



Appeal Decision

Site visit made on 10 January 2023

by Diane Lewis BA(Hons) MCD MA LL M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/J2210/X/22/3292364

Land at Lyndale, 24 School Lane, Blean CT2 9JA

- 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 a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr L Clark against the decision of Canterbury City Council.
 - The application Ref CA/21/01659, dated 2 July 2021, was refused by notice dated 19 August 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: Change of use from agricultural land to residential curtilage C3 use in relation to the additional block of land added to the rear of the property as shown on the location plan.
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DECISION

1. The appeal is dismissed.

REASONS

The use and main issue

2. In applying for the LDC the description of the development refers to 'residential curtilage C3 use'. Curtilage is not a land use. On the decision notice issued by the Council the development is described as "Application for lawful development certificate for existing change of use from agricultural land to residential garden." The same description is used in the appeal form and I will proceed on this basis.
3. The land in question is a roughly rectangular area (5,500m²), lying to the east of the dwellinghouse and adjoining the rear boundary of the original narrower and much smaller residential plot. At the time of my visit most of the land was under grass, with a small shed in one corner. There were a few pieces of play equipment, a small amount of garden furniture (such as tables and chairs), and along the western boundary a compost area and a vegetable patch. Access from the original garden was over a narrow ditch where there was a gap in the hedge. The land nearer the house, west of the hedge, had a domestic, residential appearance with its mown lawn, flower borders and trees, a patio, a greenhouse and sheds and so on.
4. The main issue is whether a material change of use of the land to use as a residential garden occurred before 2 July 2011 and the residential use continued substantially uninterrupted for a period of ten years thereafter. If

these tests are met a garden use would obtain immunity from enforcement action through the passage of time and become lawful.

5. The onus is on the appellant to prove his case. As set out in the national Planning Practice Guidance 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 probability. Issues of planning merit are not relevant.
6. A material change of use brings about a definable change in the character of the use made of the land. Thus for a material change of use to have occurred there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree.

Evidence

7. According to the appellant the land was part of a much larger area of agricultural land that was put on the market in 2005. The appellant completed acquisition of the parcel of land in 2006, since when the land was not put to active agricultural use. The appellant stated he immediately used the land as an extension to his garden. The grass was regularly rolled, mowed and treated as a lawn, a perimeter hedge was planted as well as flowers, vegetables and trees. In July 2011, the area was ploughed and power harrowed to level it and new grass seed planted in order to further improve the ground and make the lawns more even. The appellant said he then mowed the area every two weeks and cut the hedges twice per year. The area is used solely by himself, his family and friends and in particular his grandchildren for camping, football, cricket and such like and for walking his dogs. To support his statement various photographs and third party statements were submitted.
8. The aerial photographs. An aerial photograph dated 1999 indicated the former agricultural use, possibly arable land, before the land was acquired in 2005. The photograph dated 2008 shows a boundary hedge enclosing the land and possibly a very small shed in the north west corner. Most of the area appears as rough grassland with a mown strip along the southern and western boundaries. Any sign of consistent domestic use and activity is absent. The grassland looks very similar to the non-residential land nearby, whereas there is a marked contrast in appearance to the garden land to the west, which looks more like a well tended lawn. The boundary between the two land parcels was marked by a mature hedge, with a small gap near the southern corner. The 2012 photo was after the land had been ploughed and re-seeded. In appearance there is nothing to suggest any domestic use or to distinguish the land as garden land. The photo dated 2021 shows maturing boundary hedges but most of the area looks like rough grassland. A small number of items were present along the western boundary but nothing to indicate a residential use.
9. Whilst photos are a snapshot at a moment in time, significantly no form of residential use or related activity is indicated throughout the period and the character of land did not significantly change. Over this period of time, based on the aerial photographic evidence, the local planning authority would have little reason to take enforcement action against a material change of use of the land.

10. The letter regarding re-seeding in 2011 described the land as Blean Paddock, a description that is more suggestive of an agricultural use than a garden use. The work dates to July 2011, about the same time as the relevant date. The probability is that after re-seeding a period of time of inactivity would be necessary to allow the new grass to become established. When considered together with the aerial photo of 2012, a ten year period of continuous use is not supported.
11. The appellant and his family and friends probably have considered the land as part of the garden to the house. Occasional leisure activities associated with family use no doubt have taken place, as the appellant has outlined. However, that is not sufficient to satisfy the tests for a lawful use. Furthermore, the appellant's statement dated 23 June 2021 makes no reference to the Statutory Declarations Act 1835 and therefore does not have the weight of a statutory declaration. The third party statements, to a standard form of words, are not precise and lack specific detail in respect of the actual use that took place.
12. The appellant has referred me to an application and lawful development certificate issued by the Council for use of land as residential garden at a property on Tile Kiln Hill, Blean. The details provided indicate that the precision of the evidence and the character of the use are readily distinguishable from those in the current appeal. The example does not support the appellant's case.

Conclusion

13. The appellant has not demonstrated on the balance of probability that a material change of use of the land to use as a residential garden occurred before 2 July 2011 and that a residential garden use continued substantially uninterrupted for a period of ten years thereafter.
14. For the reasons given above the Council's refusal to grant a certificate of lawful use or development in respect of existing change of use from agricultural land to residential garden was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Diane Lewis

Inspector