



Appeal Decisions

Hearing Held on 12 September 2024

Site visit made on 12 September 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2024

Appeal A: APP/L3815/C/24/3340948

Land at Loxwood Farm, Brewhurst Lane, Loxwood, West Sussex RH14 0RJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr William MacGeagh against an enforcement notice issued by Chichester District Council.
 - The enforcement notice was issued on 26 February 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land to garden land associated with the dwelling known as Loxwood Farm.
 - The requirements of the notice are: 1. Cease the use of the Land as garden land associated with the dwelling known as Loxwood Farm; 2. Remove the storage container building; 3. Break up and remove from the Land the ground cover and access; 4. On completion of steps 1-3, re-seed the area affected with grass.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Appeal B: APP/L3815/X/23/3316710

- 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 William MacGeagh against the decision of Chichester District Council.
 - The application Ref LX/22/01565/ELD, dated 14 June 2022, was refused by notice dated 22 August 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 was described as: Use of land as garden curtilage.
-

Summary of Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld with corrections.

Appeal B

2. The appeal is dismissed.

Application for Costs

3. An application for costs was made by Mr William MacGeagh against Chichester District Council. This application will be the subject of a separate Decision.

Preliminary Matters

4. The appellant opted for a Hearing which means that evidence cannot be taken on oath or be the subject of cross-examination. The parties therefore accepted that I would not be testing the evidence during the Hearing.
5. The thrust of both appeals relate to the use of land for residential purposes. It cannot relate to a curtilage, as curtilage is not a use of land. The parties accepted during the Hearing that I should consider Appeal B on this basis and correct the enforcement in respect of Appeal A for reasons of precision and consistency. Injustice to the parties does not arise from this.
6. It was also discussed during the Hearing that requirement 3 of the notice should be corrected to more precisely describe what is meant by ground cover and access, namely hardstanding. Again, injustice does not arise from making this correction.

Appeal A – The ground (b) appeal

7. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control, namely the residential use of land, has not occurred as a matter of fact.
8. The appellant contends that the land enforced against is used to store a container and provide access to it. Personal items of the occupiers of Loxwood Farm are then stored inside which is an incidental use to that dwelling.
9. This accordingly amounts to a residential use of the land, and which has been dealt with by the correction that was agreed during the Hearing.
10. The appeal on ground (b) therefore fails.

Appeals A and B – The ground (d) appeal and refusal of a certificate of lawfulness

Main Issue

11. The main issue is whether the Council's refusal to grant a certificate of lawfulness and issue an enforcement notice was well founded.

Reasons

12. For the appeals to succeed the appellant will need to demonstrate that there has been 10-years residential use of the land (a relevant period). My assessment is therefore fact specific, based upon the evidence before me.
13. Loxwood Farm relates to a bungalow, originally granted planning permission as an agricultural workers dwelling, and I could see during my site visit that immediately surrounding it were small outbuildings, pathways/hardstandings and some planting, as well as large trees.

