



Appeal Decision

Site visit made on 30 August 2024

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 18 September 2024

Appeal Ref: APP/K0235/X/22/3311312

The Two Brewers, Bushmead Road, Staploe, PE19 8JG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (hereinafter the "1990 Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Paul Giles against the decision of Bedford Borough Council. The application ref LDE 21/02001, dated 16 July 2021, was refused by notice dated 12 May 2022.
 - The application was made under section 191(1)(a) of the 1990 Act. The use for which a LDC is sought is described in the application form as follows: *C3 – dwellinghouses*.
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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 extent of the existing use which is found to be lawful.

Preliminary Matters

2. Precision in the terms of any certificate is vital so there is no room for doubt about what was lawful at a particular date, as any subsequent change may be assessed against it. A certificate for existing use must include a description of the use. The description needs to be more than simply a title or label, if future problems interpreting it are to be avoided. The certificate needs to spell out the characteristics of the matter to define it with precision. In an existing use case, the LDC should clearly describe the activity that was, on the evidence, carried out during the 10-year period.
3. Describing the existing use as "C3 – dwellinghouses" is vague and simply refers to the use class in which the property falls¹. The Council's decision, issued 12 May 2022, does not precisely describe the use because it refers to "garden use" or "curtilage". Elsewhere, the existing use is described as "residential curtilage" "residential garden use" or "garden land (C3)". In section (E) of the appeal form, the existing use is described as "regularising the existing use of land for purposes incidental to use as a dwelling". However, that is a statement rather than spelling out the characteristics of the existing use.
4. There are powers available to me to modify the description should that be necessary². Indeed, I am obliged to issue an LDC for any use that is shown to be lawful on the facts and evidence, rather than refuse a certificate based on some error or misunderstanding in the application form.

¹ See part C, Schedule 1, to the Town and Country Planning (Use Classes) Order 1987 as amended.

² The 1990 Act, at s191(4).

5. The written submissions appear to suggest the appellant seeks an LDC certifying the incidental residential use as garden of the land that is the subject of this appeal. The representations from both parties describe the use as a garden. I intend to adopt the following description: *incidental residential use as garden*. My modification reflects the evidence before me and does not fundamentally alter or differ from the description given in the application form. I shall proceed on this basis.
6. The application included a land registry plan which showed the entire land outlined in red, but the existing use covers an area of land situated to the east of the dwellinghouse. At appeal stage, the appellant clarified the full extent of the land covered by the LDC application. The plan attached to their statutory declaration, as exhibit 1, better shows the extent of the land and it is clearly outlined in red. I will use this plan in my assessment.

Inspector's Reasons

7. The appeal property, which is known as The Two Brewers, was acquired by the appellant in June 2011. It was previously used as a Public House ('PH') but is currently in residential use. The Two Brewers is about 1.2 hectares in size³ and includes a dwelling, barns, parking, and garden (for shorthand, "the appeal property"). The plan shows the full extent of the appeal property. However, this appeal relates to a parcel of land located to the east and I will refer it as the "appeal site".
8. The nub of the appellant's case is that the appeal site's incidental residential use as garden is lawful, due to the passage of time and the site has been continuously used as a garden for a period of 10 years beginning on or before 16 July 2011, which is the relevant date.
9. The Council submits that the evidence presented did not sufficiently demonstrate lawfulness. Additional information in the form of sworn and properly executed statutory declarations have been submitted at appeal stage. All this additional evidence has been considered by the authority, but they continue to oppose the grant of an LDC. The Council considers the totality of the information submitted does not sufficiently show the nature, scale, extent, and intensity of the appeal site's existing use. The argument is that the land to the east of the property does not form part of the curtilage.

For the following reasons, I disagree with the Council.

10. The concepts of the curtilage and planning unit are distinct and separate; they should not be confused. The planning unit is a concept evolved as a means of determining the most appropriate physical area against which to assess the materiality of change in the use of land. The mere fact that the appeal site physically adjoins the curtilage, and is in the same ownership, does not automatically mean that it is/not curtilage land. Curtilage defines an area of land in relation to a building and not a use of land.
11. My starting point is the planning unit. The leading authority on planning unit is the case of *Burdle*⁴. Starting with the unit of occupation, the assessment turns on the concept of physical and functional separation. In *Burdle*, Bridge J (as he then was) suggested three broad tests for determining the appropriate planning unit. The assessment is a matter of fact and degree, and as a useful working rule, it should be assumed that the unit of occupation is the appropriate planning unit, unless and until

³ Delegated officer report.

⁴ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.

