
Appeal Decision

Site visit made on 4 April 2023

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 26th April 2023

Appeal Ref: APP/B1550/X/21/3287356

Land at Wisteria House, 209A Hockley Road, Rayleigh, Essex SS6 8BH

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Julia Argles against Rochford District Council.
 - The application (Ref 21/00211/LDC) is dated 26 February 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is residential garden.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Main Issue

2. The main issue in this appeal is whether or not the deemed refusal of the LDC application by the Council was well-founded.

Reasons

3. As a 'failure' case, the Council has not issued a reasoned decision notice. Further, the Council has provided neither a statement in the appeal nor commented upon the appellant's submissions. There is therefore no indication that the Council is resisting the appeal, nor that it holds any information or evidence against the issue of the LDC which has been sought.
4. In accordance with the Gabbittas principle¹, as there is no evidence to contradict the appellant's version of events or make it less than probable, I will grant the LDC if the appellant's evidence is sufficiently precise and unambiguous.
5. I found on my site visit that the land in question was in use as a residential garden, and I have no good reason to find that it was not at the time of the application for the LDC.
6. Photographs said to be taken from 31 July to 2 August 1999 (and I have no good reason to doubt the veracity of those dates) clearly evidence recreational equipment on the land in the form of football nets, reportedly used by the young children of the appellant, and are persuasive that the character of the use at that time was that pertaining to a residential garden.

¹ Gabbittas v SSE & Newham BC [1985] JPL 630

7. The digger at work in the photographs also supports the appellant's submissions (by way of a signed letter) that the land was levelled and landscaped, to facilitate use as a garden, about a year after she moved into the newly built dwelling on the plot in September 1998. I accept that evidence as a whole, including the appellant's precise and unambiguous statement therein that the land has been continuously in use as a residential garden since that time.
8. Section 191(2) of the Act provides that uses and operations are lawful at any time if no enforcement action may then be taken in respect of them, including because the time for enforcement has expired². Section 171B(3) of the Act provides that, as regards the change of use constituting the appeal development, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
9. For the reasons I have set out, I am satisfied on the balance of probabilities through receipt of sufficiently precise and unambiguous evidence that the use of the land as a residential garden had occurred continuously for a period of more than 10 years on the date of application for the LDC. Therefore, immunity has been acquired and the use is lawful.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development in respect of residential garden use was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

² And that they do not constitute a contravention of any of the requirements of any enforcement notice than in force. There is no evidence before me that this is the case in this appeal.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 26 February 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in green on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Use of the land as a residential garden had occurred continuously for a period of more than 10 years. Therefore, immunity had been acquired by reason of section 171B(3) of the Town and Country Planning Act 1990 (as amended).

Signed

Andrew Walker

Inspector

Date: 26th April 2023

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First Schedule

Residential garden use.

Second Schedule

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NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 26th April 2023

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Scale: Do not scale

