



Appeal Decision

Site visit made on 30 July 2024

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 August 2024.

Appeal Ref: APP/R0335/X/23/3336168

78 Calfridus Way, Bracknell, Berkshire RG12 9HA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Roman Railean against the decision of Bracknell Forest Borough Council.
 - The application ref: 23/00009/LDC, dated 5 January 2023, was refused by notice dated 18 July 2023.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a LDC is sought is to establish use of amenity land to private garden.
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Decision

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

Preliminary Matters

2. The description of the use in the banner heading above is taken from the Council's decision notice. It is clear having considered the evidence before me, that the existing use of the land, that is to be assessed through this appeal, appears to be currently functionally connected to the residential use of 78 Calfridus Way (No 78). It is occupied by the appellant who resides at No 78. Although an incidental use, associated with the residential use of No 78, of the land is not specified in the evidence, I am satisfied that I would not be at odds with either parties' case, were I to determine the appeal on this basis. I am not determining whether any operational development on the appeal site is lawful.

Reasons

3. The main issue is whether the land that is the subject of the appeal has been in use as a private garden, associated with the residential use of No 78, for a ten-year period prior to the date of the LDC application and is therefore immune from enforcement action against that use. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.
4. The Planning Practice Guidance (PPG)¹ states that '*in the case of applications for existing use, if a local planning authority has no evidence itself, nor any*

¹ Paragraph: 006 Reference ID: 17c-006-20140306

from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.'

5. The appellant has stated that the previous homeowners of No 78 started to plant hedges around the land from 2002 to keep animals, cars and people away from it as planning permission was granted for the change of use of land to the front of the house. He goes on to state that parking spaces to the side of the house were also constructed and the whole of the areas to the front and rear of those parking spaces were maintained by the owner of No 78 since 2002. He also states that one of his neighbours helped a previous owner, Mrs Rockett, maintain the plants when her husband passed away in 2010.
6. No 78 is located at the junction of Calfridus Way and Drovers Way. The appeal site is a small piece of land between No 78's rear garden boundary treatment and Drovers Way. A hardstanding used as a parking area for No 78 adjoins the appeal site on one side and a grassed 'amenity land' area on the other side. There are currently structures within the appeal site and it appears there are beds to grow flowers/vegetables also within it.
7. In 2002 the previous owners, Mr and Mrs Rockett, of No 78 requested to purchase all the area of land between No 78's side boundary and Drovers Way. The appeals and grants panel report (the report) into that request indicates that they wished to purchase the land due to issues with cars being parked on it, children playing on it and animals using the grassed area as a toilet. The recommendation of the report was that the request was to be refused. The photographs annexed to the report indicate that the area of land included in that report was grassed with a number of small trees within it. No hedges are visible on the boundary with Drovers Way.
8. Planning permission was granted in 2002 for the change of use from amenity land to private garden and hardstanding for parking of the part of the area of land nearest to the junction of Calfridus Way and Drovers Way. That planning permission did not cover the appeal site.
9. The submitted 2008 and 2012 Google Street view images of the appeal site indicate that the appeal site was bounded by a hedge along the edge of the pavement and along the boundary with the adjoining amenity land. In the 2008 image a hedge is also visible adjoining the pavement on the opposite side of the hardstanding. That hedge has a similar appearance to the hedge bounding the appeal site. In both images plants can be seen adjoining No 78's rear garden boundary wall with the ones in the 2012 image appearing larger and more mature.
10. The aerial photographs from 2013 and 2014 show that the areas to the front and side of No 78 were all bounded by a neatly trimmed hedge. All that hedge appears to be maintained in the same manner and appears visually similar. The grass in those areas also appears to be mown. I acknowledge that could indicate that the appeal site was maintained as amenity land at that time. However, the appeal site and the remainder of the land associated with No 78, at those times, clearly has a similar appearance and maintenance regime. Moreover, taken in combination with the desire of the then owners of No 78 to deter unwanted use of the whole of the land it is more likely than not that they planted the hedge around the whole of the land and maintained it and used it

all as part of the private garden associated with No 78. It is also more likely than not that they planted the landscaping alongside the wall that can be seen on the 2012 Google Street view image. In the 2013 aerial photographs the whole of the land adjoining No 78 bounded by the hedge appears to be one plot with the hardstanding within it.

11. In my judgement, that hedge and landscaping was planted to denote that the appeal site was part of the garden associated with No 78 and not part of the adjoining amenity land. I observed that the existing planting scheme on the appeal site is different to that visible in the submitted images and photographs. However, there is nothing before me to contradict the appellant's evidence that the appeal site has been used continuously as part of the garden area of No 78 since 2013. In my judgement his evidence is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. Moreover, on the balance of probabilities it is more likely than not that the appeal site has been used without substantial interruption as part of the private garden of No 78 since at least 2008.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of use of amenity land to private garden 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.

D Boffin

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 5 January 2023 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, on the balance of probability, that the use of the land as private garden incidental to the dwellinghouse at 78 Calfridus Way has continued substantially uninterrupted for a period in excess of ten years, and that the use was lawful on the date the application for a lawful development certificate was made.

Signed

D Boffin

Inspector

Date: 12 August 2024.

Reference: APP/R0335/X/23/3336168

First Schedule

The use as private garden incidental to the dwellinghouse at 78 Calfridus Way.

Second Schedule

Land at 78 Calfridus Way, Bracknell, Berkshire RG12 9HA

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: 12 August 2024.

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

Land at: 78 Calfridus Way, Bracknell, Berkshire, RG12 9HA

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Scale: Not to Scale

