



Appeal Decision

Site visit made on 31 August 2024

by D Hartley (BA Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6TH SEPTEMBER 2024

Appeal Ref: APP/P2935/X/24/3345052

Quarry House, Tows Bank, Coanwood, Northumberland, NE49 0QP

- 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 Mr Walter Mitchell against the decision of Northumberland County Council.
 - The application ref 24/00616/CLEXIS, dated 26 February 2024, was refused by notice dated 23 April 2024.
 - 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 a domestic garden.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether the land shown with diagonal red lines on the 'Pre-development site plan and sections' drawing dated August 2023 has been used for a period in excess of ten years as a domestic garden.

Reasons

3. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. For an LDC to be granted under section 191 of the Act, the burden of proving relevant facts in this appeal rests on the appellant, and the test of the evidence is the balance of probability.
4. In the case of an LDC application for an existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there should be 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 appeal site is in a rural location and is located off Tows Bank. It is off set, albeit essentially opposite, a dwellinghouse known as Quarry Bank. It is severed from the property known as Quarry Bank by the intervening highway and is enclosed by stone boundary walls.

6. The appeal is submitted based on the appellant claiming continuous use of the land as a domestic garden for a period '*in excess of ten years*'. Hence, section 171B (1) of the Act is relevant which states that no enforcement action may be taken after the end of the period of ten years beginning with the date on which the operations were substantially completed.
7. The appellant claims that the land has been used continuously, in '*excess of ten years*', as a domestic garden by '*present and previous occupants of Quarry House*'. However, the appellant has not provided details of when the use of the land as a domestic garden began/was substantially completed. The appellant has, however, provided me with Google Street-View images dated 2009, 2010 and 2011. The images appear to show the land sectioned off and vegetables being grown. The evidence also includes signed statements of evidence from the occupiers of Tows Bank Colliery and Asholme Farm who say that the land has been in continuous use as a domestic garden associated with Quarry House for a period of more than ten years.
8. The evidence above is not sufficient to demonstrate ten years continuous use of the land as a domestic garden. While there are three Google Street-View images showing evidence of the growing of vegetables between 2009 and 2011, at best this demonstrates use of the land for such purposes for three years and not ten years. While there are two signed statements alleging more than ten years continuous use as a domestic garden, these are not sworn statements or statutory declarations. In this context, coupled with little information about how the land has been used and for what specific period, I afford the signed statements limited weight from an evidential point of view.
9. I find that the above evidence is not suitably precise or unambiguous to demonstrate continuous ten years use of the land as a domestic garden. This on its own is sufficient to justify dismissing the appeal.
10. In addition to the above conclusion, it is also noteworthy that section 336 of the Act defines agriculture as '*horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes*'.
11. The evidence is that the land has been used, at least for some time, for the growing of vegetables. No other domestic activities on the land have been referenced by the appellant. In my judgement, the evidence casts sufficient doubt about the appellant's claim that the land has been used for a domestic garden use. Instead, the evidence points to use of the land between 2009 and 2011 for horticultural purposes in accordance with the definition of agriculture in section 336 of the Act.

Conclusion

12. I can only determine the appeal based on the information that is before me. Bearing in mind that the onus rests with the appellant to make his case, on the balance of probability I find that the evidence is not sufficiently precise or unambiguous in so far as demonstrating that the land has been continuously used for ten years as a domestic garden. Consequently, I conclude that the Council's refusal to grant a certificate of lawful use for land as a domestic

garden was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act, as amended.

D Hartley

INSPECTOR

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