12. The appeal property ceased operating as a PH during the 1960s but there is nothing to suggest an intervening agricultural use at any point in time. It appears to me the PH was converted into a residential property, but how that use came about is unclear. For instance, the authority's evidence lacks any detail as to whether planning permission was granted for the residential conversion. There is nothing before me to suggest any permission defined the extent of the residential use. The previous use as a PH is different in character to the current primary residential use: the latter is likely to include some incidental type of activities for example, use of the land attached to the building as a garden.
13. The Google Earth images are a snapshot in time, but they appear to show the appeal site as a separate parcel of land, which is laid to lawn given the layout. The appellant's statement of case also includes street views, taken in November 2009, and point to a fence located between the garden and appeal site. The latter was removed in 2012 to form one continuous space. The appellant maintains that the removal of the barrier resulted in the merging of the existing garden with the appeal site, but the information submitted seems to indicate to me that it was already used in connection with the property's residential use.
14. When assessing an incidental residential use, it is important to consider the nature and type of activities or uses of the land on a case-by-case basis. The evidence shows that the appeal site is used by occupiers of the host dwelling in connection with its residential use. The appellant and family regularly uses the appeal site for normal residential activities. Accurately documented activities include occasional social and family gatherings on the land, keeping of domestic animals such as chickens and the growing of vegetables. The appellant regularly carries out activities such as maintaining the lawn, trees, and vegetation. These activities are low-key and domestic in nature and scale, but they complement the reasonable enjoyment of the appeal site as a garden. The evidence points in the probability that the appeal site is used for an incidental residential use which is functionally linked to the use of the residential planning unit.⁵
15. To my mind, the unit of occupation, the appeal property, forms a single planning unit. Clearly, a new chapter in the history of the planning unit opened once the former PH ceased and the residential use started. The primary use of the appeal property is residential and the use of the appeal site for gardening activities, as described by the appellant, are incidental to that primary use.
16. As I have already said elsewhere, there is nothing before me to suggest the appeal site was used for any other purpose like agriculture or keeping of horses. If the Council wanted to pursue that line of argument, it should have submitted evidence. Further, it could have initiated enforcement action if it appeared a breach of planning control had occurred.
17. On the contrary, the authority provides no evidence of its own to make less than credible the appellant's sworn testimony of the timing, nature, and scale of the appeal site's incidental residential use as garden. The appellant's evidence is corroborated and supported by independent witnesses who confirm the appellant's version of the events.

⁵ *O'Flynn v Secretary of State for Communities and Local Government* [2016] EWHC 2894 (Admin) applied.

18. My analysis and assessment of the evidence presented reveals no contradictions and I find that the quantum of documentary information meets with the balance of probabilities test. Indeed, the Council has not pointed out any inaccuracies in the documentary information provided nor has it required the evidence to be subjected to cross-examination. In my judgment, the sworn testimony is not overly consistent between the appellant's version of the events and witnesses to cast doubt over the veracity of the claims. The statements do not appear to be engineered to suit the appellant's claims. There is no internal inconsistency between the appellant and their witnesses.
19. In any event, to me, the evidence clearly, precisely, and unambiguously, points in the likelihood that the appeal site's incidental residential use as garden commenced on or before the relevant date and continued thereafter without significant interruption for a period of 10 years. At the date of the application, that existing use had become lawful for the purposes of s191(2) of the 1990 Act, due to the passage of time.
20. Even if an alternative view is to prevail, the character of the use does not suggest a primary residential use of the appeal site rather it is an incidental type of use. It is arguable whether the nature and scale of the incidental residential use as garden falls within the definition of "development" for the purposes of s55(1) of the 1990 Act.
21. The Council refers to curtilage but as I have already said elsewhere that is not a use of land. No argument has been made before me to indicate the curtilage to the dwellinghouse has extended over the appeal site. I am not persuaded s55(2)(d)⁶ of the 1990 Act is of direct relevance to this case.
22. As the notes attached to the LDC explain, the certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule. 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.

Conclusion

23. Drawing all the above threads together, I conclude, on the evidence now available and balance of probabilities, that the Council's refusal to grant the LDC for existing incidental residential use as garden was not well-founded and the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

A U Ghafoor

INSPECTOR

⁶ The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land... the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.

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 16 July 2021 the matter described in the First Schedule hereto, constituting an existing incidental residential use as garden, 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 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action may then be taken in respect of the use because the time for enforcement action has expired, and the use does not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

A U Ghafoor

Inspector

Date: [18 September 2024]

Reference: APP/K0235/X/22/3311312

First Schedule

Incidental residential use as garden.

Second Schedule

Land edged red as shown on the plan attached to this certificate and identified as The Two Brewers, Bushmead road, Staploe, PE19 8JG.

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 incidental residential use as garden 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 incidental residential use as garden 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: [18 September 2024]

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

Land at: The Two Brewers, Bushmead Road, Staploe, PE19 8JG

Reference: APP/K0235/X/22/3311312

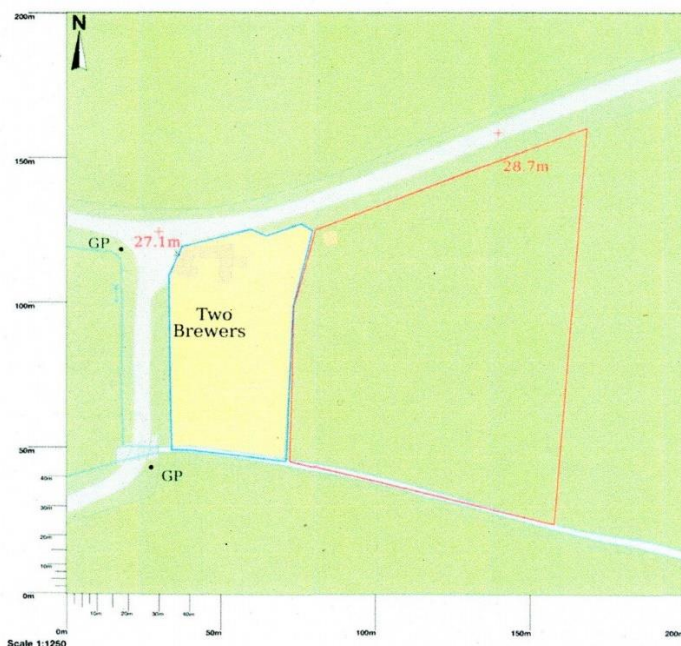
Scale: Not to Scale

EXHIBIT 1: in the Statutory declaration
of Paul David Gates

David Gmwell
Solicitor - 10/10/22



Two Brewers, Bushmead Road, Eaton Socon, St. Neots, PE19 8JG



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