
Appeal Decision

Site visit made on 5 December 2023

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

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/H0520/X/23/3315507

Paddock View, 24 High Street, Spaldwick, Cambridgeshire PE28 0TD

- 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 Graham Titheridge against the decision of Huntingdonshire District Council.
 - The application Ref 22/01117/CLED, dated 18 May 2022, was refused by notice dated 21 December 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 lawful use as garden associated with Paddock View, 24 High Street, Spaldwick, Huntingdon PE28 0TD; and associated lawful development comprising a summerhouse and a children's play frame.
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Decision

1. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the existing operation which is considered to be lawful.

Preliminary Matters

2. I am aware that the Council now considers that the second reason for refusing the application (relating to the associated development comprising a summerhouse and children's play frame) was issued incorrectly. Therefore, that reason for refusal has been withdrawn and is not being contested by the Council at appeal.
3. At my site visit I observed that the children's play frame has been removed, but because it forms part of the application, which is no longer being contested, I shall nonetheless issue a LDC with respect to it and the summerhouse.

Application for costs

4. An application for costs was made by Mr Graham Titheridge against the Huntingdonshire District Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is whether the appellant has proved on the balance of probability that the use of the property has changed to garden associated with

Paddock View, 24 High Street, Spaldwick, Cambridgeshire PE28 0TD on or before 18 May 2012 and that the use then continued for 10 years after the date of the change.

Reasons

Legal Basis for Determination

6. When dealing with a case such as this, the burden of proof is on the appellant and the standard of proof is the balance of probabilities. Following the judgement of *Gabbittas*¹ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
7. It is not sufficient that something may have occurred or is capable of having occurred or even that it could be assumed that something has occurred. It must clearly be demonstrated that it was more likely than not that the use actually occurred. In addition, in accordance with case law² the key question to ask in cases such as this is whether the site has been used throughout the ten year material period so that the Council could have taken enforcement action in respect of that use at any time and furthermore, it is insufficient to start the use, but the use must have taken place over the whole period.
8. These represent the legal principles against which I have determined this appeal. In addition, it is important for me to highlight that in cases such as this the is very much on the specific circumstances of the case and the detailed evidence presented. Therefore, whilst I have taken account of case law and other appeal decisions to which my attention has been drawn, my decision is based on the specific evidence presented by the parties.

Reasons

9. In summary, the appellant contends that the appeal site had been cleared of debris, levelled, seeded with grass, planted with trees, was being mowed, tended and used as a garden in the same way that land immediately to the north has been. In support of his case he has submitted a range of evidence including:
 - A statement of Truth signed by the applicant Graham Titheridge dated 11 May 2022 including a number of photographs demonstrating a timeline of the land in question;
 - A Statement of Truth signed by Richard Morton, dated 9 May 2022, who knows the applicant personally and is asserted that has specific knowledge of the land the subject of this application including a photograph of a gathering of people with the land in question in the background;
 - A Location Plan with the land the subject of this application outlined in red and other land owned by the applicant outlined in blue;
 - Legal Submissions in Support of an Application for a Certificate of Lawful Development' prepared by Graham Gover, Solicitor; and

¹ *Gabbittas v SSE & Newham LBC* [1985] JPL 630

² *LB Islington v SSHCLG* [2019] EWHC 2691 (Admin), *Thurrock BC v SSE* [2002] EWCA Civ 226, [2002] JPL 1278 and *Swale BC v FFS & Lee* [2005] EWCA Civ 1568; [2006] JPL 886

