



Appeal Decision

Inquiry held on 5-6 December 2023

Site visit made on 4 December 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Appeal Ref: APP/W0340/X/22/3296597

Land to the rear of Brookfield, Post Office Road, Inkpen Hungerford, RG17 9PU

- 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 Mrs Elaine Crewe-Turrell against the decision of West Berkshire District Council.
 - The application ref 21/02616/CERTE, dated 12 October 2021, was refused by notice dated 25 February 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 the use of land in excess of 10 years as residential garden.
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Decision

1. The appeal is allowed in part for the stable building only and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Main Issue

2. Whether the appellant can demonstrate a continuous use of the land for residential purposes for 10 years.

Reasons

3. Brookside is one of three large detached houses set back on the east side of Post Office Road. All three have a common rear boundary beyond which is a paddock. Three sides of the paddock are surrounded by woodland. The paddock is owned by the appellant who bought it and a piece of woodland behind it along with Brookfield in 2004. The paddock and woodland form the 'land' which it is argued has been used residentially for 10 years or more.
4. There is some uncertainty as to the use of the paddock prior to 2004, but at some point it had definitely been used for grazing of horses and a stable block stands in the west corner near to the boundary with Brookfield. When Brookfield was purchased the paddock was already closely mown but there is no suggestion there had been any material change of use at that time and the lawful use of the paddock was and remains agricultural, which would include the grazing of ponies.
5. There was some discussion about a pony ridden by the appellant's daughter that occasionally was seen on the land. I agree this has little to do with the

appeal as that use, if it was a use, ceased in 2009 when the pony was sold. However, it does demonstrate an attitude to how the land was used that I shall return to later.

6. The appellant and the various witnesses called on her behalf all told a similar story and I have no reason to doubt what they said. The two neighbours who also gave evidence and were cross-examined, more or less agreed with the appellant's version of events, as did the Council. What separates the parties is the frequency of the events and what they mean in planning terms.
7. Firstly Mrs Crew-Turrell mowed the paddock with a push along petrol mower in order to keep the grass short. She did this frequently, at least fortnightly according to a neighbour, more often, especially in the summer, according to the appellant and her team. I am happy to accept her explanation for this seemingly rather obsessive behaviour as a welcome respite from her need to care, 24 hours a day, for one of her sons who is confined to a wheelchair. This gave her exercise and time to mentally recharge. It became something of a family in-joke and there are photographs of her mowing and the results, showing close cropped grass with mown lines across the entirety of the paddock.
8. Secondly, the stable building was used for storage of domestic items and garden toys and furniture and occasionally for camping out. It also contained a model railway for a while and more recently a bar was installed for outdoor events. I saw on my site visit that currently it is mostly given over to domestic and gardening storage.
9. Thirdly, the appellant and her witnesses all described their day-to-day life involving playing games of football and cricket on the paddock, war games on the paddock and in the woodland, driving quad bikes around and holding parties, bonfire night celebrations etc on many occasions.
10. The evidence to support this, apart from oral testimony, are photographs provided across the years. These show a snapshot of events, some of children playing, some of large scale events such as birthday parties or wargames. In all of them the paddock is closely mown, though not always obviously with stripes, but they do show a regular use of the land, both paddock and woodland across the years back to 2004. However, that is not in dispute, what is in dispute is the frequency of the events and what they represent.
11. The oral evidence is that the children often played in the paddock and the woodland after school, at weekends and in the holidays but this use must have been tempered by the weather and the inclination of the children. During the period in question (2021 to 2011 and beyond) the children grew up and moved out either to university or to live their own lives. The eldest had his 21st birthday party in 2016. So the frequency and intensity of use must have declined as they got older. They also drove quad bikes, which for a time was clearly a regular activity as an undated aerial photograph shows the circular groove worn in the paddock one summer. There was also much discussion of the 'wargames'. The photos show what appeared to be several well organised events with friends in cadet uniforms carrying BB guns, in one case stopping a car which was on the paddock and in another showing stills from a night vision video taken in the woods.

