



Appeal Decisions

Site visit made on 22 May 2023

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2023

Appeal A: APP/N1730/X/21/3288009

Pond House, Church Lane, Dogmersfield, Hook RG27 8TA

- 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 Gary Martin against the decision of Hart District Council.
 - The application Ref 20/03099/LDC, dated 17 December 2020, was refused by notice dated 16 November 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: Use of land as garden associated with Pond House.
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Appeal B: APP/N1730/D/22/3292137

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The application Ref 21/02350/HOU, dated 8 September 2021, was refused by notice dated 16 November 2021.
 - The development proposed is: Two storey side extension with basement.
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Summary of Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Preliminary Matters

3. A 'concept of lawfulness' has been highlighted by the appellant with reference to s191(2)(a) of the Act. This clarifies that for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
4. However, for a person wishing to ascertain whether any existing use of buildings or other land is lawful, an application is made under s191(1)(a) of the Act. With this comes the prospect of engaging s171B(3) of the Act and

therefore a need to demonstrate a 10-year period of continuous usage so that no enforcement action may then be taken (a relevant period).

5. In 2011, planning permission was granted for the change of use of a garage at Ormersfield House to a dwelling, which is now known as Pond House. The approved plans have a red edge showing the residential planning unit created as a result of the change of use to only encompass the building and some land to the south. The residential use of the southern part of the appeal site is therefore not contentious and is accordingly not liable to successful enforcement action in respect of its residential use. I will therefore not consider the southern land further.

Application for Costs

6. An application for costs was made by Mr Gary Martin against Hart District Council. This application is the subject of a separate Decision.

Appeal A

Main Issue

7. The main issue is whether the Council's refusal to grant a certificate of lawfulness for the use of the northern land as residential garden land was well founded.

Reasons

8. In matters such as this, the onus is on the appellant to demonstrate on the balance of probabilities that the residential use was lawful and was therefore not liable to enforcement action at the date of the appeal application. My assessment is therefore very fact specific, based upon the evidence before me.
9. The thrust of the appellant's case centres on the assertion that the northern land was part of the residential garden of the neighbouring Ormersfield House. Two statements of truth have been made by a former owner. They explain that permission was granted in 1997 for a garage building and that the historic use of this area, which included barns and a granary, was agricultural land. In 2011, planning permission was then granted for the use of that garage as a dwelling, and which is now known as Pond House.
10. That agricultural description however only relates to land to the south of Pond House and the former owner highlights they have never made a statement or declaration about the use of the northern land. They however contend in the statements before me that the northern land has not at any time since the purchase of the site in 1969 been used for agriculture.
11. It is further stated that the northern land '...was used, kept and enjoyed by us and our family as part of Ormersfield House's garden grounds for over four decades...'. The contention is accordingly that the northern land has been in residential use for a considerable period of time, and that being so, the subsequent severance and transfer to and residential use of part of that land by Pond House would not alter the lawful position.
12. It is therefore necessary to consider the evidence of a residential (garden land) use as it pertains to the northern land of the appeal site to establish whether it was in a lawful residential use prior to its transfer to Pond House. To this effect, the evidence of the former owner is that it has been tended, maintained and

used as such in common with the whole of the land, which is then edged in red on a title plan. This encompasses Ormersfield House and the now Pond House. Aerial photographs are said to demonstrate that the northern land has been mown and maintained to the same standard as Ormersfield House. It is however not possible to adduce from the evidence whether the character of the use was the same, and there are no ground-level photographs to corroborate any assertions.

