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## Appeal Decision

Site visit made on 31 March 2026

by **V Bond LLB (Hons) Solicitor (Non-Practising)**

an Inspector appointed by the Secretary of State

Decision date: 14<sup>th</sup> May 2026

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**Appeal Ref: APP/P1940/X/24/3350733**

**2 Arundel Road, Abbots Langley, Hertfordshire, WD5 0TP**

- 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 Michael Virtue against the decision of Three Rivers District Council.
  - The application ref 24/0980/CLED, dated 17 June 2024, was refused by notice dated 16 August 2024.
  - 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 'Use of grassed area as residential land'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I have taken the description of development from the appeal form, with this having been agreed to be amended during the course of the application to remove reference to the term 'curtilage' as this is not a use of land.

### Main Issue

3. The main issue is whether or not the LPA's decision to refuse to grant a lawful development certificate (LDC) was well-founded. This will turn on whether or not the use described in my banner heading above was lawful as at the date of the LDC application.
4. Planning merits are not relevant to the assessment and the onus is firmly on the appellant to make their case on the balance of probability. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.

### Reasons

#### *Legislation*

5. Subsection 191(2) of the 1990 Act<sup>1</sup> states that a use is lawful if: (a) no enforcement action can be taken in respect of it (whether because it did not involve development, or require planning permission, because the time for enforcement action has expired, or for any other reason). Per s171B of the 1990 Act no

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<sup>1</sup> Town and Country Planning Act 1990

enforcement action can be taken in respect of a material change of use after a period of ten years, beginning with the date of the breach.

6. The basis of the appellant's claim of lawfulness is that the use began more than ten years before the date of the application (rather than, for example, on the basis that the residential use was not development, or that it benefited from planning permission). The application form indicates that the use commenced on 9 April 1996. The LPA's position is that on the available evidence, it has not been demonstrated that the land has been used continuously for residential purposes for more than ten years.
7. The appellant must then demonstrate on the balance of probability that the use of the land changed to residential use on or before 17 June 2014 and that the use then continued without significant interruption for at least 10 years after the date of the change such that it would have been open to the Council to take enforcement action at any time during that period.

#### *The application land*

8. The LDC application land is a strip which sits between the pavement of Arundel Road and fencing which encloses the main garden of the appellant's dwelling. The block plan submitted with the LDC application indicates that the land in question does not include the hardstanding parking area to the side of the house.
9. As at the date of my site visit, the application land was grassed and a street sign for Arundel Road was sited on this area<sup>2</sup>. The application land falls within the registered title of the appellant's dwelling<sup>3</sup>, with both the Land Registry title plan and the original estate application plan<sup>4</sup> showing a demarcation that roughly follows the line of the fencing separating the application land from the dwelling's main garden. In these plans, the side driveway referenced above is not shown as separately delineated from the application land.

#### *Evidence/submissions*

10. The appellant has submitted a series of Street View images in support of the application. A September 2008 image shows the application land with some hedging and shrubs with patches of grass visible and fencing behind with no street signage in position. The hardstanding parking area to the side of the dwelling can be seen in images from this date onward also. An August 2012 image appears to depict hedging, which seems to have been fairly recently cut back, covering almost the entirety of the application land, with street signage now in situ on the land. The May 2014 image shows the land almost entirely covered by hedging, which seems fairly overgrown.
11. An April 2018 Street View image shows the land as entirely grassed without any shrubs or hedging. It seems that the grass has been recently cut but it appears fairly rough textured, with some drier patches visible, rather than being neatly manicured. A photograph from an Estate Agent brochure which apparently dates from 2022 shows a very small area of the application land being laid to grass.

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<sup>2</sup> Albeit I note the appellant's comment in relation to arrangements for this to be re-sited

<sup>3</sup> Indicated by Land Registry official copy entries and by a copy of the original 1996 Deed of Transfer

<sup>4</sup> Drawing number 507/100 pursuant to planning permission reference 94/321/8

