
Appeal Decision

Site visit made on 15 August 2023

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Appeal Ref: APP/Z4718/X/23/3317784

Bar House, Penistone Road, Hade Edge, Holmfirth HD9 2JG

- 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 Daniel Mosley against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2022/CL/92597/W, dated 29 July 2022, was refused by notice dated 4 January 2023.
 - 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 purposes incidental to the enjoyment of the occupiers/owners of Bar House.
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Preliminary Matter

1. I have noted that the description of the development for which a LDC is being sought has changed from the application form where it was described as "*domestic curtilage for dwelling providing garden, parking, turning and vehicular access*". However, curtilage is not a land use but is relevant in planning terms because the use of land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is exempted from development under s55(2)(d). Consequently, the Council changed the description to that which is set out above. I am satisfied that it accurately describes the development the subject of the LDC application and therefore have used it in this decision.
2. The Council has not submitted a Statement of Case and in their Delegated Decision for Application for Certificate of Lawful Development dated 4 January 2023 there is reference to various historic aerial photographs and images held by them. However, these have not been submitted as evidence and consequently, do not form part of the evidence base on which this decision is made.
3. In the evidence submitted the appeal site is referred to using different addresses, but for the avoidance of doubt I have taken the address from the original application form.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well founded. That will turn on whether the appellant has proved on the balance of probability that the use of the land changed to purposes incidental to the

enjoyment of the occupiers/owners of Bar House on or before 29 July 2012 and that the use then continued without significant interruption for 10 years after the date of the change.

Reasons

5. In an appeal relating to a lawful development certificate the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided it is sufficiently precise and unambiguous. It is my understanding that the original application a range of supporting documentation, which included:
 - Historic maps published in 1854, 1893 and 1906;
 - A 2009 Google Street View image;
 - Google Earth aerial photographs from 2001 to 2021;
 - Title deed plan dated 15 September 1943; and
 - Letters from local residents, including supplementary letters submitted on 14 November 2022.
6. The historic maps appear to show an enclosed area of land to the rear of and associated with Bar House. However, these do not correspond with the site the subject of the application and do not define what that land was actually used for at the time. As such they do not comprise clear or unambiguous evidence of the use for which the LDC is being sought.
7. The 2009 Google Street View image appears to show a car parked on the appeal site but beyond that is rough grass, scrub land and some small trees. There is no evidence of a stock fence or any other form of boundary definition between the area the subject of this appeal and the agricultural land beyond. There is also a 2021 Street View image available which shows relatively shortly mowed grass and a fence along the approximate boundary line of the appeal site. However, these two images only show part of the appeal site and therefore do not provide strong evidence of use or the period for which the use has occurred.
8. The Google Earth aerial images dated 2001, 2003 and 2009 appear to show an area of land associated with Bar House but they are not sufficiently clear to be able to see the precise extent of the land or what it is being used for. The additional aerial images from 2016, 2018, 2019, 2020 and 2021 are very unclear and from them it is not possible to identify any specific land which is being used for purposes incidental to the residential occupancy of Bar House. Consequently, I find that the Google Earth aerial photographs from 2001 to 2021 are not clear and unambiguous evidence of the use for which the LDC is being sought.
9. The 1943 title deed plan shows a red parcel of land the subject of the deeds. Within that area there is a defined approximately square area of land to the rear and side of Bar House. There is no indication of the use of that smaller

square parcel and it does not correspond with the land to which the LDC application relates. Therefore, it does not comprise clear and unambiguous evidence of use incidental to the enjoyment of the occupiers of the appeal property.

10. Six letters from local residents confirm that the previous occupant gardened the land to the rear of his property and he used the side gate (left-hand side) for vehicular access and also parked his cars to the rear of this property. However, there are no maps or plans attached to these letters and therefore the extent of the previous user's activities on the appeal land are not at all clear.
11. There is an additional letter from a party who states that he has carried out work as a contractor on the nearby agricultural building and spent time in the garden terraces below the trees. This indicates some garden use of land around the time the agricultural building was being constructed and, whilst there is an indication of where a barbecue may have taken place there is little detail of relevant time periods or the extent of incidental use.
12. There is an additional letter from the appellant, stating that he lived at a nearby farm for 76 years up to 14 February 2022. His evidence is that the terraced garden area to the rear of the appeal property was created in the 1950s, that at the time the owner grew vegetables and kept pigs and chickens and that the land was mown sporadically from that date onwards. There is no accompanying plan showing the extent of the use contended, nor are there specific dates. In addition, some of these activities are more agricultural than domestic.
13. Four more recently submitted letters describe how the previous owner mowed the garden area around the house, up the side and around the back up to the back terrace. He also parked his car through the wooden gate. Animals were kept on a separate area outside the fenced off garden enclosure behind the house. One letter confirms that the red line shown on the application plan is the area described as garden. No plans are submitted with the letters and only one refers to the red edge on the application drawings. There are some contradictions on the evidence provided by local residents including the precise use of the land in question over the years. Therefore, there is a degree of uncertainty with respect to the extent of the area used for purposes incidental to the enjoyment of the residential property and the activities that took place within any fenced off or designated area. As such the body of evidence contained within the letters does not provide the level of certainty required to be considered as unambiguous for the purposes of proving the use took place for the material period.
14. I have taken account of the appellant's full body of evidence, including case law and legislation regarding curtilage and how it may be defined. I have also taken account of the potential limitations of relying on aerial photographs and how the condition of land may vary on a season-by-season basis. However, taken as a whole, the appellant's evidence lacks the detail and consistency required and consequently, does not prove on the balance of probability that the use of the land changed to purposes incidental to the enjoyment of the occupiers/owners of Bar House on or before 29 July 2012 and that the use then continued without significant interruption for 10 years after the date of the change.

Conclusion

15. In this case I find that the appellant has not shown, on the balance of probabilities, the use of the land changed to purposes incidental to the enjoyment of the occupiers/owners of Bar House on or before 29 July 2012 and that the use then continued without significant interruption for 10 years after the date of the change.
16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

A A Phillips

INSPECTOR