



Appeal Decision

Site Visit made on 8 July 2024

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2024

Appeal Ref: APP/U2370/X/23/3318684

**Nateby Hall Cottage, Nateby Hall Lane, Ford Green, Nateby, Lancashire
PR3 0JQ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 and Mrs Dunkley against the decision of Wyre Borough Council (the LPA).
 - The application Ref 22/00673/LAWE, dated 24 June 2022, was refused by notice dated 8 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 garden land use as part of the enjoyment of the main dwellinghouse (C3).
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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 considered to be lawful.

Main Issue

2. The main issue is whether the LPA's decision to refuse to grant an LDC was well-founded.

Reasons

3. S191(2)(a) of the Act states that uses are lawful at any time if – (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. The relevant time limit for taking enforcement action in this instance is 10 years under S171B of the Act. It is necessary, therefore, for the appellants to demonstrate, on the balance of probabilities, that the material change of use of the land to residential garden took place on or before 24 June 2012 and continued thereafter for 10 years.
5. It is said that the appellants purchased the land in early 2005. The appellants state that following the purchase, they began using the land as residential garden. The application form indicates the use began on 9 February 2005.

6. Aerial imagery provided by the appellant shows that in December 2002, the land formed part of the adjacent agricultural field which was separated from Nateby Hall Cottage and its garden by hedgerows. It contained a small copse surrounding a pond. Otherwise, it was a maintained field of a singular grass species, with animals out to pasture. At that point in time, the land was not functionally or physically linked to the house. It was clearly within a separate planning unit.
7. In contrast, the aerial image from May 2010 shows the land within the redline on the plan demarcated by hedges from the remainder of the agricultural field of which it was once a part. The copse and pond had been retained. The land appears to be largely mown grass, in contrast to the ploughed field and in keeping with the garden area associated with the house. Moreover, the land does not appear to be segregated in any significant way from the garden adjacent to the house. A polytunnel is in place in the north-east area of the land whilst a football goal is apparent in the centre of the land. There is no dispute that the appeal site and the house and its garden are within a single ownership and it is clear that the land has some form of association with the dwelling.
8. Although not a sworn declaration, one of Mr Dunkley's children has indicated that throughout his childhood the land was used as their garden as a place to play football, rugby, climb trees, make dens, sit, read, relax, eat out, play in tents and ride bikes. They occasionally helped mow the grass. That is reflected in the aerial photograph of May 2010 where some structures are visible in the north-east corner of the appeal site, with what appears to be a football goal in the central area.
9. Whilst there is no indication of that person's age or when the activities they describe occurred, Mr Dunkley does provide the years of birth of his four children which indicate they would have been around 13, 9, 7 and 4 in 2005. Thus, those activities would likely to have been undertaken by children of those ages.
10. Indeed, whilst undated, the appellants have provided pictures which show children playing football and playing with toys on the land. There are also undated pictures showing a polytunnel, some cultivation ongoing and a football goal is present in the background. Furthermore, there are pictures showing part of the land put to wildflower, and there is clear separation with the stock proof fence and the cattle on the adjacent land.
11. Moreover, a photograph is provided which is said to be from Spring 2006 in which a person is shown to be rotavating part of the site. A letter from a colleague and/or friend of Mr Dunkley's confirms that the photograph is of him helping the appellants prepare the ground in the spring of 2006 in anticipation of the planting of a wildflower garden within the site. The appellants' submissions make clear that the sowing of wildflower seeds across part of the land was for domestic, gardening purposes, rather than cultivation for horticultural purposes.
12. There is therefore a significant difference in the character of the activities carried out on the land from what had gone before and those activities cannot, in my view, be defined as agricultural. Rather, it seems to me, that such activities were wholly domestic, reflective of the use of the land as a residential garden.

