

Appeal Decision

Site visit made on 7 September 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 4 October 2022

APP/P2365/X/22/3294849

5 Dean Wood Close, Up Holland, Skelmersdale WN8 0BS

- 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 the failure of West Lancashire Borough Council to grant a certificate of lawful use or development.
- The appeal was made by Harvey Tongue.
- The application, reference 2021/1089/LDP, was validated on 20 September 2021. The Borough Council did not issue a decision within the prescribed period.
- The development for which a certificate of lawful use or development was sought was for the incorporation of the garden land formerly of 30 Parliament Street into the garden of 5 Dean Wood Close.
- The application was made under section 192(1)(a) of the Act for a certificate of lawfulness for land to be added to the garden of 5 Dean Wood Close.

Summary of decision: The appeal succeeds. A certificate of lawfulness is issued.

Costs application

1. The Appellant, Harvey Tongue, made an application for a full award of costs against West Lancashire Borough Council. That application is the subject of a separate decision.

Appeal site

2. The appeal site is just south of the listed building dwelling, Brooklands, No. 30 Parliament Street, Up Holland. Following the sale of Brooklands, an unauthorised high retaining wall, (ref: APP/P2365/D/16/3165277, appeal dismissed 23 March 2017), was built to form a new southern boundary to its garden, the severed section becoming what is now the appeal site. The land on each side of the retaining wall has been levelled, the 3m or so lower appeal land now near the same level as that of No. 5 Dean Wood Close, home of the Appellant.

Appellant's proposal

3. Harvey Tongue applied to the Council for a Certificate of Lawfulness for the proposed incorporation of the appeal land into the garden of his home at No. 5 Dean Wood Close.
4. Mr Tongue said the transfer of garden land from Brooklands to extend the garden to No. 5 Dean Wood Close would not constitute development. The existing use of the land was that of a residential garden. The proposed use of the land would also be as a residential garden within Class C3 of the

Town and Country (Use Classes) Order 1987 as amended. There would be no development involved as no material change in the use of the land would take place. No physical works would be involved. A Lawful Development Certificate should be issued.

Council's case

5. The Council said the appeal land had been part of the garden of the listed building dwelling, Brooklands, No. 30 Parliament Street. When No. 30 was sold, what is now the appeal land was severed from No. 30 and retained in the ownership of the Appellant. The appeal site remained part of a curtilage to the listed building, Brooklands. Retaining wall and levelling works did not change that legal status. Nor did the change in ownership. But construction of the retaining wall and levelling of the site removed any attributes it had as a garden when physically separated from Brooklands in 2016. It no longer had a lawful use as a garden. In land use terms it had a nil use.

Inspector's assessment

6. The appeal site land had a long established use as part of the garden to the dwelling at Brooklands; a lawful residential use. That accrued planning right could only be lost in one of 3 ways: by abandonment, by the formation of a new planning unit, by a material change of use.
7. It appears the severed appeal land has not been used for about 6 years. At the time of my visit, it was overgrown and unkempt. The Council said it had a garden use only because it had been historically integrated into the domestic use of Brooklands when part of its curtilage. It had been separated from Brooklands, the retaining wall and land levelling causing it to lose garden qualities. It had not been used as a garden with any other dwelling. The residential use of the appeal land had effectively been abandoned. But land can remain unused for lengthy periods without losing its lawfulness, (*Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461). Once severed, the land had not been used for another purpose. Mr Tongue had tried unsuccessfully to obtain planning permission to build a house on the land following its severance from the Brooklands, (appeal decision: APP/P2365/W/20/3264490, 20 May 2021). Mr Tongue retained an interest in the land. I consider that the intervening lack of use of the appeal land did not amount to abandonment or the loss of its lawful residential use.
8. The question arises as to whether the transfer of part of the Brooklands garden to No 5 Dean Wood Close would amount to the formation of a new planning unit that would require planning permission. In my view, it would not. Taking part of the historic garden of Brooklands and adding it to the garden of the recently built No. 5 Dean Wood Close would change the size of each garden but it would not result in a change in the character and impact of the use of either property in planning terms that might nevertheless have amounted to a material change of use, (*Richmond upon Thames LBC v SSETR* [2001] JPL 84, where proposed permitted changes to a large property had adverse implications on local housing policy).

9. There could be a concern for Mr Tongue if the appeal land can be seen to remain, as the Council suggested, part of the curtilage to Brooklands in relation to the application of Class E of the General Permitted Development Order. But the determination of the extent of curtilages to the properties involved is not before me and has no effect on my consideration of the lawfulness of the appeal proposal.

Conclusion

10. I conclude that planning permission is not required to incorporate the appeal garden land formerly part of Brooklands, No. 30 Parliament Street, Up Holland into the garden of 5 Dean Wood Close. A certificate of lawfulness is issued.

FORMAL DECISION

11. For the reasons given above, I conclude that the Council's failure to grant a certificate of lawful development for incorporating land formerly part of the garden to the dwelling Brooklands, No. 30 Parliament Street, Up Holland, Skelmersdale WN8 0BS into the garden of No. 5 Dean Wood Close, Up Holland, Skelmersdale WN8 0BS was not well founded and that the appeal should succeed. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is the relevant plan.