14. The thrust of the evidence in the form of statutory declarations, supporting letters and documentation is that a significant area of land, amounting to almost 9 acres of open grass and woodland, has been used for residential purposes, in connection with the occupation of the dwelling, for a relevant period.
15. The evidence from the occupiers of Loxwood Farm, who have owned the property since 2008, can be summarised as use of the land for walking, cycling, hammocks and seating areas, camping with a tent erected for 3 years during summer months, meditation workshops, nature watching, parties, fishing, vegetable growing, football, log piles, large-scale tree planting and photography.
16. I appreciate the appellant has not used the land for active agricultural purposes during their ownership. They also consider this to have not been the case with previous occupiers. However, the bungalow was an agricultural workers dwelling which likely demonstrates a historic agricultural use.
17. Moreover, the absence of active agricultural use and the use of the land for the ephemeral and/or generic activities described does not then demonstrate on the balance of probabilities the use of land for residential purposes for a relevant period. Any residential uses that could be said to have been undertaken were thus transient and limited in extent. Even though I accept that a residential use does not have to be carried-out every single day during a relevant period to accrue lawfulness, the evidence does not demonstrate a primary use as residential and the character of the land remains that of grass and woodland as would ordinarily be identifiable with agricultural land. I find this to be the case even though the land is reasonably close mown, and so is contended to be of low agricultural value, and laurel tree planting has been undertaken to create hedgerows.
18. The appellant's photographs also serve to reinforce the transient nature of their activities as opposed a material residential use taking place over a significant area of land for a relevant period. There is not a plethora of garden paraphernalia. The remaining evidence in the form of declarations, letters and documentation including an advice which concerns curtilage, then adds little to demonstrate a lawful residential use. Similarly, the mowing or maintenance of land are not activities demonstrable of a residential use, let alone one for a relevant period.
19. Much of the appellant's evidence also focuses upon the representations of interested parties, as opposed precisely demonstrating their own case. Contrary to the appellant's assertion, the onus is not on interested parties or the Council to prove a case, as it remains firmly on the appellant.
20. The area of land accepted by the parties as the curtilage of the dwelling was identified to me during my site visit. Part of the original hedgerow still existed, and it was evident where the remainder had been removed and how a large Oak tree likely formed part of the boundary. Immediately outside the curtilage was a bell tent, vegetable patch and seating area as well as a storage container, referred to during the Hearing as container number 1. Given the character of these respective features and duration some of these have existed it is probable that lawfulness has been accrued in respect of a residential use in a comparatively small area. However, the appellant's evidence does not focus

upon a smaller area of land, and I am unable to accurately identify the spatial extent of any residential use that has taken place pursuant to these features.

21. I was also shown the remains of a greenhouse and brick BBQ feature as well as slabbed area which were said to have been constructed by a previous owner. There was however very little of two of these features physically remaining and their origins are estimated and thus not precisely known. In any event, they do not demonstrate that the significant area of land sought was used for residential purposes for a relevant period.
22. I was advised during the Hearing that the works pertaining to the storage container and hardstanding attacked by the notice were then only undertaken in June 2020.
23. Even if the entirety of the appellant's land then fell within a single planning unit, it remains the case that different uses can lawfully exist within it, as was agreed during the Hearing. In any event, the character of the open grass and woodland contrasts considerably with that immediately surrounding the dwelling, with its hardstandings and buildings, which demonstrates a degree of physical and functional separation, even though there is no longer a continuous hard boundary treatment.
24. The appellant agreed during the Hearing that the significant quantum of case law and other decisions brought to my attention highlighted basic legal parameters. They are therefore not determinative for the purposes of this appeal, given its fact specific nature.
25. I also raised that the Statutory Declarations did not appear to contain the appropriate statement of truth or wording pursuant to the 1835 Act. Even though they have been sworn before a Solicitor, they would attract less weight as a consequence. This has however not been determinative given my above findings.
26. As a matter of fact and degree, based upon the evidence before me, the appellant has therefore not discharged the necessary burden of proof.
27. The ground (d) appeal and against the refusal of a certificate of lawfulness therefore fails.

Overall Conclusion

28. For the reasons given above I conclude that the appeals should not succeed. I shall accordingly uphold the enforcement notice with corrections and exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decisions

Appeal A

29. It is directed that the enforcement notice be corrected by:

- deleting the words '*to garden land associated with the dwelling known as Loxwood Farm*' and replacing them with the words '*for residential purposes to Loxwood Farm*' in section 3 of the notice.

- deleting the words '*as garden land associated with the dwelling known as Loxwood Farm*' and replacing them with the words '*for residential purposes*' in section 5. 1. of the notice;
- deleting the words '*ground cover and access shown in the approximate position*' and replacing them with the words '*hardstanding shown hatched*' in section 5. 3. of the notice.

30. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Appeal B

31. The appeal is dismissed.

Paul T Hocking

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Jupp, Agent
William and Annette MacGeagh, Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Emma Kierans, Planning Officer
Martin Mew, Principal Planning Officer
Sue Payne, Enforcement Officer

DOCUMENTS:

1. Missing pages from the appellant's bundle