12. Other evidence from the appellant includes letters from neighbouring occupants. A letter from the occupants of 1 Arundel Road states that 'previous neighbours have consistently maintained the land in question, from soft landscaping to keeping the grass in good condition' and that it has been 'used for residential purposes'. Comment is made also that the 'current fence arrangement' presents challenges especially 'with dogs constantly fouling on the grass'.
13. Occupants of 4 Arundel Road state that they have lived there since the development was first built and confirm that the land 'has always been maintained and cared for' by the owners of No 2. Reference is made to dogs fouling on the land and litter accumulating and that the street sign was installed after the development was built, making the land more difficult to manage.
14. A letter from occupants of 7 Arundel Road indicates that the current owners of the application land have 'maintained the land as part of their property' since moving into the property eighteen months before and that 'previous neighbours have consistently maintained the land and it has always been used for residential purposes'. Reference is made again to dog fouling on the land by reason of the proximity to the country park and that other properties in the area have an arrangement whereby fencing abuts the footpath.
15. Occupants of 17 Arundel Road who have lived there since the development was built write that the land 'has always been maintained by the owners of the property' and has 'always been used for residential purposes'. Again reference is made to issues of dog fouling and litter.
16. The appellant also makes reference to the red line plan and ownership certificate in a previous planning application<sup>5</sup> for development including 'change of use of amenity land to land forming part of residential planning unit) via re-positioning of fencing'. The appellant refers to an officer comment that other properties in the area have fences immediately abutting the pathway.

### *Analysis*

17. The appellant indicates that during the period of their ownership, the land has been maintained by removal of a 'significant amount of litter, weeds and other detritus' and that the grass has been cut 'regularly' and dog fouling cleaned on a 'regular basis'. The appellant comments also that the Council has not in this time tended the land. Based upon the Land Registry title register, it would appear that the appellant has owned the property only since October 2022 and cannot therefore attest to the use over a full ten years.
18. Further, removal of litter and dog fouling, along with grass mowing are activities that indicate general maintenance of land, rather than management in a manner consistent with a residential garden which might, for example, include ornamental planting beds or a closely mown lawn with a more manicured appearance.
19. The appellant highlights that the land forming the hardstanding parking area to the side of the house was originally also grassed and is not shown on the Land Registry title plan as separately delineated from the application land. The appellant contends that on the basis that this parking area has been in residential use, it follows that the application land has also been in residential use. The

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<sup>5</sup> Ref: 20/2306/FUL (2020 Application)

appellant refers to plant pots sited in this parking area and comments that the narrow width of the side parking space necessitates stepping on the application land when entering or exiting a vehicle parked in this area.

20. I appreciate that there is no physical barrier between the side parking area and the application land and I accept that it likely would be necessary to step onto the application land when entering/exiting a vehicle in this location. I note that the Officer Report in respect of the 2020 Application referred to this parking area as 'disused' and that the Street View images do not show parking taking place in this area. These represent though evidence only of brief snapshots in time and so are not good evidence that the side parking area has been disused.
21. However, I am mindful that there is parking for two vehicles to the front of the appeal property which would give more convenient access to the front door than use of the side parking space. I also do not have any detailed evidence as to how regularly this side parking space has been used; it may, for example, have been in use only for visitor parking. I do not therefore have clear evidence as to the claimed associated use of a small area of the application land in the manner described.
22. Comments from a number of neighbouring occupants who have been resident for in excess of a ten year period make reference to maintenance of the land and 'residential use' but there is no detailed evidence pointing to a level of horticultural management that would be indicative of how a residential garden would be maintained. Street view imagery from 2008, 2012 and 2014 shows some hedging and shrubs on the application land but these do not appear to have the neat or manicured appearance that would offer clear evidence of a residential use.
23. Further, comments in relation to dog fouling and littering on the application land are more indicative of amenity land, in common with similar grass strips/verges within the surrounding area. While the appellant comments that 'paving blocks' along the back edge of the pavement indicate that the land is 'privately owned', it appears that the same blocks continue beyond the adjoining path to delineate separation between the pavement and the country park. This physical feature does not therefore give any good indication of residential use and indeed, the presence of the street signage from 2012 onwards likely gives more of an impression of amenity land.
24. As regards the 2020 Application, while the ownership certificate and application plan indicated the application land as within the red line, the LPA does not dispute that the application land falls within the appellant's ownership and the comment in the 2020 Application officer report that the proposal was 'to enclose an area of grassed open amenity land' clearly indicates that the LPA at that time did not consider the application land to be in residential use.
25. Equally, the lack of a designation on the LPA's policy map and indication from David Wilson Homes' estate team that the application land does not represent open amenity land does not offer substantive evidence of ten years' residential use. The appellant references a 'fall-back' position related to being able to place domestic paraphernalia on the application land on the basis that it forms part of the curtilage of the property. A claimed fallback position is not relevant to the assessment of lawfulness on the basis of immunity.

26. Drawing all of these matters together, I find as a matter of fact and degree that the appellant's evidence lacks the necessary detail and precision to demonstrate on the balance of probability that the application land has been in residential use for a period of ten years or more. The use in my banner heading above would not therefore have been lawful as at the date of the application.

### **Conclusion**

27. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use of grassed area as residential land 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).

*V Bond*

INSPECTOR