John Whalley

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192 (as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 15 September 2021 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, would be lawful within the meaning of section 192(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Incorporation of land formerly part of the garden to Brooklands, No. 30 Parliament Street, Up Holland, Skelmersdale WN8 0BS into the garden of No. 5 Dean Wood Close, Up Holland, Skelmersdale WN8 0BS would be lawful as it would not amount to a material change of use of the land defined as development in s.55 of the Act.

John Whalley

INSPECTOR

Date: 4 October 2022

Reference: APP/P2365/X/22/3294849

First Schedule

Incorporation of land formerly part of the garden to Brooklands, No. 30 Parliament Street into the garden of No. 5 Dean Wood Close.

Second Schedule

Land adjoining the garden of No. 5 Dean Wood Close, Up Holland, Skelmersdale WN8 0BS.

IMPORTANT NOTES OVERLEAF

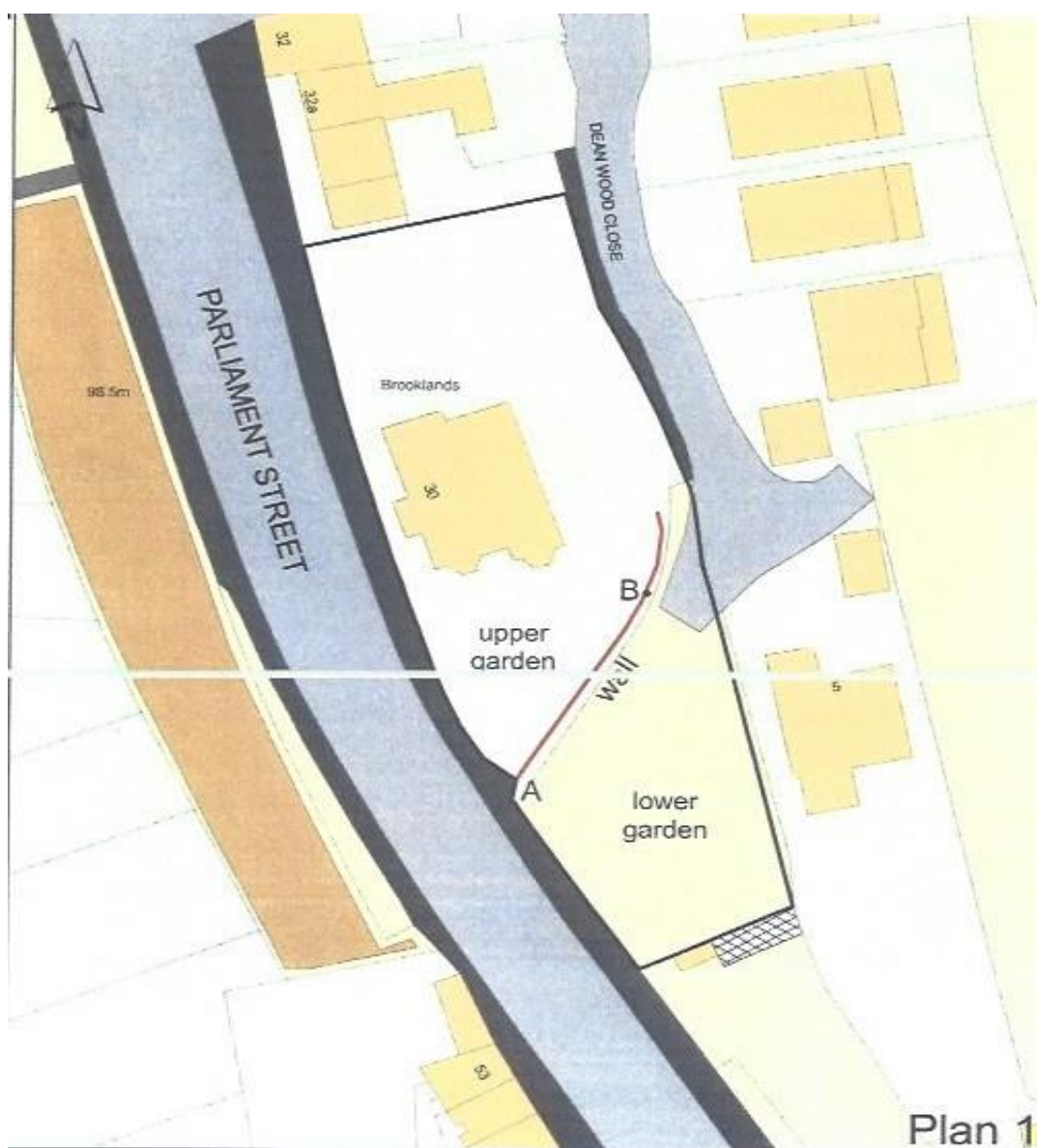
NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule was lawful on the certified date and thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

Appeal reference: APP/P2365/X/22/3294849 Date: 4 October 2022

Land adjoining the garden of No. 5 Dean Wood Close, Up Holland, Skelmersdale
WN8 0BS, (shown as lower garden)



Plan attached to the Lawful Development Certificate – No scale

John Whalley

INSPECTOR