



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 28 November 2024

Appeal Ref: APP/Y9507/X/23/3329960

Hautboyes, New Way Lane, Hurstpierpoint, West Sussex BN6 9BD

- 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 C Williams against the decision of South Downs National Park Authority (SDNPA).
 - The application ref SDNP/23/00836/LDE, dated 24 February 2023, was refused by notice dated 24 April 2023.
 - 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 use of land as residential garden.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. An application for a LDC does not involve considering any matters of planning merit. It is restricted to considering whether, in this case, the use is, as a matter of fact and degree, lawful. Given this background and because the outcome of the appeal involves looking back at the history of use of the site, there was no benefit to either appeal party, or myself, in seeing the site as it is now. The submitted documentary details provided sufficient evidence to determine the appeal and neither side has been prejudiced by this approach.

Preliminary Matters

3. Under s191(2)(a) of the 1990 Act, uses and operations are lawful at any time if no enforcement action may then be taken against them, whether because they did not involve development or require planning permission or because the time for taking enforcement action has expired or for any other reason.
4. The relevant time limit for the uses of land under s171B(3) of the 1990 Act is the period of ten years beginning with the date of the breach. The appellant therefore needs to show that the use of the land started at least no later than 24 February 2013. In this case it is claimed that the residential garden use started in 1987. Moreover, the use must have continued substantially uninterrupted over the ten years period.
5. The development under consideration is the use of a parcel of land as residential garden next to the appellant's house. S55(1) of the 1990 Act defines development, which includes the making of any material change in the use of land. For a material change of use to have occurred there must be some significant difference in the character of the use of the land from what has gone on previously as a matter of fact and degree.

6. The burden to make out the case rests firmly with the appellant and the test of the evidence is the balance of probability.

Main Issue

7. The main issue is whether the SDNPA decision was well founded.

Reasons

8. I accept and acknowledge that some domestic related features and activities have occurred on the land, such as an oil storage tank and hanging out of washing to dry. It may have also had uses for golf practice and it can be accessed by a gate from the garden to the main house. The composting/storage of grass clippings and a vegetable garden I am not convinced could be classed as just a residential activity. However, even I was to accept that all these features and activities were residentially related, for the most part they are confined towards the top part of the land. They are a very limited incursion into the overall site area and, as such, they have not had a material impact on the character of the use across the land. Moreover, using the site for golf practice over the summer with a temporary golf net and mat, even if this activity involved using more of the land, did not change the character of the use of the site.
9. Indeed, across the series of aerial photographs from 2001 to 2022, apart from variations seen probably due to the time of the year when the photographs were taken and different climatic conditions, the appeal land has no discerning difference to the appearance of the surrounding agricultural land to demonstrate a defining change to the character of the use to use as a residential garden. Alongside the SDNPA site visit photographs, they depict a field with minor elements of domestic paraphernalia. I accept that the SDNPA site photographs are a snapshot showing the land on one day. However, there are no other photographs showing anything different. The exclusion of livestock from the land has also not led to a marked change to the character of the use. The fact that the land is defined separately from the adjoining garden by fencing and mature hedges has very little bearing on the issue in this case.
10. I have read the sworn declarations, but these only confirm details such as those I have already considered above. It seems to me that whilst the land has been used for some residential activities, that has not amounted to a significant difference in the character of the use of the land from what has gone on previously as a matter of fact and degree. Consequently, there has not been a material change of use of the land.

Conclusion

11. For the reasons given, I conclude that the SDNPA refusal to grant a certificate of lawful use or development in respect of use of land as residential garden was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Gareth Symons

INSPECTOR