



Appeal Decision

Site visit made on 22 January 2025

by **Simon Hand MA**

an Inspector appointed by the Secretary of State

Decision date: 30 January 2025

Appeal Ref: APP/X2220/X/23/3322141

Shalimar, Well Lane, St. Margarets-At-Cliffe, DOVER, CT15 6AA

- 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 M Hockley against the decision of Dover District Council.
 - The application ref DOV/22/01009, dated 26 August 2022, was refused by notice dated 24 November 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 the continued use of land as residential garden.
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Decision

1. The appeal is dismissed.

Main Issue

2. Whether on the balance of probabilities the land in question has been used for residential purposes for a period of 10 years or more prior to August 2022.

Reasons

3. The parcel of land in question sits behind the garden of Shalimar and is otherwise surrounded by gardens belonging to neighbours' houses. The appellant has posed this question before in 2020 when a similar LDC application was refused. The subsequent appeal was also refused. The Inspector found there was convincing evidence for the land and the garden to have been amalgamated and used as one from 2017 onwards, but before that the evidence was too sparse to suggest the use had been sufficiently continuous. For this appeal more evidence has been supplied in the form of photographs and letters of support.
4. Previously, it seems, there were some letters of objection. The appellant has explained why these are not relevant, but I have not been provided with them. Nor have I seen a copy of the Inspector's decision or been given a full reference to it. I have determined the appeal solely on the evidence that has actually been provided.
5. The appellant purchased the land in 2009 and claims to have used it ever since as his garden. I should point out here that it is generally difficult to demonstrate there has been a material change of use to residential when there has been little change in the actual character of the land such as by permanent buildings, flower beds, ponds, patios etc. The appellant makes much of the fact that once his family began using the land as a garden there have been no other intervening uses. This may well be the case, but that is only half the story. In order to demonstrate that a

change of use has occurred over time that use has to have been continuous. That is not to say every day, but certainly it needs to be regular. The principle is that although the land may have been subject to a material change of use in 2009, if that use ceased it would revert to its previous lawful use. Sporadic use of the land as a garden would therefore entail regular changes of use back and forwards. This is different to a normal garden use, where one might not go into one's garden for months in the winter, but it doesn't stop being a garden, because that is its lawful use. But if you are trying to establish a new use through the passage of time, not actively using the land for several months at a time is fatal. Given that, is clear why it is difficult to establish a residential use that is, by its very nature, sporadic.

6. The appellant cut a gap in the hedge that separated the land from the garden and began regular mowing of the grass and created a new boundary fence and hedge around the edge of the land. By 2016 the separating hedge had been completely removed and this tallies with the previous Inspector's view that by 2017 the land and the garden had been amalgamated and were used as one. Prior to that I have 6 photographs showing use of the land, with tents erected, a trampoline, pets running free and so on. These photographs are from 2010, 2011, 2013 and 2014. There is also evidence of a fluctuating use of the land for storage of building materials for use on various DiY projects of the appellant. There are, however, long gaps with no evidence at all, nothing from 2012 or 2014 for example. I have no doubt the sincerity of the letters of support, and the appellant's own detailed account of what went on but none of these amount to a convincing argument that there was an actual residential use going on most of the time, across every year between 2012 and 2022.
7. The storage of building materials is also problematic. The use of your garden for the storage of roof tiles or flooring taken from your house would generally be considered ancillary to the residential use. But here the residential use was not established. Storing building materials on a field could well amount to a material change of use to a mixed use of agriculture and storage. Equally if the storage in the garden went on for many years and comprised more than just materials taken from the house and was of a sufficient scale that too could amount to a mixed storage and residential use. The storage in this case has been going on for many years and is of a scale more than is normally considered ancillary to a residential use. I do not have any real evidence as to what is being stored, but it does create a further uncertainty as to the actual use of the land in the period in consideration.

Other Matters

8. I note the land used to be accessed through a larger field to the north of the site. That field has now been developed for housing and the access closed off. The site is now entirely surrounded by houses and gardens with the only access through the appellant's own garden. It is unclear therefore what other use the land could be put to other than as an extension of the garden of Shalimar. However, this appeal is not based on the planning merits of the use, but on the more restricted question of what the evidence shows the use has been. As I explain above it is insufficient to show, on the balance of probabilities, a continuous residential use for 10 years.

Conclusion

9. I shall dismiss the appeal.

Simon Hand

INSPECTOR