12. It is the quad biking and the wargames that the Council argue are not residential uses. I accept that 'wargames' is perhaps a rather grandiose description, but it does seem to fit the events we have photographs for. I accept that at other times the boys simply played in the woods with their guns, nevertheless if an enforcement officer had witnessed the quad bike activity or the more organised wargames I doubt they would have thought a residential use was taking place, so I am inclined to agree with the Council that these events are not residential, but they would have amounted to a material change of use to a sui generis use. This would have interrupted any residential use, even if that was ongoing either side of the events. This brings me back to the point made earlier about the pony. The appellant has a large paddock and an area of woodland at the back of her house, it is inevitable, with 3 sons and a daughter, all active and "outdoorsy" as they were described, they would make use of this resource, for playing on, camping out on, holding parties, riding quad bikes, holding wargames and even riding a pony. They were not setting out to establish a 10 year use, but simply using the land as they saw fit. I have no doubt sometimes this would have been quite intensive, but at others it would have been hardly used at all. Many of these activities, could, in hindsight be described as residential, other less obviously so.
13. However, the key issue is whether the appellant and her family and friends' activities amounted to a material change of use that was continuous. Could the Council, at anytime during those years have issued an enforcement notice alleging the residential use had taken place? This brings us to the point that it is very difficult to establish a use that is by its nature ephemeral and temporary. The paddock has always remained just an open grass field with no permanent residential features at all. The only permanent structure on the land is the stable block. It seems a slide and swing were positioned next to the stables in a corner of the paddock by some trees, and the goalpost was stored there as well. But the vast majority of the paddock was simply mown grass.
14. If we do not go into our own garden for months on end it doesn't affect its status as a garden as that is its lawful use. However, when the lawful use of the land is agricultural and it is used for something different then a material change of use is made. Once this new use stops, for more than a de minimis period, the land reverts to its lawful use. So in planning terms an area of land, such as the paddock can switch back and forward between agriculture and residential and sui generis (that is to say quad biking) many times across the years, but with very little physical evidence of any of the uses. So what happened at Brookfield?
15. Firstly the paddock itself. Not all the activities would have amounted to a material change of use in the first place. Simply playing on part of the paddock near to the house would not lead to a material change of use of the paddock as a whole. No-one could issue an enforcement notice because three of four children kicked a ball around for an hour after school. This activity would be de minimis. Some clearly would amount to a material change of use, such as a party with camping, driving quad bikes around for several hours or inviting friends around for a day of wargames, or just spending all of a summer day playing and lounging around the paddock. However, the GPDO allows such changes of use¹ to take place 28 times a year anyway. The oral evidence was that these sorts of events took place a lot, but no-one could actually say what

¹ General Permitted Development (England) Order 2015 Schedule 2 Part 4 Class B Temporary Uses of Land

'a lot' was. 28 times a year is more than once a fortnight, across the entire year, that could well seem 'a lot' to many people.

16. Some of the activities were de minimis, some were not residential, there would most likely also have been long periods of time when the paddock was not used at all due to the weather or other demands on people's time. It is simply too difficult to believe on the basis of the evidence I have that there was sufficient activity sustained across the year (in any one year between 2004 and 2021) to warrant the description of a material change of use to residential for any particular year never mind a 10 year period.
17. In particular, I don't find that mowing the paddock, even on a weekly basis in itself amounts to a material change of use. I was referred to another appeal decision² where the Inspector held that "landscaping and maintenance alone [do not] constitute garden use for planning purposes". The appellant's mowing might have been more than would be usual for a paddock but it doesn't mean the character or use of the land was changed, it was, and still is, a grassy paddock. Even taken altogether, the mowing, the events, the playing does not amount, on the balance of probabilities, to sufficient evidence for a sustained material change of use across 10 years.
18. Secondly, evidence for the woodland is even less convincing. Picking up fallen branches and clearing the stream are just normal woodland maintenance. Many woods have children playing in them from time to time and many woods have steps cut into banks, paths laid and benches set up for people to sit on, they don't cease to be woodland in planning terms. If they had set up a paintballing club with permanent structures and regular meetings that would be one thing, but a few children running around with guns is neither here nor there.
19. As to the stable building, it is quite clear this has not been used for horses for a long time. The evidence is that it was used for storage and amenity purposes from the time the appellant bought the land until today. I have no evidence to counter this and as it would seem to have been on-going and uninterrupted then the material change of use of the stables has been demonstrated and I shall issue a lawful development certificate to that effect.

Other Matters

20. Much of the neighbour's concerns arose from a fear of the consequences should this appeal have been successful. However, the land in question is clearly not part of the curtilage of Brookfield and so would not have benefited from any permitted development rights to erect sheds or greenhouses or swimming pools. But, the land could have been used much more intensively with planting, flower beds, vegetable plots and other things that did not amount to development that required planning permission.
21. It seems, however, this was never the appellant's intention - although it may have been attractive for future occupiers. Mrs Crewe-Turrell explained she just wanted to carry on doing as she has done in the past. Ironically, in dismissing the appeal, I have found that what she has been doing has not amounted to a material change of use so I can see no obstacle to her continuing to mow the

² APP/W1525/C/13/2209485 etc Issued 30 December 2014

paddock, sitting on a bench in her woodland and holding the occasional parties providing they do not exceed 28 days a year.

Simon Hand MA

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jack Smythe (of counsel)
He called:
Mark Crewe
Richard Bowden
Angus Paige
Elaine Crewe-Turrell
Sara Spencer-Ades
Iain Bruce
Oliver Crewe-Turrell
William Crewe-Turrell
Sebastian Crewe-Turrell
Rebecca Crosley
Hannah McGregor

FOR THE LOCAL PLANNING AUTHORITY:

Noemi Byrd (of Counsel)
She called:
Cheyanne Kirby BSc. MSc

INTERESTED PARTIES:

Gordon Wilson
Benedict Skinner

DOCUMENTS

1. Plan of the land excluding the woodland
2. LPA Closings
3. Appellant's closings

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 October 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: the use has been ongoing for more than 10 years.

Signed

Simon Hand

Inspector

Date: 18 December 2023

Reference: APP/W0340/X/22/3296597

First Schedule

The use of the stable building for domestic storage and residential amenity purposes.

Second Schedule

The stable building cross hatched in black on the Land to the rear of Brookfield, Post Office Road, Inkpen Hungerford, RG17 9PU

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.