



---

# Appeal Decision

Site visit made on 25 July 2022

**by Thomas Shields DipURP MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 05 September 2022**

---

**Appeal Ref: APP/D2320/X/22/3294421**

**53 Longworth Avenue, Coppull, Chorley, Lancashire, PR7 4PJ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mrs Joanne Cunliffe against the decision of the Chorley Borough Council.
  - The application Ref. 21/01236/CLEUD, dated 14 October 2021, was refused by notice dated 31 January 2022.
  - The application was made under section 191(1)(a) of the Act.
  - The use for which a LDC is sought is described as existing use as residential garden.
- 

## Reasons

1. The main issue in this appeal is whether the Council's decision to refuse a LDC was well founded. I should point out that the merits of the use of the land as a garden and its effects on neighbouring properties are not relevant. I am required to determine the appeal solely on matters of fact, planning law, and application of any judicial authority.
2. When determining LDC applications (and appeals) for existing uses the PPG<sup>1</sup> reiterates the approach to be taken, as established by earlier Court judgments. Hence, 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 probabilities.
3. No. 53 is one of a number of residential properties on Longworth Avenue with rear gardens that back onto a track and the Yarrow Valley Park. Between and adjoining the track and rear gardens of Nos. No.53 and 51 is an area of land<sup>2</sup> which the appellant argues has been used as garden land in conjunction with the residential use of her dwellinghouse at No. 53.
4. The provisions of s191(2) of the Act include (a) that a use is lawful at any time if no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement

---

<sup>1</sup> Planning Practice Guidance Reference ID: 17c-006-20140306 (MHCLG)

<sup>2</sup> Outlined in red on the submitted application location plan (the appeal site)

notice then in force. Since no enforcement notice was in force at the date of the application it is clear that the requirements of s191(2)(b) are satisfied.

5. Turning to s191(2)(a), there is no dispute that the change of use of the land to garden land was development requiring planning permission. As such, the only remaining question is whether the time for taking enforcement action had expired. Hence, in order for a LDC to be granted the appellant needs to demonstrate, on the balance of probabilities, that the appeal site has been used as a residential garden for a period of at least 10 years prior to the date of the application i.e. since 14 October 2011, or earlier, and without any significant interruption of that use.
6. The evidence in support of the appellant's case, in summary, is that she and her family moved into No. 53 in January 1993 when the appeal site existed as overgrown wasteland. She states that she and her husband used a digger to clear and level the land and began using it as an extension to her existing garden from about 1 September 1993 to the present day. This included adding a fence, a decking area, and planting of shrubs. Some photographs have also been submitted which indicate use of at least some of the appeal site land for the types of domestic activities one would tend to associate with a garden. Although the photographs are undated they are said to have been taken in 2003, 2005, 2006, 2008 and 2009. It is stated that occupiers of No. 51 have retained access through the land to the track and Yarrow Valley Park beyond. The original fence was damaged and has been replaced with a new one more recently. Additionally, correspondence (October 2021) from occupiers of two nearby properties have supported the appellant's claim that the appeal site has been used as a garden for over 20 years.
7. Taking the totality of the appellant's submissions on face value, I find that while it does not provide a fully evidenced continuous 10 year history of the use of the appeal site as a garden, it is nonetheless generally supportive of her case. However, other evidence before me is contradictory.
8. Against the appellant's evidence the Council points to correspondence from other parties. These include relatives of the former owner/occupier of No. 51. One states she visited No. 51 monthly for over 40 years and regularly used the rear gate to gain access to the land beyond. She goes on to say that she never saw any sign that anyone had fenced the area off or was treating the land as their own garden. It is not entirely clear whether she refers to the whole of the appeal site or just to the land at the rear of No. 51. Other relatives who also regularly visited No. 51 state much the same in terms of how the land was used although they expressly refer only to the land at the rear of No. 51. Evidence, including photographs, from the current occupier of No. 51 indicates some use of all of the appeal site as a garden but this dates only from 2017.

## **Conclusion**

9. The appellant's evidence is limited rather than being a full documentation of a relevant 10 year period of use, although in isolation of anything else it is generally supportive of allowing the appeal. However, evidence from other parties contradicts the appellant's evidence, particularly so in respect of part of the appeal site (being to the rear of No. 51), such that to this extent at least I find the appellant's version of events less than probable.

10. Moreover, following the approach I set out above at paragraph 3, I find that the conflicting evidence before me results in the applicant's evidence alone not being sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.

**Formal Decision**

11. For all the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the appeal site as a 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.

*Thomas Shields*

INSPECTOR