



Appeal Decision

Site visit made on 26 November 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2024

Appeal Ref: APP/J9497/X/23/3319686

Heath Cottage Tavistock Road, Yelverton PL20 6EF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Dr Graham Adlard against the decision of Dartmoor National Park Authority.
 - The application ref 0461/22, dated 11 October 2022, was refused by notice dated 3 February 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 described as "Use of land as garden land ancillary to the enjoyment of Heath Cottage, Tavistock Road, Yelverton, PL20 6EF."
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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 development which is considered to be lawful.

Preliminary Matters

2. It was clarified at my site visit that the location plan submitted with the application shows the correct boundary for the relevant land. The larger scale block plan does not show all of the relevant land and also includes the walled-garden of Heath Cottage within its red line, the use of which is not in dispute.

Main Issue

3. The main issue is whether the National Park Authority's (NPA's) decision to refuse the LDC was well founded. The onus is upon the appellant to prove their case on the balance of probabilities and planning merits are not relevant.

The land in question adjoins the walled garden of Heath Cottage on the west and northern side of it. The appellant is trying to establish that the land is also used for domestic activities as a garden ancillary to the enjoyment of the house and that such use was lawful at the date of the application. Section 191(2) of the Act states that uses and operations 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. There is no suggestion that an

enforcement notice is in force on the site in relation to these matters and therefore s191(2)(a) is relevant here.

4. The time limits for taking enforcement action are set out in s171B. It is agreed that the relevant sub-section applicable for a use is (3) which specifies a 10 year period. In considering the main issue, it is necessary to consider whether the use as applied for has taken place and then if it has, whether it was occurring at the date of the application and has been continuous for at least 10 years prior to that date. The application was submitted on 11 October 2022 and the material date is therefore 11 October 2012.

Reasons

5. There is physical distinction between the garden immediately around the dwelling and the wider land to which the appeal relates due to the stone wall. The appeal site is also then in 2 main parts. Firstly, along the western side is a long, rectangular area accessed directly from the front driveway. This is enclosed on 2 sides by fencing and planting and is laid mainly to grass but in the centre are rows of trees as well as a large shed in the north-west corner. There is also a gateway providing access to the second area which is also laid to grass surrounded by landscaping. That part of the appeal site is on 2 distinct levels. As well as being accessed from the gateway, the northern part of the appeal site can be accessed through a gap in the stone wall.
6. The appellant has owned and occupied Heath Cottage since the summer of 2019. They have made a statutory declaration which includes the statement that since their occupation, they have used the land incidentally to the enjoyment of the home and for domestic purposes only. They have also referred to spending time mowing and tendering to the land.
7. A further statutory declaration has been submitted from the occupier of Thornhill, the adjoining neighbouring property to the west of the appeal site. They confirm that in their 21 years at Thornhill, the 2 sets of owners of Heath Cottage, prior to the current appellant, mowed the grassed areas and used them as garden land with the current owner continuing in the same manner. They refer to maintenance of the trees and boundaries, planting of young trees as well as use of the entire area only having been for recreational purposes. The neighbour's statutory declaration was supplemented by a signed letter clarifying that they have regularly witnessed the use of the land for children's games, informal sport, quiet enjoyment – either sitting or strolling or social gatherings with friends. Additionally, they refer to the use of a tennis court which the appellant has also explained has been turfed over and which was in the northern part of the site. Another neighbour has independently commented that they have lived in 'Clonway' for 8½ years. During that time, they have never seen the land used other than as a garden.
8. The aerial images used by the NPA in their assessment of the application show limited apparent changes on the appeal site since the first image in 1999. I have no expert interpretive evidence about what the images show from either party. However, some raised beds can be seen on the area to the north-east which have now been removed which is consistent with what the appellant has stated. Those raised planters were very limited in area. The surface of the appeal site appears consistently covered in grass which, although not completely clear in every image, does appear to have a mown appearance. Whilst there are some apparent changes they are limited and difficult to

completely discern given the inconsistent quality of the images. What I saw at my site visit is also consistent with what can be gleaned from the images which is largely well-maintained, not overly manicured grassed areas with some ornamental planting as well as fruit trees. At the time of my visit there was a small football goal in the northern part of the site although that is moveable and it was a snap-shot in time.

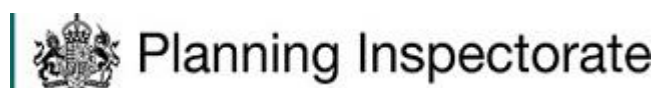
9. Although separated from Heath Cottage by the more intimate garden area and the stone wall, the land within appeal site is closely related to and accessed from the dwelling. The aerial images from 2006 and 2010 indicate that there may not have been the access through from the driveway to the south of the site at that time, the other images are insufficiently clear to show when that access was created. The statutory declarations explain that the land was used as garden. Whilst the NPA consider the statements made are insufficiently detailed, I consider that the declarations have spelt out what the use would appear to have been in the normal meaning of the word garden. After all, many activities can feasibly occur within domestic gardens according to the interests of the occupants of the dwelling that the garden serves. This can include horticulture and agriculture on small scale just as it can include many other ancillary activities which are not in themselves a primary use of the land.
10. Whilst some of the activities within the appeal site may have been agricultural, I have no evidence from the Council to indicate that it has been on any significant scale that would take it beyond being an ancillary activity by the occupants of Heath Cottage. The small areas involved in any production of crops is within a much larger site which appears to have been consistently mowed and landscaped by the occupiers of Heath Cottage. There is also some explanation of the type of activities that have taken place but the term "garden" is used in its normal everyday sense which the ordinary person on the Clapham omnibus, if it were diverted to Dartmoor, would understand.
11. The land within the appeal site is more distanced from the dwelling than the more intimate garden enclosed by the stone wall, however it is easily accessed. It is only occupied by the appellant as it was by the former occupiers. In the above context, I consider that the appellant's evidence is sufficiently precise and unambiguous to demonstrate their case. Whilst the NPA questions the evidence submitted and has interpreted the aerial images differently, they have no direct evidence to contradict or make the appellant's version of events less than probable. I am therefore satisfied on the balance of probabilities and as a matter of fact and degree that the use of the appeal site is and has continuously for 10 years prior to the application, been as a garden ancillary to the enjoyment of Heath Cottage.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the land as garden land ancillary to the enjoyment of Heath Cottage, was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andy Harwood

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 11 October 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black 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:

On the balance of probabilities and as a matter of fact and degree, the appeal site is and has continuously been for 10 years prior to the application, used as a garden ancillary to the enjoyment of Heath Cottage.

Signed

Andy Harwood
Inspector

Date: 16 December 2024
Reference: APP/J9497/X/23/3319686

First Schedule

Use of land as garden land ancillary to the enjoyment of Heath Cottage

Second Schedule

Land at Heath Cottage Tavistock Road, Yelverton PL20 6EF

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 use in the First Schedule taking place on the land specified in the Second Schedule was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 16 December 2024

by Andy Harwood CMS MSc MRTPI

Land at: Heath Cottage Tavistock Road, Yelverton PL20 6EF

Reference: APP/J9497/X/23/3319686

Scale: Not to Scale



0 50
Metres



Plan Produced for: Dartmoor Planning

Date Produced: 31 May 2022

Plan Reference Number: TQRQM22151120447172