13. Thus, I am satisfied that at some point prior to June 2012, the material change of use of the Land to residential garden took place. The evidence of the appellants is sufficiently precise and unambiguous to demonstrate that is the case, and there is nothing from the LPA which makes the appellants' version of events any less than probable. Based on the evidence before me, it is more likely than not that the material change of use of the land to residential garden took place on or before 24 June 2012.
14. To be lawful, it is nevertheless necessary for the appellant to also demonstrate that the use continued thereafter for 10 years, such that the LPA could have taken enforcement action at any point during that period.
15. A series of aerial images are provided beginning with the aforementioned in 2010. The image from March 2013 is of hazy definition, however, it is apparent that the polytunnel and football goal remain in situ from 2010. Mown paths are also apparent and the beginnings of the newly planted copse of trees at the very southern end of the site can be seen. Again, the appellants' evidence is that the area was planted for domestic purposes, an area to privately enjoy nature and I was able to see from my more recent site visit, that it contained structures use for sitting and relaxing.
16. By July 2017, that small copse of woodland has grown considerably in terms of tree cover. The aerial image from shows the north-east corner of the land with a polytunnel, a shed and various rows of planting. Mown paths are clear in the southern part of the site.
17. In March 2018, an officer from the LPA visited the property in relation to an application for extensions to the dwelling. In their report, they commented that the property had "extensive gardens front and rear bounded by established hedging."
18. The LPA indicates that the plan submitted with that application did not include the land within the red edge of the site, rather it was edged in blue. However, this does not necessarily point to the land not being used for residential garden and is not, as the LPA suggests, a tacit acceptance that the land was not part of the garden.
19. An aerial image from June 2018 shows the north-east corner of the land with a polytunnel and rows of vegetable or plants growing with the southern area of the land grassed with mown paths through.
20. The appellants have provided several invoices for the purchase of flower seeds and bulbs between 2019 and 2022. Whilst it does not provide evidence that the seeds and bulbs were actually planted on the land, it again supports the appellants position that they have continually used the land as garden during that period.
21. The aerial image from April 2020 also shows the north-east corner of the land remains put to the small scale growing and cultivation that was apparent in earlier photographs. Moreover, mown paths through the wildlife planting are apparent. That is repeated in the aerial image from July 2021
22. I saw from my site visit that the appeal site was readily accessible from the garden adjacent to the house. Whilst some mature trees and parts of the original hedgerow had been maintained, there was little physical separation between the two areas of land. I also saw that the north-east part of the site

contained fruit trees, a menagerie, planters, a potting shed, a polytunnel and an area cordoned in which a small number of chickens were kept. The wider area of the site immediately to the south of the original garden was given over to long grass and wildflowers with neatly mown paths. The southern part of the site retains the copse and pond which is apparent on the aerial imagery from 2010 and 2002. The very southern part of the site contained a wooded area where trees have been planted and which contained a small shed. I also saw that the land contained a summerhouse along with a gazebo and seating area.

23. The appellants indicate that for the 17 years prior to the application, they have spent many hours gardening on the land, including weeding, cutting and mowing, collecting and drying seed, cutting and removing growth every year, raking and scraping the soil, reseeding, nurturing plug plants and planting bulbs. The purpose of doing so has entirely been for the pleasure of garden and to create a private area in which to sit, relax and enjoy.
24. A letter is also provided by a Mr Truswell who indicates he worked at the property on numerous occasions and for extended periods from 2008 to 2022 on decorating jobs. He confirms that throughout that time, the appellants and their family considered the appeal site as their private garden and he had seen them use the space for recreation, enjoyment, gardening jobs, games and activities in addition to simply relaxing. It is further said that Mrs Dunkley spent many hours growing vegetables and cut flowers on the site whilst Mr Dunkley worked on flowers in the meadow garden, mowed paths and looked after bees.
25. The LPA has drawn my attention to three separate appeal decisions. However, in those instances, the Inspectors found the factual evidence of the appellants to be insufficiently precise and unambiguous regarding the use of the land. For the reasons set out above, that is not my finding here. There were also other circumstances, such as intermittent uses, which differ from those before me. As it is, I have determined this appeal on its own merits, having regard to the evidence before me.
26. As such, taking into account the aerial and still images of the land provided over the relevant period, along with the accounts of its use from the appellants, their children, and friends and others who have visited the site, I am satisfied that there has been a continuous use of the land as a residential garden associated with the dwelling and there have been no apparent gaps or breaks within that continuity of use.
27. Consequently, I am satisfied that it has been demonstrated, on the balance of probabilities, that the use of the land for residential garden continued for 10 years following the material change such that the LPA could have taken enforcement action against it at any point during that period.
28. As a result, no enforcement action may have been taken against the material change of use of the land to residential garden at the time the LDC application was made. Moreover, there is no evidence that the material change of use constituted a contravention of any of the requirements of any enforcement notice then in force.
29. Thus, at the time the LDC application was made, the development was lawful in the meaning of S191(2) of the Act.

Conclusion

30. 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 garden land use as part of the enjoyment of the main dwellinghouse (C3) 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 as amended.

J Whitfield

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 24 June 2022 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:

At the date of the LDC application, no enforcement action may then have been taken in respect of the use of the land to garden land use as part of the enjoyment of the main dwellinghouse (C3) as the time for taking enforcement action had expired.

The use did not constitute a contravention of any of the requirements of any enforcement notice then in force.

The use was therefore lawful under S191(2) of the Act at the date of the LDC application.

Signed

J Whitfield

INSPECTOR

Date: 3rd October 2024

Reference: APP/U2370/X/23/3318684

First Schedule

Garden land use as part of the enjoyment of the main dwellinghouse (C3).

Second Schedule

Land at Nateby Hall Cottage, Nateby Hall Lane, Ford Green, Nateby, Lancashire
PR3 0JQ

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: 3rd October 2024

by **J Whitfield BA (Hons) DipTP MRTPI**

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Scale: Not to scale

