



Appeal Decision

Site visit made on 8 March 2023

by Roy Curnow MA BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2023

Appeal Ref: APP/D0840/X/21/3305351

Crift Farm, Lanlivery, Bodmin PL30 5DE

- 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 Benjamin Lewis against the decision of Cornwall Council.
 - The application Ref PA21/10251, dated 6 October 2021, was refused by notice dated 17 January 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 Land as shown on the site location plan edged in red has been in lawful residential use in connection with Crift Farm dwellinghouse continuously since at least 1994.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a certificate of lawfulness was well-founded.

Reasons

3. Crift Farm is a detached dwelling lying amongst a small collection of dwellings in the open countryside. It has gardens immediately to its front, side and rear. I saw that the garden area immediately to its rear was linked to a further garden area at lower levels, that runs to a small conifer plantation. There was a mobile home and outbuildings on this land, which is the appeal site. Beyond this to the southeast, and conterminous to it, was land that was not separated from the appeal site and looked to be used for the same purpose at the time of my visit.
4. Section 191(1)(a) of the Act allows for any person to ascertain whether any existing use of land is lawful. The time limits after which no enforcement action may be taken against breaches of planning control are set out in s171B of the Act. In respect of the use that is the subject of this appeal, the period is 10 years ('the relevant period'). The period is taken from the date that the application for the certificate was made to the Council. This was 6 October 2021. It is for the Appellant to prove, on the balance of probability, that the land has been used continuously for residential use in connection with Crift

Farm from 6 October 2011 ('the relevant date'). The appeal only deals with the case play no part in my decision.

5. It is for the Appellant to make his case on the balance of probability. Where a local planning authority does not provide evidence to contradict an appellant's version of events, the appellant's evidence should be precise and unambiguous.
6. The Council asserts in its statement that the main issue in the appeal is "whether the appeal site can be considered curtilage". However, curtilage is not a use of land and a certificate of lawful use cannot therefore be issued for it. The Appellant seeks a certificate for the use of the land for residential purposes associated with Crift Farm. Although the two might cover the same area of land, they are quite different in planning terms. The statement repeats the mistake made in the Officer's report into the certificate application which states "This application for a Lawful Development Certificate seeks to establish the existing use of a parcel edged red on the submitted location plan of land adjacent to Crift Farm has been used as domestic curtilage purposes for more than 10 years".
7. I have assessed the appeal on the basis of the original application, rather than as one for residential curtilage. Nonetheless, and notwithstanding the references to curtilage, elements of the case put forward by the Council are relevant to the appeal.
8. The Appellant and his partner completed the purchase of Crift Farm and surrounding land, including the appeal site, on 4 July 2011. Prior to this, it was owned by a Mr Higgs who died in 2009. The Appellant's position is that he has used the appeal site for purposes incidental to the enjoyment of the dwelling since he purchased it, and that this followed on from Mr Higgs' use of the land for the same purposes.
9. The sales particulars for the property showed that it was in need of renovation at the time they purchased it. The Appellant moved a mobile home onto the land and paid Council Tax for this during the period from July 2011 to 31 March 2013, though a 'Long Term Empty Discount' was given for the period 18 January to 31 March 2013.
10. A large outbuilding on the appeal site, close to the conifer plantation, was built without planning permission, though it is unclear from the evidence when this occurred. A planning application¹ to retain the building was made in February 2020; this was refused by the Council and a subsequent appeal² against that decision was dismissed. I am told that an enforcement notice requiring its demolition and removal was issued by the Council on 20 June 2022, though I have not been provided with a copy of this.
11. In his decision letter for that appeal, the Inspector touched upon the question of the use of the land to which the appeal before me relates. He stated that no firm evidence had been submitted to demonstrate that its use for domestic purposes is a long-established one and that the Council's photographic evidence suggests that the land was not so used in 2009. However, he pointed out that it was not within the remit of that appeal to formally determine the lawfulness of the existing use. Amongst his findings was that the building lay outside the established residential curtilage of the dwelling.