- Planning Statement by Matthew Utting of MatPlan Limited, dated 18 May 2022.
10. The statements of truth from the appellant and a friend both state that the land has been used as residential curtilage since around 2008 and there are some accompanying photographs which show, among other things, children playing, a structure for fireworks dated 2010 and a summerhouse and some stepping-stones dated 2014. Some of the photographs show land beyond what is agreed as the domestic curtilage of the appeal property, Paddock View. Photographs show a gap in a timber post and rail fence and another shows a group of people in the residential curtilage with the appeal land beyond. The appellant contends that the photographs show that well before May 2012 the paddock had been levelled, seeded, planted, mown, tended and used as a garden area in the same way the original garden area was used. In addition, it is argued that the photographs show family events and gatherings and for recreational purposes such as playing tennis and rounders.
 11. The appellant has also submitted a timeline of events that have taken place since 2008 when the land in question was purchased. It is my understanding that part of the fence dividing the original garden with the paddock was removed and trees planted in August 2010 and a frame for fireworks erected in November 2011. A gate to provide improved access was installed in April 2013 and in 2014 a summerhouse was built. Subsequently in 2015 the appellant purchased a ride-on lawn mower to tend to the land and in 2017 a large children's play frame was erected on the appeal land. The supporting statement by Richard Hugh Morton confirms that in his opinion the land has been used as residential land by the appellant and his family since around 2008.
 12. Council's photographic records from 2008 to 2022 show little evidence that there has been a change of use of the land, other than showing a summerhouse and children's play frame which were both built after 2014. The aerial photograph from 2003 appears to show that the land was in agricultural use and after the residential properties were built, in 2009 and 2013 the aerial photographs show the land to the south of the dwelling as being physically separate from the garden area and it clearly has a different colour, texture and surface to what appears to be a well-manicured lawn area forming the garden to the appeal property. The photographs from 2018 and 2019 show the land in question as being physically separated from the curtilage area to the north.
 13. The activities identified by the appellant, including fireworks, children's play, landscaping and purchasing a ride-on mower may be activities that could take place on a garden area, but they are not restricted to a garden and may equally likely take place elsewhere in locations such as a public park or other public place. Therefore, the activities identified do not on their own represent a material change in the use of land to residential related garden. The ride-on mower could have been purchased to cut any area of grass and not necessarily the appeal suite, specifically. Furthermore, I do not dispute that some of these activities may have taken place on the land during the material period, but there is insufficient evidence that such activities and therefore the use as a garden has occurred for a continuous period.
 14. The photographic and other evidence presented to me and my own observations are that the land in question is principally covered in grass and

there is little in the way of formal landscaping, planting and other features that may be found in a residential garden. There is evidence of where the children's play frame was once sited and there is also a large summerhouse on the land. However, the evidence before me is that these were constructed in 2014 and 2017 which is within the 10 year timeframe. In any case the construction of the play frame and summerhouse only accounts for relatively small areas within the wider red line the subject of the application and for a certificate to be issued it would need to be proved that all of the land has been used for garden associated with the host property.

15. As a consequence of the photographic evidence which shows that during the material ten year period there were different surfaces and a physical boundary, the lack of detailed evidence of the activities that have taken place on the land and the overall absence of key elements that would normally be associated with a garden, I have concerns regarding the extent of use of the land and its physical relationship with the appeal property's garden. Furthermore, I am concerned about the relevant timescales and, in particular, whether the use has been continuous over a continuous period of 10 years before the date the application was made.
16. Therefore, taking account of the evidence before me, including other appeal cases and case law I conclude that the appellant has failed to prove on the balance of probability that the use of the property has changed to garden associated with Paddock View, 24 High Street, Spaldwick, Cambridgeshire PE28 0TD on or before 18 May 2012 and that the use then continued for 10 years after the date of the change. As such the appeal with respect to the use of the land cannot succeed.

Conclusion

17. 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 of use as garden associated with Paddock View, 24 High Street, Spaldwick, Huntingdon PE28 0TD was well-founded and that the appeal with respect to that part of the application should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.
18. I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development with respect to a summerhouse and a children's play frame was not well-founded and that the appeal should succeed with respect to that part of the application. I will exercise the powers transferred to me under section 195(2) Of the 1990 Act as amended.

A A Phillips

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 18 May 2022 the operations 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

They constitute lawful operational development which, it is no longer contested, have been on the land specified for a period in excess of four years prior to the date the application was made.

Signed

A A Phillips

Inspector

Date: 12 February 2024

Reference: APP/H0520/X/23/3315507

First Schedule

A summerhouse and a children's play frame.

Second Schedule

Land at Paddock View, 24 High Street, Spaldwick, Cambridgeshire PE28 0TD

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: 12 February 2024

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

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Scale: Do not scale

