

Appeal Decisions

Site visit made on 26 February 2024

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 19th March 2024

Appeal A: Ref APP/U2235/X/22/3303110

Beech House, 178B Ashford Road, Bearsted, Kent ME14 4NB

- 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 B Barratt against the decision of Maidstone Borough Council.
 - The application Ref 22/501989/LDCEX, dated 20 April 2022, was refused by notice dated 13 July 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is use of land as residential garden and residential curtilage ancillary to the residential dwelling.
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Appeal B: Ref APP/U2235/W/22/3312306

Beech House, 178B Ashford Road, Bearsted, Kent ME14 4NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr B Barratt against the decision of Maidstone Borough Council.
 - The application Ref 22/502339/FULL, dated 9 June 2022, was refused by notice dated 11 October 2022.
 - The development proposed is insertion of a drop kerb and creation of a new front driveway to serve 178B Ashford Road, and the creation of an access path to serve nos. 180 and 180A Ashford Road, including the demolition of existing front wall and gate.
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Decisions

1. Appeal A is allowed and attached is a certificate of lawful use or development describing the existing use which is considered to be lawful.
2. Appeal B is dismissed.

Appeal A

Main Issue

3. The main issue in this appeal is whether or not the Council's refusal to issue the LDC was well-founded.

Reasons

4. Section 191(2) of the Act provides that uses are lawful at any time if no enforcement action may then be taken in respect of them, including because the time for enforcement action has expired. Section 171B(3) of the Act provides that, as regards the change of use constituting the appeal development, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.
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5. Accordingly, for success in the appeal, the appellant must show with sufficiently precise and unambiguous evidence and to the required standard of proof (the balance of probabilities) that the land had been continuously in use on 20 April 2022 as a residential garden/curtilage for at least 10 years.
6. I have carefully considered 2 statutory declarations from third parties providing first-hand accounts of how they experienced the land in question being used during a 14 year period. The first, from a family member and regular visitor of the previous (deceased) owner, precisely and unambiguously describes the land's use as a garden ancillary to the enjoyment of the associated dwelling and refers to the employment of a gardener to facilitate that use. The second, from the said gardener, precisely and unambiguously gives evidence of the same. These accounts, solemnly declared as true before a solicitor and commissioner of oaths under the Statutory Declarations Act 1835, provide clear evidence of use as a garden and residential curtilage (from 2004 to the previous owner's death in August 2018) and for these reasons I give them significant weight.
7. The evidence is strengthened further by aerial photographs from 2006¹ and 2007² which show (notwithstanding tree cover obstructing views in other photographs) the stated LDC use with apparent signs of a landscaped, maintained garden with a path down one side leading from the house facilitating an intimate association between dwelling and land. Design drawings of the landscaped garden created in 2004, as seen in the aerial photographs, further add to the accumulation of evidence.
8. After the death of the previous owner, and purchase by the appellant on the basis of sales documentation that described the appeal site as a garden to the dwelling, I am satisfied that the land continued to be used as such (with as it happens, the same gardener) up to the point of application for the LDC (and indeed, to present).
9. I am therefore satisfied on the balance of probabilities, for the above reasons, that the use which is the subject of the LDC application is now lawful due to acquired immunity.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of use of land as residential garden and residential curtilage ancillary to the residential dwelling was not well-founded and that Appeal A should succeed.
11. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B

Main Issue

12. The main issue in this appeal is the effect of the development on the character and appearance of the streetscene and local area.

¹ Figure 8 of the LDC application.

² Page 4 of the appellant's appeal statement.

Reasons

13. The appeal dwelling lies in the centre of a row of 5 properties with a broadly consistent front building line. The houses have front private driveways which each lead out onto the short inlet access road known as Lilk Hill running behind a verdant raised bank separating it and the properties from the relatively busy A20. This arrangement provides a visually pleasing set back of built form upon the streetscene which contributes to the sense that one is moving towards the countryside a short way to the east along the A20. That sense is heightened by the presence of a protected Oak tree³ upon the raised verge, albeit at one end away from the appeal property.
14. The appeal development would remove a section of the verge and thrust the built form of the new driveway (upon which vehicle parking could occur⁴) well forward of the broadly consistent line of neighbouring driveways along Lilk Hill. This would create harmful incongruity and cause the hard form of the developed appeal site to be significantly visible upon the streetscene, notwithstanding some additional planting on the residual banking as part of the scheme. Accordingly, the proposal would unacceptably harm the successful contributions the green bank provides to the character of this near-countryside location and to the valued setting of the protected Oak tree upon it. Those contributions are not lessened by the absence of a similar raised bank/private inlet arrangement locally (such as on the other side of the A20 approaching the countryside boundary), or the fact that direct driveway access to a main highway is a common feature both locally and in general terms. Further, I do not agree that the existing access inlet road is unsightly or poorly maintained or that the raised bank persists as an unattractive feature⁵.
15. The fact that the Council has approved works to the fabric of the appeal property itself recently (23/500560/FULL) does not mitigate the harm I have described.
16. For the above reasons, the appeal proposal would cause significant harm to the character and appearance of the streetscene and local area. As such it is in conflict with Policies DM1, DM3 and DM9 of the Maidstone Borough Local Plan (2017) which together seek to ensure that proposals are well-designed and protect character and appearance. For the same reasons, the proposal does not accord with the design principles of the National Planning Policy Framework.

Other Matters

17. I am satisfied that, were the appeal not unacceptable on the main issue, the development could be made acceptable on highway safety grounds through a conditioned permission. I am not persuaded by the appellant's argument that the proposal would be significant in improving safety by reducing the numbers of vehicles using the inlet road. The inlet road would still exist in a form serving neighbouring properties, and I have seen no substantive evidence that the retained element would not continue to be used to a similar degree for turning and/or parking.

³ Tree Protection Order 5009/2022/TPO.

⁴ It is the appellant's intention to use it for parking (Final Response to LPA Statement; 2:12).

⁵ Even were the appellant to remove all trees on the raised bank (save for the protected Oak), as he would be entitled to do without consent.

18. Under the scheme, native hedges and 3 new trees would be planted. Bird boxes would also be provided to trees. However, these benefits for biodiversity do not outweigh the significant harm I have identified to character and appearance. I also note the support for the proposal from neighbours. However, that does not offset the harm the development would cause.

Conclusion

19. For the reasons given above I conclude that Appeal B should be dismissed.

Andrew Walker

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 20 April 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in blue 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 time for enforcement action had expired.

Signed

Andrew Walker

Inspector

Date: 19th March 2024

Reference: APP/U2235/X/22/3303110

First Schedule

Residential garden and residential curtilage ancillary to the residential dwelling

Second Schedule

Land at Beech House, 178B Ashford Road, Bearsted, Kent ME14 4NB

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: 19th March 2024

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

Land at: Beech House, 178B Ashford Road, Bearsted, Kent ME14 4NB

Reference: APP/U2235/X/22/3303110

Scale: Do not scale

