



Appeal Decision

Site visit made on 3 October 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023

Appeal Ref: APP/C9499/X/22/3308135

Calton Hall, Hall Brow, Calton, Skipton, North Yorkshire, BD23 4AD

- 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 and Mrs Alistair Richard James and Josephine Wellock against the decision of Yorkshire Dales National Park Authority.
 - The application ref C/16/12T/LDC, dated 14 April 2022, was refused by notice dated 14 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 use of land as domestic curtilage.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 12th October 2023.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use describing the existing use which is found to be lawful.

Preliminary Matters

2. The description of the development in the banner heading for which the LDC was sought is taken from the application form. However, as 'curtilage' is not a use of land, for clarity I have used the description 'existing use of land as domestic garden in association with Calton Hall, Calton' as referenced by the National Park Authority (the Authority) in their Decision Notice and adopted by the appellants for the purposes of the appeal.

Main Issue

3. The main issue is whether or not the Authority's decision to refuse the LDC was well founded.

Reasons

4. The provisions of s191(2) of the Act include (a) that a use is lawful at any time if no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force. Since the Authority have confirmed that no enforcement notice was in force at the date of the application, it is clear that s191(2)(b) is satisfied.

5. The burden of proof in satisfying the requirement of s191(a) falls to the appellant to establish that the use of the land (the Land) as a garden in association with the residential occupation of Calton Hall commenced at least 10 years before the date of the application, hence on or before 14 April 2012 ("the relevant date"), and continued without any significant interruption thereafter. The appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not.
6. The Planning Practice Guidance reflects prior Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
7. The Land consists of an area of maintained lawn and includes, and is contiguous with, part of a paved area immediately to the southern elevation of the dwelling. The Land and house are enclosed by a combination of a stone ha-ha wall and drystone walls which continue to encircle another garden area to the north. At my site visit I saw that the Land has a plain maintained appearance with few domestic features or planned planting. However, by its well-defined boundaries and manicured lawn, it appears distinct from the surrounding grazing land.
8. In support of the claim, the appellants have provided a statutory declaration highlighting that the property was acquired in 2003. There is no dispute that the Land formed part of the sale and the marketing documents reference the Land as a 'lawned paddock'. The declaration states that since moving to the property the Land has been used as domestic garden.
9. Submitted photographs of the Land are apparently taken on isolated occasions, estimated by the appellants to be a few years after purchase in 2003 and then circa 2021. These show some domestic use and a similarly maintained condition. Google imagery provided by the appellants also suggest some continuity in the appearance of the Land from acquisition onward. It reflects the continuous maintenance regime of the lawn and distinction of the Land from the rough grazing land alongside. Whilst the maintenance of land is not necessarily determinative of its use, there is little doubt that it has been carefully managed over a long period.
10. Other photographic evidence showing its use beyond isolated dates is, however, scant; and there is little other supporting evidence to visually demonstrate a continuity of use over the relevant period. However, the appellants' position is verified in a sworn statement made by a relative of the former owners of the property, who lives locally. This adds weight to the claim that the area has been consistently used as domestic garden by the occupiers of the dwelling and for no other purposes.
11. A statement of a family friend who has visited on occasions is ambiguous however, as the land to which the statement relates is unclear from the documentation provided. That claim is therefore a matter of negligible weight in the appeal.

12. The Council refer to works undertaken around 2018 and 2020, potentially including the replacement of a drystone wall, removal of a field gateway and extension of the ha-ha wall. However, there is no supporting evidence to demonstrate the extent or timing of those works. Even if there was, there is little to indicate that it interrupted any claimed use then taking place on the Land. The removal of a field gate does not confirm any prior agricultural use of the Land within the relevant period.
13. I acknowledge the Council's concern that the use may have been intermittent such that the necessary continuity of the qualifying period has not occurred. However, as garden use is not necessarily a daily occurrence, any balance of evidence must be considered in that context. Notwithstanding that the character of the land has changed little from its condition on acquisition, having regard to the nature and the consistent appearance of the Land, its distinction from surrounding agricultural land, the weight to be attributed to the sworn statements in relation to its use, and the substantial absence of evidence to the contrary, I find it more likely than not that the claimed use has taken place for the relevant period of 10 years or more up to the date of the application.

Conclusion

14. For the reasons given above I conclude on the evidence available, that the Council's refusal to grant a certificate of lawful use in respect of the Land as domestic garden in association with Calton Hall 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.

R Hitchcock

INSPECTOR

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 14 April 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, would have been lawful within the meaning of section 191(1) or (2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could have been taken in respect of the use because the time for enforcement action had expired and it did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

R Hitchcock

Inspector

Date: 08 December 2023

Reference: APP/C9499/X/22/3308135

First Schedule

Use of land as a domestic garden in association with Calton Hall, Calton

Second Schedule

Land at Calton Hall, Hall Brow, Calton, Skipton, BD23 4AD

IMPORTANT NOTES – SEE OVER

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 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 08 December 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

Land at: Calton Hall, Hall Brow, Calton, Skipton, North Yorkshire, BD23 4AD

Reference: APP/C9499/X/22/3308135

Scale: not to scale

