



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 May 2023

Appeal Ref: APP/R0660/X/22/3304172

Land off Newtown Road, Sound, Nantwich, Cheshire, CW5 8BG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr William Lowe against the decision of Cheshire East Council.
 - The application ref 22/0134N, dated 13 January 2022, was refused by notice dated 12 July 2022.
 - 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 as 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 found to be lawful.

Main Issue

2. The main issue is whether the Council's decision not to grant the lawful development certificate for the use as residential garden was well-founded. As the application is for an existing use the appellant needs to prove on the balance of probability that the site has been used as a residential garden for a substantially uninterrupted period of over 10 years prior to the date of the LDC application.

Reasons

3. The site is situated on the south side of Newtown Road, on the opposite side of the road to the dwellinghouse owned and occupied by the appellant. The site is predominantly grassed with boundary hedging to all sides as well as some trees and other planting.
4. The Council does not dispute the appellant's version of events regarding the use of the site. Prior to the appellant owning the land it had been included in the same ownership and title registration as Corner Cottage, the dwelling immediately opposite on the other side of the road. The site was separated from Corner Cottage and was then purchased by the appellant, who owns and lives at Holly Cottage, in 1982. The Enquiries Before Contract completed by the vendor as part of the transfer states that the land had been "Used as a garden since before the planning legislation."
5. The appellant says that since he acquired the site he has used it as a garden for the benefit and incidental enjoyment of himself and his family living at Holly Cottage. His evidence is that he has always parked his car on it and kept the family caravan there. In addition, he has provided photographs of his son and friends camping on the site on two occasions with several other photographs

showing a well-maintained site with mown lawn and neat hedges and trees, including one photograph showing some fairly extensive tree maintenance work. There are three aerial photographs dated between 1999 – 2003, 2010, 2015 – 2017 (from Cheshire Tithe Maps Online) all appear to show a neat grassed area with at most three items stored on it (one which does appear to be the caravan as explained by the appellant). I accept that these photographs only provide evidence regarding a snapshot in time in each case, but there is nothing provided by either the Council or anyone else to contradict the applicant's version of events.

6. The Council describes the use as 'outdoor storage' rather than as a garden. Indeed, it was always the appellant's intention to store his caravan on the site. However, the caravan only takes up a small part of the land, and rest is grassed. There is no evidence before me to show that it has been used for a wider storage use (other than for the parking of the appellant's car). There is also no evidence that the land has been left overgrown or unmaintained, or that it has been used for any other purpose in the 10 years preceding the date of the LDC application.
7. The types of uses described by the appellant fall within those to be expected of a garden. An important factor in this case is that the appeal site is separated from the appellant's house by a road, but garden land can be physically separate from a dwelling and it is a matter of fact and degree as to whether the site has been used as such.
8. The Council referred to a previous planning appeal in relation to the site but I was not provided with a copy of that decision. I do note that the Council quotes the inspector in that appeal as stating that the site is 'maintained but is currently vacant' and that 'the site has an undeveloped character'. I cannot put these comments into context as I do not have the full decision, let alone copies of the submitted documents in that appeal. However, I do note that that was an appeal regarding a refusal to grant planning permission for a bungalow, and not an LDC appeal, and so the issue regarding the historic use of the site may not have been a main issue.
9. In this case, for the reasons as set out above, there is sufficient clear and unambiguous evidence on the balance of probability to support the appellant's case that the land has been used as a garden by the occupants of the dwellinghouse known as Holly Cottage.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use as a residential garden 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.

Zoë Frank

INSPECTOR

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 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.

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 13 January 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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:

The use as a residential garden began more than 10 years prior to the date of the application and continued thereafter.

Signed

Zoë Franks

Inspector

Date: [11 May 2023]

Reference: APP/R0660/X/22/3304172

First Schedule

Use as residential garden.

Second Schedule

Land at Land off Newtown Road, Sound, Nantwich, Cheshire, CW5 8BG

IMPORTANT NOTES – SEE OVER

Plan

This is the plan referred to in the Lawful Development Certificate dated: [11 May 2023]

by Zoë Franks Solicitor

Land at: Land off Newtown Road, Sound, Nantwich, Cheshire, CW5 8BG

Reference: APP/R0660/X/22/3304172

Scale: Not to Scale