13. Whilst the northern land has not been in an active agricultural use, certification is not being sought for this, rather, it is sought for residential usage. I accept that drains were installed as the land was wet and boggy, although no date is provided for when the works took place. Flowers were also said to have been planted, although the extent of this and any maintenance involved is also absent. The land was then mown, and a perimeter pathway further cut. The northern land was then considered to have been maintained in common with the other land.
14. Despite this, there remains a lack of evidence and/or account of residential activities or paraphernalia on the northern land accordant with a continuous and therefore lawful residential use for a relevant period. This casts considerable doubt in my mind. I recognise that the previous owner has been consistent in his view that the northern land was not in an agricultural use, but this does not demonstrate a lawful residential use in planning terms. The installation of drains, mowing of grass and other explanations provided are not activities exclusive to a residential use, let alone demonstrable of a lawful one for a relevant period.
15. My attention has also been drawn to a restriction within a covenant. It states that the land should not be used 'for any purpose other than its current use as garages and/or for residential use'. However, that wording did not demonstrate a current use of the land for residential purposes. It identifies the then current use as garages and a prospective residential use, which thus was likely to arise from the 2011 planning permission.
16. I appreciate the unit of occupation associated with Ormersfield House remained the same from 1969 to 2013. However, the evidence before me is not sufficiently precise and unambiguous to demonstrate on the balance of probabilities that there has not been physical and functional separation. I also note the quantum of land formerly associated with Ormersfield House and that there is physical separation created by the access track. I am also mindful of the likelihood of there being a historic agricultural use of the land, given the explanation of the previous owner about the southern land and the otherwise rural surroundings. There is also little evidence of a planning permission for Ormersfield House itself and with-it the creation of the planning unit which is sought to be relied upon.
17. I have also considered the agent's statement of truth which advises they have visited Ormersfield House since September 2009 and that no part of the land has been put to an agricultural use, and that the character of the land has not changed. However, as I have already noted, that the land may not have been actively used for agriculture is not determinative, it is whether there has been a continuous period of residential use for a relevant period such that lawfulness can be attained.

18. In addition, the evidence before me is that Pond House was only completed in March 2018, despite the planning permission having been granted in 2011. In their statement of truth, the appellant advises they are a builder and built Pond House, having first visited the site in 2016. Had I accepted the thrust of the appellant's case, there would still have been considerable doubt in my mind as to a lawful residential use of the northern land. This is because based on the evidence before me it could neither have been associated with the residential use of Ormersfield House, given that property has not been occupied by the former owner since 2013 and thus the appeal site severed, nor the residential use of Pond House, given this would appear to not have commenced until 2018. There is therefore a considerable period where there is not sufficiently precise and unambiguous evidence pertaining to residential usage or whether a nil use arose. Moreover, residential usage between 2013 and 2020 is disputed by the current owners of Ormersfield House, in the statutory declaration they have provided. However, as the possibility of a nil use is not determinative in respect of my current assessment, I need not consider this matter further.
19. It remains the case that the appellant's own evidence needs to be sufficiently precise and unambiguous to justify the grant of a certificate. I accept that the lawful use of residential land is not dependent on an assessment of curtilage and that the severance and transfer of lawful residential garden land from one dwelling to another may not amount to development. However, as a matter of fact and degree, based upon the evidence before me, the appellant has not discharged the necessary burden of proof to demonstrate the lawful residential use of the northern land for a relevant period prior to its transfer and that therefore it was not liable to enforcement action.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the northern land 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.

Appeal B

Main Issues

21. The main issues are:

- the effect of the development on the character and appearance of the area; and,
- the effect of the development on living conditions, having particular regard to the size of outside private amenity space.

Reasons

Character and appearance

22. The site is approached via a long track and is set within a well-defined and mature plot. It is located in the open countryside. The development before me relates to a two-storey side extension with basement.
23. Whilst the origin of the dwelling was a garage building, it has since been converted and extended. The position of the extension would then be set towards the rear corner of the plot, and would be inconspicuous within the

wider area, particularly given the presence of a nearby large building of agricultural appearance. Whilst the gap between the dwelling and this building would then be reduced, based upon my site visit, I am not persuaded as to the importance of retaining the current size of gap in this location, or that the extension would detrimentally alter the perception of built form or increase bulk more generally. It would therefore not result in the property becoming more visually intrusive in the countryside.

24. The design and form of the extension would then replicate details from the existing dwelling and would be of no greater height. Whilst the building would be elongated, it would not appear as a terrace of houses owing to the gabled design nor otherwise have an urbanising effect. I do not accept that the development would transform the building, given the scale and position of the extension.
25. I recognise there have been pressures to use land to the north for residential purposes. However, I have little evidence to persuade me that the additional accommodation would concentrate domestic paraphernalia to the detriment of the surrounding countryside.
26. I conclude the development would not be harmful to the character and appearance of the area, and so accords with Policy NBE9 of the Hart Local Plan (Strategy and Sites) 2032 (the LP) and saved Policy GEN1 of the Hart District Local Plan (Replacement) 1996-2006 (the LPR). These policies, amongst other things, require development to achieve a high-quality design and be in keeping with local character by virtue of their scale. For the same reasons the development accords with the objectives of the National Planning Policy Framework (the Framework). I also do not find conflict with Policies NBE1 of the LP or RUR1 of the LPR which denote where support will be provided for development in the countryside, and which defines settlement boundaries.

