

Appeal Decision

Site visit made on 28 February 2025

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07th March 2025

Appeal Ref: APP/P1805/X/22/3310781

The Old Barn, Chapel Lane, Rowney Green, Alvechurch B48 7QJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Terence Hand against the decision of Bromsgrove District Council.
 - The application ref 21/00271/CPE, dated 12 February 2021, was refused by notice dated 15 January 2022.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a LDC is sought is for use of land as domestic garden forming part of the extended residential curtilage of the dwellinghouse known as The Old Barn.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse a LDC was well founded.

Reasons

3. Section 191(2)(a) of the Act provides that uses and operations are lawful at any time if 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.
4. With regard to use of land section 171B(3) of the Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. Therefore, in this case, in order to be lawful the use described must have commenced at least 10 years before the application date (hence before 12 February 2011) and continued without any significant interruption thereafter for at least a 10 year period of time.
5. The burden of proof is on the appellant and the relevant test is the 'balance of probability'. If the local planning authority has no evidence itself to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities. It is therefore necessary to consider whether, on the facts of the case and relevant planning law, the specific use for which a certificate is sought was lawful at the date of the application.
6. The appellant claims that the use of the land has been residential since 2010 and therefore the use of the site has accrued immunity from enforcement action over the passage of time. The submitted evidence to establish this includes timeline of

events, photographic evidence, aerial images, witness statements, invoices, planning permission and building regulation approval, various correspondence including emails, sales particulars and OS plans. The evidence is examined in the following paragraphs.

7. The appellant states that at the appeal site in 2010, the fence line and gate was moved, a gravel drive and hard standing were laid, and a field shelter was moved onto a concrete base. The submitted photographs, that are hand dated 2010, shows some pipe work, hard standing and part of a structure, open land, picnic table and a single storey building. Aerial images are provided showing the appeal site in 2007 and 2013 which shows that there are differences including removal of fencing and installation of hard standing, however they do not provide clarification on whether the land was used for residential purposes. These photographs and aerial images do not provide substantial evidence of the actual use of the land for any continuous 10-year period as residential.
8. Two invoices from a Paul Chadderton have been provided. One is for removal of pig pens and boundary fence and is dated February 2010 with the second invoice being for supply and erection of fence including gate, and supply and plant of hedgerow which is dated February 2011. These invoices do not provide compelling evidence that the land has been in residential use for a continuous period of 10 years.
9. Decision notices have been submitted for planning permission and building regulations relating to conversion of a building into a holiday flat. A letter dated October 2012 details an application for change of use from holiday let to residential of the building known as The Stables. Insufficient evidence has been provided with these decision notices and the letter, and from the evidence before me, they do not precisely detail a particular or specified use for the land subject of this appeal. These notices and the letter do not provide substantial evidence that the appeal site has been in residential use for a 10-year continuous period.
10. An affidavit submitted from a Danielle Owens, details that her and her husband were tenants of The Stables from January 2011 to September 2012 indicating that they mowed the lawn of the land, used the field shelter for storage of household items and that they had a vegetable patch. Paul Chadderton has also made an affidavit confirming the works he undertook at the site and also stating that he cut the hedges at the site every year since 2010, and that he understood the land to be in garden use. Statutory declarations from Mr and Mrs Alleeson, who reside in a neighbouring property, have been submitted that question the validity of the submitted affidavits. In any event, I am not convinced from the evidence presented in the affidavits that the appeal site has been in residential use uninterrupted for a continuous period of 10 years.
11. Two sales particulars relating to the Old Barn have been provided dated September 2012 and November 2021. Whilst these particulars provide some information on the garden areas of the Old Barn, they do not provide compelling evidence that the land subject of this appeal has been in residential use for a continuous uninterrupted period of 10 years.
12. Accordingly, having regard to all of the evidence before me in this appeal, I find as a matter of fact and degree and on the balance of probability, that the whole of the appeal site has not been in use for domestic garden for more than 10 years before the date of the application.

Conclusion

13. I conclude on the balance of probability, that the Council's refusal to grant a LDC in respect of the use of the land as domestic garden forming part of the extended residential curtilage of the dwellinghouse known as The Old Barn, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me under section 195(3) of the Act.

Chris Baxter

INSPECTOR