds, fruit trees and lack of domestic paraphernalia support this view. The Council maintain that the appellant's evidence is consistent with this view and only shows that temporary domestic activities have taken place on the land.
6. The access is from the rear garden of the house and continues along a shared track leading from Wetherby Road before turning on to the land at a gate a short distance beyond the end of the rear garden. A Land Registry document shows that the appellant as the owner of the house was granted a right of way in 1990 over the strip of land between the end of the track and the gate; I conclude from this and the information submitted by the appellant that the use of the land in association with the house has existed at least since then.
7. The appeal decision therefore turns on the answers to two questions. Firstly, is the land capable of being a 'domestic garden' in these circumstances? Secondly, if so, has the land in fact been used as a domestic garden for the requisite period?
8. As to the first question, the term 'domestic garden' is not defined for town planning purposes. In my opinion, to be classed as such, land would normally have to have a demonstrable association with a dwelling and to be near to that dwelling. The land in this appeal meets these criteria. It is similar to the many examples that exist of dwellings that hold land in two separate plots because it is crossed by a track or roadway owned and used by others.
9. As to the second question, I would expect a domestic garden to be used for a variety of purposes associated with the residential use of the dwelling. These would usually include the cultivation of plants and the laying out of areas for recreation and other domestic activities. They might also include the keeping of poultry for domestic needs. A 'smallholding' or 'allotment' on the other hand would normally be used for small-scale agricultural or horticultural production where there was no significant recreational or domestic activity.
10. The information supplied by the appellant clearly places the land in the first of these categories. The Google Earth and the private images supplied by him show that in about 2000 rough grass on the land was being mowed and that by 2010 most of the land was a lawn, with the remainder being used in the main as a fruit and vegetable patch and a small area being used for poultry. This remains the case today and did not change in the intervening period. The existence of a lawn of these proportions is inconsistent with a use of the land as a smallholding or allotment and strongly supports the domestic garden use described by the appellant and others.

11. I have therefore concluded on the evidence available to me 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