¹ Council Reference – PA20/01407

² PINS Reference – APP/D0840/W/20/3261497

12. Two statutory declarations were made in support of the application for the certificate: one by the Appellant, and one from a neighbour. I afford substantial weight to these declarations.
13. In his statutory declaration, dated 4 October 2021, the Appellant says that when the land was bought, the appeal site was not in agricultural use and that, from his moving into the property, the land was used as part of the residential garden to Crift Farm. He refers to the siting of the mobile home and that, since purchasing the property, the land has been used by him, his family and friends for purposes "ancillary to the enjoyment of my home". He refers to mowing the land, trimming trees and hedges surrounding it and its use for camping by visiting friends, barbecues and picnics. At times, he says, parts of the land were left to create wildflower meadows. The land, he states, was not used for any other purpose than residential use during this time.
14. The other statutory declaration was made by DS, (I refer to third parties by their initials for the sake of their privacy), and was also dated 4 October 2021. DS owns a neighbouring property, having lived there for 56 years. He states that the land was not used for agricultural purposes by Mr Higgs from 1994; from that time, he says, it was used "ancillary to the enjoyment of the dwellinghouse, Crift Farm, for gardening and vegetable growing for Eric Higg's [sic] own use". He states that it has been in "residential use" by the Appellant and that the land has not been used for any other purpose since 1994.
15. A number of aerial photographs of the land have been submitted by both main parties. As the Inspector in the recent planning appeal found, that from 2009 does not provide substantive evidence of the land being used for residential purposes. However, as this was taken at or around the time that the previous owner of the land died, it is, perhaps, not surprising that this is the case. The Council submitted two further aerial photographs, from 2017 and 2021. It is apparent from these that there had been a change in the character and appearance of the land from that in 2009.
16. The Appellant supplied aerial photographs of the land dated 2002 and 2005, but I cannot conclude that they show the use of the land for purposes linked with the residential use of Crift Cottage. An oblique view from 2005 shows what appears to be a tractor parked on the land, and grass on the appeal site is cut in the same manner as that on conterminous land to the southeast, as well as the land to the west of the conifer plantation. It does not, to me, suggest a residential use of the land at that time.
17. I find that oblique view undermines the claim made by DS that Mr Higgs used the land continuously for the purposes claimed for 27 years. It has not been demonstrated in the required manner how long Mr Higgs used the land for the purposes claimed. The Appellant states that the property had been empty for some 2-3 years before he purchased it, and that it "took some time to get back on top of" the overgrown gardens. Even if Mr Higgs had been using the land for the claimed purpose before his death, those 2-3 years prior to the Appellant's purchase of the land represent a significant break in the use of the land. As such, I find that the earliest that the use commenced would have been 4 July 2011.
18. I find that the hedge between the area of garden close to the dwelling and the appeal site most probably did have an opening in it, providing a quick and convenient link between the two areas. This would have negated the need for a

relatively lengthy and circuitous alternative route from one to the other. It was most likely hidden by the tree canopy when the 2009 aerial photograph was taken. The evidence suggests that this was improved, rather than created, during the Appellant's ownership.

19. The Appellant has submitted photographs of his property to the rear of the house during his ownership. Those dating from 2011, 2012 and 2013 are inconclusive in terms of the claimed use of the land. That from 2019 could be read as suggesting that the land was used as claimed, at that time.
20. Third party letters were provided in support of the claimed use of the land. AB states that the land was not used by Mr Higgs for agriculture for 15 years prior to his death. This states that "it was used for him as his vegetable garden for many years until he was unable to do so due to his age". This, again, is at odds with the evidence of the 2005 oblique view. It does, however, reinforce my view that there was a break in its use prior to the Appellant's purchase.
21. MW who lives nearby states that "all of the land at Crift Farm...has been in use and maintained constantly". However, he does not state what the use was, nor what is meant by all of the land. BC sets out that "the land below the house has always been a garden". This does not, however, identify precisely what land is referred to. This is also the case with the letter from LB and JB, which refers to the use of the "land next to the house and stretching down to include the Pine trees" for various activities linked to the residential use of Crift Farm. SR makes much the same point also stating that the Appellant has used the land to the southeast for these purposes since 2011; a point that is not claimed by the Appellant. The letter from AC and RC speaks only of the 4 years prior to when it was written, so does not demonstrate the ten-year use of the land.
22. None of these letters, whether taken individually or cumulatively, provide evidence that is sufficiently precise to prove the use of the land.
23. The Council's statement refers to a statutory declaration from a Mr C, of Windmill Cottage, in which it is said reference is made to the creation of a formal access between the two areas was formed in 2011-2012. I was not, however, provided with a copy of the declaration, nor other representations referred to in the Council's submissions. As a result, I wrote to the Council requesting that third-party comments referred to in its submissions be provided. I was given copies of 'Public Access' documents for a number of representations, including from the Appellant, which appeared to have been edited or précised. However, I was not provided with any further statutory declarations. In the circumstances, I can only afford this evidence limited weight.
24. The Council points out that the site plan attached to a 2015 planning application for alterations to the house did not show the appeal as being "garden area which accompanies the dwelling". The Appellant says that this was not included as it would have required additional surveying. He acknowledges that this was an error and that the land should have been included in the application.
25. Notwithstanding that the Council addressed the application incorrectly and has provided little substantive evidence of its own, it is, nonetheless, for the Appellant to make his case on the balance of probability.

26. Whilst Mr Higgs might have used the land in the manner claimed, it has not been adequately demonstrated how long this was undertaken. In any event, if he was putting the land to the claimed use, the evidence points to there being a significant break in this in the period from before his death to the Appellant's purchase of the property.
27. The evidence put forward by the Appellant of the use during his ownership lacks the necessary precision to prove his case on the balance of probability. It seems unlikely that the use of the land started immediately he moved in, given that he said that it took some time to get the overgrown land under control. I have simply not been provided with evidence that leads me to find that his use of the land began prior to the relevant date and carried on continuously for the subsequent 10 years.

Conclusion

28. 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 residential use of land in connection with Crift Farm dwellinghouse continuously since at least 1994 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.

Roy Curnow

Inspector