



Appeal Decision

Site Visit made on 3 November 2025

by **J Whitfield BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th November 2025

Appeal Ref: APP/P2935/X/25/3362359

93 Heather Lea, Bebside, Northumberland, NE24 4DF

- 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 Mr C McGlen against the decision of Northumberland County Council (the LPA).
 - The application ref 24/04295/CLEXIS, dated 12 December 2024, was refused by notice dated 3 February 2025.
 - 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 residential garden.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant indicated on the appeal form that it was necessary for the appointed Inspector to enter the site to gain a better understanding of the site layout. However, the LPA indicated on its questionnaire that it was not essential for the Inspector to enter the site and that the relevant of the appeal site could be seen from public land.
3. I therefore attempted an unaccompanied site visit on the above date. However, it was apparent that I could not see the appeal site in its entirety from public land. Nonetheless, given the appeal falls to be considered on the submitted evidence regarding the use of the land prior to the date of the LDC application, then I consider it is not necessary to see the site in its entirety, as any understanding of the site in its current layout would not assist. I will therefore proceed on that basis.

Main Issue

4. The main issue is whether the LPA's decision to refuse the application for an LDC was well-founded.

Reasons

5. S191(1) of the Act states that, if any person wishes to ascertain whether (a) any existing use of land is lawful, they may make an application for an LDC. S191(2) of the Act sets out that uses 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.

6. The application seeks to ascertain whether the use of land to the rear of 93 Heather Lea as residential garden is lawful. The appellant submits that use of the land as a garden commenced in July 2010 and continued thereafter until the date of the LDC application, such that it was lawful at that time because the time for enforcement action had expired, the relevant time limit under S171B(3) of the Act being 10 years beginning with the date of the breach.
7. The primary evidence upon which the appellant relies is described as the establishment of adverse possession confirmed by possessory title granted in May 2022. Submitted is a document from the HM Land Registry, dated 1 May 2022, which the appellant says is the Possessory Title Claim, however, the document does not state that is what it is. Rather, it simply cites the land in question, the applicant's names, the objector's name and states, "further to the Order of the Tribunal dated 20 April 2022, I am writing to inform you that the application has now been completed on 1 May 2022 as directed by the Tribunal." There are no details of what the application is or what the Order of the Tribunal dated 20 April 2022 contains. The second page of the document simply thanks the applicant for their recent email forwarding a copy of the Order of the Tribunal of 20 April 2022. Again, no copy of the Order is provided. Finally, the third page is from the HM Courts and Tribunals Service to the appellant with reference to the land in question which states, "further to the enclosed letter dated 1 May 2022 from the Land Registry informing the Tribunal that the referred application has now been given effect to, the file opened by the office in respect of this matter will now be closed."
8. There is nothing within the document which confirms the appellant made a successful Possessory Title Claim for the land. In any event, even if the appellant has made a successful claim, there is nothing within the documentation which confirms the use of the land as residential garden or the length of time it had been used as such.
9. The appellant states that in order to achieve the title claim, they would have had to demonstrate that the land had been enclosed, maintained and used by them for a period in the manner of an owning occupant in excess of 12 years. It is said that factual possession is characterised by the consistent use and maintenance of the land without the consent of the registered owner.
10. However, there is nothing in the evidence before me to say that it must have been enclosed, maintained and used for such a period as residential garden in order to achieve the claim. Again, there are no details of the application for the title claim or details of the Order of the Tribunal which confirm use of the land as residential garden. Indeed, as the appellant submits, "the successful grant of possessory title in May 2022 provides a legal confirmation of this continuous, owner-like use over the requisite period", they themselves accept that it does not provide any confirmation of what the actual use of the land in that period was.
11. The appellant's evidence then turns to a series of photographs. There are 16 photographs provided which are all said to be the land and show it in use as residential garden. Some of the images simply show dogs on the land, which does not sufficiently demonstrate use as a residential garden. Likewise, it is not clear what land is shown on some of the images and indeed whether it is the appeal site. There are nonetheless images which show garden furniture placed on the land and that ornamental planting has been introduced suggesting a degree of

residential use. Nevertheless, all of the images in the document are undated, and thus do not assist in demonstrating the period of time when the land was put to residential garden use.

12. Five of the images have been selected for inclusion within the appellant's statement. Dates have been added to those images. The LPA casts doubt the accuracy of the dating given the same images that were submitted at application stage were undated. Nonetheless, it is possible that the appellant was aware of the dates the images were taken and simply added them on in compiling evidence for the appeal.
13. However, it is ultimately a moot point. The earliest dated image is said to be from 9 August 2015. The appellant would need to demonstrate the use of the land as residential garden commenced no later than 12 December 2014 in order to demonstrate it was immune from enforcement action under S171B(3) of the Act.
14. Moreover, the image which is said to be from August 2015 simply shows two dogs sitting on part of the land. It does not show the entirety of the land. It also shows that part of the land is not grassed but covered by soils and some form of vegetative growth, as opposed to the mown lawn and decorative planting of later images. Thus, the image said to be from August 2015 shows insufficient detail to demonstrate the land's use as residential garden at that point. The simple moving of the fence line does not demonstrate that the land in between the existing garden and that fence line has been put to residential use.
15. Furthermore, images said to be from July 2016 and September 2018 are similar, only showing part of the land and without formal lawns, formal fencing and with little in the way of residential paraphernalia or planting. Indeed, the earliest image where a significant part of the land can be seen with the appearance of something akin to a residential garden is October 2020.
16. An email is submitted from the LPA to the appellant in January 2024 regarding the use of the land. In that email the LPA indicates that, "I believe through our pre-application service you were made aware planning permission is required in 2011." The appellant says this date aligns with their commencement of the use. However, the application form says the use commenced in July 2010. Moreover, there are no details of the pre-application service submission the appellant made or the LPA's response to it. Indeed, the LPA's submissions include a copy of their record which indicates that the pre-application submission was for the extension to the existing fence to follow the boundary. There is no suggestion it was for residential use of the land. Thus, I cannot accept that the pre-application communication referred to demonstrates the land was being used as an extension of the existing residential garden.
17. Consequently, on the evidence before, I find that it has not been demonstrated, on the balance of probabilities, that the use of land to the rear of 93 Heather Lea as residential garden was lawful within the meaning of S191(2) of the Act at the date of the LDC application because no enforcement action may then have been taken in respect of it and because it did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Conclusion

18. For the reasons given above, I conclude that the LPA's refusal to grant a certificate of lawful use or development for residential garden is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

J Whitfield

INSPECTOR