



Appeal Decision

Site visit made on 18 March 2025

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th March 2025

Appeal Ref: APP/U2750/X/24/3344028

Potto Hall, Parson Back Lane, Potto, North Yorkshire DL6 3EU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Dr Anthony Lang against North Yorkshire Council.
 - The application ref ZB23/01873/CLP is dated 11 September 2023.
 - The application was made under section 192(1)(a) the Act 1990.
 - The use for which a LDC is sought is described as “proposed use of houses, curtilages, lands and grounds at numbers 3 and 6 Potto Hall as two properties with private residential houses at 3 and 6 with adjoining and detached private residential garden lands as curtilage”.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Dr Anthony Lang against North Yorkshire Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The LDC application was made under section 192 of the Act, however, it is clear from the application form that the appellant is actually seeking to ascertain whether an existing use is lawful. I am therefore determining this appeal with regards to section 191 of the Act.

Main Issue

4. The main issue is whether the Council’s deemed refusal of the LDC application was well founded.

Reasons

5. 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.
6. 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 11 September 2013) and continued without any significant interruption thereafter for at least a 10 year period of time.

7. 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.
8. The appellant claims that the use of the land has been residential since before 2013 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 planning history of the site, previous planning permissions, an appeal decision, witness statements and aerial photographs. The evidence is examined in the following paragraphs.
9. The appellant describes that originally the buildings and surrounding land was a single residential property before being converted into a hotel. Planning permission¹ was granted in March 2001 for the conversion of the hotel into six dwellings. The appellant has not provided any definitive plans associated with this 2001 permission that identifies the extent of the residential curtilage of each individual residential unit. Correspondence from the Council refers to drawings of the 2001 permission held on microfiche files. Appendix B of the Council's statement of case refers to an email in which the microfiche files for the 2001 permission had been reviewed by Council Officers. They describe the drawings for the 2001 permission including notes to indicate curtilages drawn tight around the building and suggests the land beyond the curtilage areas was initially owned by a management company. Neither the history of the site, or the 2001 planning permission, provides substantial evidence that the appeal sites have been in residential use for a continuous 10 year period.
10. A witness statement, including an annotated and signed plan has been submitted by a Mr Crosbie. This statement details that the land subject of this appeal has been garden from a period of between 2010 to 2020, and was mowed and tended as a garden for normal family garden activities. Another witness statement submitted by a Mr and Mrs Clarke describes that in the years they lived at Potto House, between 2003 and 2019, the land was always used for as residential gardens, used for family get togethers and sports for the children. I am not convinced from the evidence presented in these statements that the appeal site has been in residential use uninterrupted for a continuous period of 10 years before the application date.
11. Aerial photographs of the site have been provided within the Council statement of case, in which the appellant has commented upon stating that there is nothing to say that the land is used as grazing for animals, and that the images indicate regularly cut grass. These aerial photographs do not however, provide clarification on whether the land was used for residential purposes, and they do not provide substantial evidence of the actual use of the land for any continuous 10-year period as residential.

¹ Ref: 2/01/120/0037U

12. My attention has been drawn to a summerhouse development including the associated appeal decision², application form and site plan. The application form is a householder form and the appeal decision does refer to a separate parcel of land used as garden for No 3. None of these documents, however, provide compelling evidence that the land subject of this appeal has been in residential use for a continuous period of 10 years.
13. 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 appeal site has not been in use for residential for more than 10 years before the date of the planning application.

Conclusion

14. I conclude on the balance of probability, that the Council's deemed refusal to grant a LDC in respect of the use of houses, curtilages, lands and grounds at numbers 3 and 6 Potto Hall as two properties with private residential houses at 3 and 6 with adjoining and detached private residential garden lands as curtilage, 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

² Ref: APP/G2713/D/22/3304858