



Appeal Decisions

Site visits made on 22 January 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2024

Appeal A Ref: APP/N1730/X/23/3315631

Land to the south-east of Lees Cottage, Lees Hill, South Warnborough RG29 1RQ

- 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.
 - The appeal is made by Mr Robert Evans against the decision of Hart District Council.
 - The application ref 22/00545/LDC, dated 9 March 2022, was refused by notice dated 10 August 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 as a domestic garden in association with the dwellinghouse 'Lees Farm'.
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Appeal B Ref: APP/N1730/X/23/3315630

Land to the south of Lees Cottage, Lees Hill, South Warnborough RG29 1RQ

- 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.
 - The appeal is made by Mr Robert Evans against the decision of Hart District Council.
 - The application ref 22/00544/LDC, dated 9 March 2022, was refused by notice dated 10 August 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 as a domestic garden in association with the dwellinghouse 'Lees Farm'.
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Decisions

1. Appeal A is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the existing use which is found to be lawful.
2. Appeal B is dismissed.

Preliminary Matters

3. The description of the lawful use claimed, as stated on the application forms, is long and contains words that do not relate to the use claimed. I have, therefore used the description on the appeal form which is a more concise and precise description of the development that is the subject of these appeals.

Background

4. Section 191(2)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) sets out that a use is lawful at any time if no enforcement action may 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). Section 171B(3) of the 1990 Act clarifies that for breaches of planning control such as the change of use of land in these appeals, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Where there has been a material change of use, caselaw establishes that the use must then have continued, substantially uninterrupted, through the ten year period.

5. The burden of proof is on the appellant and the standard of proof required is the balance of probabilities. If the evidence is sufficiently clear and precise and there is no evidence to contradict the appellant's version of events or make it less than probable, then their evidence should be accepted and an LDC should be issued.
6. The appeals relate to two parcels of land on the opposite side of the road to Lees Farm. Appeal A relates to a long rectangular area of land between two larger agricultural fields. Appeal B relates to a smaller square parcel of land in the corner of one of those fields.

Appeal A

7. In statutory declarations, the appellant and his wife have described how, from around 2007, their family have used the land for exercising their dogs and playing football, cricket and the like. They say that they have also regularly mowed the land and carried out other garden maintenance activities, while enjoying the evening sun by sitting out on the land. The evidence describes how, in 2010, new fencing was erected. At that time, full sized gates were replaced with pedestrian gates, after which the farmer of the adjoining land ceased using the site to access the fields either side.
8. The regularity of use for domestic recreational activities is not fully set out and the intensity of use would, undoubtedly, have been greater through the summer months. However, that pattern of usage would be little different to most domestic gardens. Moreover, the appellant's evidence suggests that the use of the site for exercising their dogs continued throughout the year.
9. On the basis of the evidence before me, it seems more likely than not that the cessation of the agricultural use at some point during 2010, together with the way that the appellant and his family were using the land, resulted in a materially different use to the agricultural uses that would have gone before.
10. The Council have suggested that the fencing would not prohibit the use of the site for agriculture and that the land may be eligible for farm subsidy payments. However, there is no evidence to suggest that it has been used for any form of agricultural use since 2010, or in any manner other than the clear, unambiguous descriptions given by the appellant. I, therefore, find that a material change of use occurred. In the absence of any other use, the way that the land was used throughout the year would be best described as a domestic garden use.
11. There was an 18 month period between August 2012 and February 2014 during which fire damage to Lees Farm forced the appellant's family to temporarily relocate. However, the appellant's wife has said that she still visited Lees Farm most days during the rebuilding work, with the appellant visiting most weekends. While they were there, their dogs would often be exercised on the

land. On this basis, I find that the reduction in use during the period where the family had to live elsewhere did not result in a material interruption to the use.

12. There is no evidence that makes the appellant's version of events less than probable. With regard to the above, I conclude that it is more likely than not that the land has been used as a domestic garden for a period in excess of ten years before the application was made to the Council.

Appeal B

13. The appellant's evidence explains that in 2007 a fence was erected around the land to separate it from a larger agricultural field. It is claimed that, thereafter, it has been used solely for domestic recreational purposes.

14. However, unlike the structured and overtly recreational uses described in respect of appeal A, the uses of the appeal B site are not so obviously domestic. The appellant has described how they have used the land for the keeping of chickens. While not the same as the grazing of cows and sheep that has occurred on the adjoining land, such activity has not been shown to be materially different to those, or any other, agricultural uses. That the chickens were considered pets and named, and that since 2007 the land has only been accessible by foot, does not go to the heart of the way that the land was used.

15. I understand that when tending to the chickens, the appellant's family often sat out there for picnics. However, it has not been shown that this was to such an extent that it would have changed the primary activities and use of the land for the keeping of chickens. Nor would simply mowing the grass or cutting hedges. With regard to the above, on the balance of probabilities, I find that a material change of use of land to a domestic garden did not occur.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect the use of land to the south-east of Lees Cottage as a domestic garden in association with the dwellinghouse 'Lees Farm' was not well-founded and that Appeal A should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

17. However, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of land to the south of Lees cottage as a domestic garden in association with the dwellinghouse 'Lees Farm' was well-founded and that Appeal B should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Bale

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 9 March 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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:

It has been demonstrated that, on the balance of probabilities, the land has been used as a domestic garden in association with Lees Farm for a period in excess of ten years before the application was made to the Council.

Signed

M Bale

INSPECTOR

Date: 06 February 2024

Reference: APP/N1730/X/23/3315631

First Schedule

Use as a domestic garden in association with the dwellinghouse 'Lees Farm'.

Second Schedule

Land to the south-east of Lees Cottage, Lees Hill, South Warnborough RG29 1RQ.

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 06 February 2024

by M Bale BA (Hons) MA MRTPI

**Land at: Land to the south-east of Lees Cottage, Lees Hill, South Warnborough
RG29 1RQ**

Reference: APP/N1730/X/23/3315631

Scale: Not to Scale

