



Appeal Decision

Site visit made on 18 October 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date 19 October 2023

Appeal Ref: APP/W0530/X/22/3296246

Blackberry Barn, 4 Over Mereway, Willingham, Cambridge CN24 5AE

- 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 Mrs Carole Jakes against the decision of South Cambridgeshire District Council.
 - The application Ref 22/00455/CLUED, dated 30 January 2022, was refused by notice dated 28 March 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 use of the land as a domestic garden and use of the mobile home on the land as ancillary accommodation to Blackberry Barn.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application form describes the existing site use for which the certificate of lawfulness is being sought. It is described as *'land has been used as a garden since 1979, with flower beds, tennis court, barbecues, play area, vegetable plots etc. Mobile home has been in situ since 2007, used by sons, but is ancillary to 4 Over Mereway for meals, showers etc and using the house's power, bins, sewer, Council tax etc. Also used by Mr & Mrs Jakes when new house being built'*.
3. In its LDC decision notice, the Council describes the LDC use as *'the continued use of the land as a domestic garden'*. Given the applicant's LDC described use, and, in the interests of precision, I sought clarification from the main parties in terms what specifically was being sought in terms of the LDC application. The main parties agreed that a LDC was being sought for use of the land as a domestic garden and use of the mobile home on the land as ancillary accommodation to Blackberry Barn. The LDC use in the banner heading above reflects this agreed position.

Main Issue

4. For an LDC to be granted under section 191 of the 1990 Act, the burden of proving relevant facts in this appeal rests on the appellant, and the test of the evidence is the balance of probability.

5. Paragraph 006 of the *Lawful Development Certificates* section of the national Planning Practice Guidance advises in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
6. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well-founded. That turns on whether the appellant can demonstrate, on the balance of probabilities, that the land can lawfully be used as a domestic garden and that the mobile home on the land can lawfully be used as ancillary accommodation to Blackberry Barn.

Reasons

7. The appellant claims that the land was historically used for horticultural purposes until '*the early 1970s when our parents ceased using it for flower growing*'. Section 336 of the Act defines what is agriculture and this includes '*horticulture, fruit growing, seed growing*' as well as other matters.
8. It was clear from my site visit that the land was currently being used as a garden and that a mobile home was on the land. However, the use of the site on my site visit is of no relevance in terms of this appeal. The LDC application seeks legal confirmation that the existing lawful use of the red edged land shown on the submitted site location plan is that of a domestic garden due to the passage of time. Furthermore, it seeks confirmation that use of the mobile home as residential accommodation ancillary to use of Blackberry Barn as a dwellinghouse is lawful.
9. In respect of demonstrating lawfulness in terms of a material change of use of the land from agricultural land to domestic garden land, it is necessary that the appellant can demonstrate, without ambiguity, at least ten years continuous use of the land having regard to s.171B (3) of the Act.
10. Garden land does not necessarily equate to land within the curtilage of a dwellinghouse. Section 55 2(d) of the Act states that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such does not amount to development of the land. Curtilage is not a use. In respect of the mobile home, it is either necessary that sufficient evidence is available to demonstrate that it is positioned within the curtilage of the dwellinghouse of Blackberry Barn, and has been used for an incidental purpose so as to not amount to development requiring planning permission, or that the land has been used for residential accommodation purposes as part of a separate use of the land for more than ten continuous years so as to be immune from enforcement action.

Garden land

11. The appellant does not dispute the fact that the land was historically used for agricultural purposes. A change in the use of the land from agriculture to that of a domestic garden is a material change of use and hence is development by virtue of section 55(1) of the Act.
12. By way of evidence, the appellant has submitted a statement signed by nine residents each commenting that that land has been used continuously as a

garden since 1979 and since 2012 when 4 Over Mereway was built as a dwellinghouse. This comment does not demonstrate actual objective evidence of continuous use as a domestic garden. I find that the weight that I can give to the claim made by those that have signed the statement cannot hold the same weight or statutory force as would say a statutory declaration or affidavit. It is noteworthy that the local planning authority did suggest to the appellant that it would be advisable to submit affidavits as part of the LDC application.

13. A series of photographs have been included with the LDC application, but these are not dated. Furthermore, an aerial photograph is included from Google Maps with a date of '17 October 2008'. However, this does not conclusively demonstrate use of the site as a domestic garden or indeed that it has been used as such continuously for at least ten years. A caravan can be seen within the Google Maps image, and it is fenced off from the land where Blackberry Barn has subsequently been built. Again, this does not conclusively demonstrate that the LDC land has been continuously used as a domestic garden for ten or more years.
14. In addition to the above, the appellant has submitted two photographs, one with a man pushing a lawn mower, and the other showing two people with a football. I am not certain from the evidence submitted whether these photographs relate to the LDC site in question and, if so, whether such alleged activities have endured for ten or more years. Furthermore, they are not date stamped and instead include handwritten dates of '1993'. Furthermore, the submitted site location plan and land registry details do not prove that the land has been used as a domestic garden on a continuous basis for more than ten years.
15. I find that the evidence submitted by the appellant is ambiguous and does not demonstrate, on the balance of probability, that the land has been used continuously as a domestic garden for a period of more than ten years.

Mobile home

16. There is no dispute between the parties that the mobile home on the land has been in place for more than ten years. The appellant asserts that the mobile home has been lived in by her son since 2007 and that this has continued since this time without interruption and including when the adjacent dwellinghouse known as Blackberry Barn was built.
17. While the information does indicate that a mobile home has been in existence on the site for more than ten years, there is an absence of clear evidence relating to the actual use of the caravan for residential purposes for ten or more continuous years. In the statement signed by nine residents it states that the mobile home was positioned on the land in 2007 and has been in '*constant use since that date as ancillary accommodation to the main house*'.
18. The existence of the mobile home does not in itself demonstrate use of the land as a garden. Furthermore, the evidence before me is not sufficiently precise and unambiguous to demonstrate that the mobile home has been used for residential purposes for more than ten years. It is noteworthy that there are no statutory declarations, sworn statements or affidavits in terms of the mobile home and no specific evidence from the son (or visitors) who it is stated has allegedly occupied/used the mobile home since 2007.

19. Furthermore, I do not find that the evidence supports a view that the mobile home is positioned on land falling within the curtilage of Blackberry Barn. The Courts have held that in considering curtilage regard should be had to three tests of (i) physical layout of the building and the land or building said to be in the curtilage, (ii) ownership (past and present) and (iii) use or function (past and present) applied.
20. I have considered the historic position of the mobile home and it is physically separated by fencing from the land which is more intimately associated with Blackberry Barn. While my site visit revealed that this is not the case now, it is nonetheless necessary that I consider the site condition evidence when the LDC application was made. Furthermore, the evidence is that the caravan was associated with land that pre-dates the erection of the dwellinghouse known with Blackberry Barn. These factors together are determinative, and, as a matter of fact and degree, I do not therefore find that the caravan falls within the curtilage of Blackberry Barn. Hence, the continued use of the mobile home in association with use of Blackberry Barn does not qualify as being not development in respect of section 55 2(d) of the Act.

Conclusion

21. For the collective reasons given above, I conclude, on the balance of probability, that the Council's refusal to grant a certificate of lawful use or development in respect of use of the land as a domestic garden and use of the mobile home on the land as ancillary accommodation to Blackberry Barn 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.

D Hartley

INSPECTOR