Living conditions

27. The development would result in the creation of a basement, living and utility room, as well as an additional bedroom.
28. The footprint of the extension would be comparatively small, located in a corner of the plot, in an area that was largely set to hardstanding at the time of my site visit.
29. I again recognise there have been pressures to use land to the north for residential purposes. However, the residential plot already contains structures, sizable hardstandings and lawns which are thus adequate for a property of this size. I am then not persuaded on the evidence before me that the additional accommodation would give rise to harmful living condition pressures for future occupants, having particular regard to the size of the outside private amenity space that would still remain. The development would therefore not detrimentally effect the enjoyment of the private outside space.
30. I conclude the development would not be harmful to living conditions and so accords with Policy NBE9 of the LP. This policy, amongst other things, requires gardens to facilitate use by future residents.

Other Matters

31. I recognise concerns about surface water drainage. However, the site is not at a high risk of flooding, and I consider that a suitably worded planning condition would ensure the property is adequately guarded against flood risk for its lifetime. As such, there would be no conflict with Policy NBE5 of the LP or the Framework.
32. Representations were received objecting to the development which raised other matters which are not in dispute between the Council and appellant. Given the existing fenestration and orientation of the building, the extension would not introduce overlooking into neighbouring private garden areas to any materially greater extent. For the same reasons, the extension would not negatively add to light pollution. Whilst I appreciate concerns about the possible previous removal of trees, the extension before me does not require trees or hedgerows to be removed. A septic tank does not form part of the development before me, and whilst I appreciate concerns have been raised regarding the location and suitability of the existing, I note these have been registered with the Environment Agency. Such concerns however do not preclude the extension before me.

Planning Conditions

33. I have considered the need for the conditions put forward in light of the Planning Practice Guidance.
34. It is reasonable and necessary to impose the standard time limit for implementation as well as ensuring development is carried out in accordance with the approved plans. In the interests of the character and appearance of the area it is also necessary to ensure the use of matching materials.
35. It is then necessary to impose a condition in respect of surface water drainage to ensure the property is adequately guarded against flood risk for its lifetime. It is also necessary impose a condition to ensure the recommendations and mitigation measures set out in the submitted ecological assessment report are followed.
36. I am however not persuaded, given the general context of the site and its surroundings, that a construction management plan is required. For the same reasons, and that it would not be relevant to the development to be permitted, it would not be reasonable to substantively remove permitted development rights or secure alternative car parking arrangements.

Conclusion

37. For the reasons given above I conclude that the appeal should be allowed.

Formal Decisions

Appeal A

38. The appeal is dismissed.

Appeal B

39. The appeal is allowed and planning permission is granted for a two storey side extension with basement at Pond House, Church Lane, Dogmersfield, Hook RG27 8TA in accordance with the terms of the application, Ref 21/02350/HOU, dated 8 September 2021, subject to the attached schedule of conditions.

Paul T Hocking

INSPECTOR

Appeal B – Schedule of Planning Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Existing Site Plan 2069/0.01; Existing Ground & First Floor Plan 2069/1.01; Existing Roof Plan 2069/1.02; Existing Elevations 2069/2.01; Proposed Site Plan 2069/0.02; Proposed Basement & Ground Floor Plan 2069/1.03; Proposed First Floor & Roof Plan 2069/1.04; Proposed Elevations 2069/2.02.
- 3) The facing and roofing materials used in the development hereby permitted shall match those used on the existing dwelling.
- 4) No development shall take place until a Surface Water Drainage Scheme for the site, based on sustainable drainage principles, has been submitted to, and approved in writing by, the Local Planning Authority. Any proposed drainage system for the infiltration of surface water to the ground must be supported by an assessment of the risks to Indicative Flood Problem Areas. The development shall then only take place in accordance with the approved Surface Water Drainage Scheme.
- 5) The development hereby permitted shall be carried out in full accordance with the recommendations and mitigation measures set out in the Ecological Assessment Report by ABR Ecology, dated 30th August 2021, including the on-site presence of a suitably qualified experienced ecologist.