



Appeal Decision

Site visit made on 25 March 2025

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 8th April 2025

Appeal Ref: APP/M1005/X/24/3350029

Kalamunda, Hob Hill, Hazelwood, Belper DE56 4AL

- The appeal is made by Charlotte Spiteri under section 195 of the Town and Country Planning Act 1990 against a refusal by Amber Valley Borough Council to grant a lawful development certificate.
 - The application Ref: AVA/2024/0099, dated 8 February 2024, was refused by notice dated 27 March 2024.
 - The application was made under section 191(1)(a).
 - The development for which the certificate was sought is described as "The use of land as domestic curtilage and garden land for a period in excess of 10 years".
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use relating to the existing use described in paragraph 4 below, which I consider to be lawful at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the use at the time of the application. The planning merits of the use are not relevant to the appeal and there is no planning application before me.
3. The application for the certificate and the Council's decision notice both refer to the use of land as domestic curtilage. The term 'curtilage' is a legal term that relates to land intimately associated with a building. The term is used in town planning legislation, for example, in connection with permitted development rights, but it is not a land-use planning description in its own right.
4. The land identified on the application plan includes an area of land formerly in agricultural use that is beyond the boundaries of the original garden of the house. Whether this land or part or parts of it are within the curtilage of the house is a separate issue that does not arise in this appeal. I have treated the application as one that seeks a certificate for "The use of land as residential garden land for a period in excess of 10 years". For the appeal to succeed, the appellant needs to demonstrate on the balance of probabilities that no enforcement action could have been taken at the date of the application for the

certificate, 8 February 2024, because the period of ten years beginning with the date of the breach of planning control had expired.

5. The Council refused the application for the following reason: -

"1. The evidence submitted does not clearly show that there has been a material change of use of the land, or that the evidence is sufficiently clear and precise to demonstrate that the land has been used as domestic curtilage for a period of 10 consecutive years.

The Council hold evidence contrary to that submitted, which consists of an Enforcement case in 2016 which concludes that at the time of investigation the land was not being used as part of the domestic garden.

On the balance of probability given the evidence submitted the land is not considered to be part of the domestic curtilage, for a continuous period of 10 years."

6. The Council state that their planning records show that on 11 April 2016 their Enforcement Officer visited the property in connection with an enquiry regarding "the land being used as domestic curtilage". The Officer reported that the land in question had been planted with a few beech trees and had a gravelled access. It was concluded that there had been no breach of planning control at this time, but the officer informed the then owner that should the land be "used as domestic curtilage a change of use would be required". The owner was then advised by letter that if they altered the land to a domestic garden, including the laying out of a formal garden or the erection of structures such as greenhouses, sheds and summer houses, "a change of use planning application from agricultural to use as domestic garden" would be required.
7. The planning records suggest that, as has continued throughout the application and the appeal, there has been a failure to appreciate the difference between domestic curtilage and residential garden. This is an issue that has arisen before in the Borough in connection with lawful development certificate appeals and previous inspectors have dealt with it as I have done - see appeals APP/M1005/X/19/3235983 and APP/M1005/X/22/3312807.
8. The appellant's evidence starts with a statutory declaration made by the managing director and owner of Mercaston Tree Company Limited. This company provided maintenance and landscaping services at the property between 2011 and 2016. In 2012 they removed the post and rail fence that separated the original garden from the land, making it into all one garden. A putting green was installed on the land, rhododendrons were planted, screen planting took place and continuous maintenance work including mowing was carried out by the company.
9. Further evidence is provided by the site location plan submitted on 8 March 2013 in connection with planning application AVA/2013/0216, which does not show a boundary between the original garden and the land. Images in Fletcher & Company's sale brochure of 2015 confirm Mercaston's statement that the fence had been removed and that the site was being maintained as one garden. Photographs taken at the time of the Enforcement Officer's visit confirm that there was no fencing. Evidence provided by the person who owned the property between 2016 and 2021 and Google Earth Pro images for this

period confirm the continued use of the site as one garden. The appellant's photographs taken in 2021, 2022 and 2023 and the present appearance of the site confirm its continued use as one garden.

10. The Council acknowledge that the sales particulars show a "manicured ... larger lawn area", but they maintain that there is still a distinct difference in the landscaping of the two parts because of the different colour of the grass and the way it has been cut. This may have arisen because of the condition of the underlying soil and the methods of cultivation and maintenance that have been utilised. It does not undermine the weight that should be attached to the evidence provided by the appellant, which confirms continuous use as one garden since the fence was removed in 2012 and is sufficient to satisfy the test described in paragraph 4 above.
11. For the reasons given above, I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), a certificate of lawful use has been granted.

D.A.Hainsworth

INSPECTOR