



Appeal Decision

Site visit made on 16 June 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2020

Appeal Ref: APP/F4410/X/19/3239682

Willowford, Melton Mill Lane, High Melton, Doncaster DN5 7TE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr James Blakeley against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 19/01970/CPE, dated 16 August 2019, was refused by notice dated 21 October 2019.
 - 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 "Consolidation of the entire site as Class C3 for purposes incidental to the enjoyment of the dwellinghouse".
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Procedural Matter

2. I have taken the description of the use for which an LDC is sought from the appeal form, which I consider to be accurate.

Reasons

3. Uses and operations are lawful at any time if no enforcement action may 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 (s191(2)). In this case, the appellant seeks to rely on the period of time over which the use has continued.
4. In cases where there is a dispute as to whether a material change of use has occurred it is necessary to ascertain the correct planning unit, as it is the planning unit against which the question of a material change of use would need to be judged. The planning unit is usually the unit of occupation, unless a smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes; the concept of physical and functional separation is key.

5. If I find that the appeal site forms a single residential planning unit, it is necessary to consider whether, on the balance of probability, the use of the land within that unit, for purposes incidental to the use of the dwelling, has continued for a period of ten years or more prior to the date of the application, therefore from at least 16 August 2009, so as to be immune from enforcement. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued for the aforementioned ten-year period.

The Planning Unit

6. From my visit it was evident that the appeal site constitutes a relatively large and roughly rectangular parcel of land. It contains the residential bungalow, with separate former piggery buildings immediately to the south-east. These buildings, which have retained their internal animal enclosures, though in a poor physical condition, have nevertheless been utilised to some degree for what appears to be miscellaneous domestic related storage, including garden tools and equipment; firewood for heating purposes and various obsolete fittings.
7. The remainder of the site includes an extensive, and uniformly mown, open grassed area, with intermittent features including garden furniture, a pond, a greenhouse, a vegetable garden and new tree planting. The grounds of the property are demarcated by timber boundary fencing, however otherwise essentially remain open, without any significant system of enclosures to sub-divide areas within the site into clearly defined distinctive uses.
8. The exception to this is the enclosure of a vegetable garden to the immediate south-east of the former piggery buildings and a short fence and hedgerow, running parallel to the rear elevation of the dwelling. However, this does not tend to detract from the sense of continuity of the residential use, with the appearance that domestic related features and storage, though sparse and relatively random, are nevertheless distributed extensively over the appeal site.
9. In terms of the unit of occupation there is no dispute that the dwelling and remainder of the appeal site fall within a single ownership. It seems to me that, from my visit, there is a functional relationship between the dwelling, the use of the former piggery buildings, for the storage of domestic related items, and the remainder of the site for the enjoyment of recreation associated with the dwelling, including the growing of flowers, fruit and vegetables, the provision of wildlife habitat and general relaxation.
10. As a matter of fact and degree, the residential use appears to be physically and functionally integrated over the entire appeal site. As such, and irrespective of where the curtilage of the dwelling is located, which is not the purpose of this decision to define, I conclude that the appeal site forms a single residential planning unit.

Continuity of Residential Use

11. I therefore turn to the question of whether the continuous residential use of the site can be said to have occurred for the requisite immunity period. In support of the application the appellant has submitted statutory declarations and statements, both from present and previous occupiers of the site.

12. A declaration from the appellant's wife confirms that they have occupied and used the entire property for residential purposes since August 2016. She says that the whole site has been used on a day-to-day basis for purposes including gardening, fruit and vegetable growing, entertaining and general recreation, with the outbuildings being used for various domestic related storage.
13. A similar declaration from the previous owners of the property claims that they used the entire property solely for domestic related purposes from January 2008, including fruit and vegetable growing, wildlife supporting activities and other typical recreational activities undertaken at home, together with storage in the outbuildings.
14. Given that any person who lies about the information contained in a sworn statement could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I give the information provided significant weight.
15. An earlier signed statement from the previous owners, provides further detail regarding the timing of various activities on the site. This includes that storage commenced in the former piggery buildings, soon after their arrival at the property in 1995, and that during the early stages of occupation a pet horse was kept on the site for a number of years. They also say that between the mid-1990s and early 2000s, a wildlife pond, greenhouse, vegetable and fruit growing areas and native trees and shrubs were introduced.
16. Additionally photographs have been provided, including aerial images of the site dating from 2003, 2009, 2013 and 2017. It seems to me that, historically, large areas of the appeal site were more unkempt in appearance than is the case today, and that over time the site has become progressively more manicured and looked after. Nevertheless the photograph from 2009 appears to show the presence of a garden path, encompassing a relatively large part of the site and physically linking the storage sheds, greenhouse and various planting areas. To my mind this tends to support the account of the use of the wider site for residential purposes. It also appears likely that subsequent aerial photographs show various domestic features to be distributed over the appeal site and the presence of maturing planted areas.
17. The Council has referred to part of the site being previously used as a horse paddock and that this would not have been indicative of a change of use of the land to residential. However from the information supplied by the previous owners of the property, the horse was sold at some time in the late 1990s and therefore well before the beginning of the immunity period window. In any event I am not persuaded that the aerial photograph provided by the Council, dating from 2015, even if it does show the outline of where the paddock used to be, serves to contradict the appellant's version of events.
18. I am mindful that planning practice guidance states "*In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.*"
19. For the reasons given above, whilst the information provided is not as detailed as it could be regarding the historic use of specific parts of the site, I consider

it to be sufficiently precise and unambiguous, in the absence of any significant contradictory evidence, to justify the grant of a certificate on the balance of probability.

20. I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of "Consolidation of the entire site as Class C3 for purposes incidental to the enjoyment of the dwellinghouse" was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Roy Merrett

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 16 August 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in magenta on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the land has been used for purposes incidental to the residential use for a continuous 10-year period, prior to the application date.

Signed

Roy Merrett
Inspector

Date: 14 July 2020
Reference: APP/F4410/X/19/3239682

First Schedule

“Consolidation of the entire site as Class C3 for purposes incidental to the enjoyment of the dwellinghouse”

Second Schedule

Land at Willowford, Melton Mill Lane, High Melton, Doncaster DN5 7TE

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 14 July 2020

by **Roy Merrett Bsc(Hons) DipTP MRTPI**

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Not to scale

