



Appeal Decision

Site visit made on 22 February 2021

by **B.S.Rogers BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 06 April 2021

Appeal Ref: APP/T2350/X/20/3263227

Land at 4 The Green, Osbaldeston Lane, Osbaldeston, BB2 7LY

- 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 Kevin Crook against the decision of Ribble Valley Borough Council.
 - The application Ref: 3/2020/0725, dated 26 August 2020, was refused by notice dated 5 November 2020.
 - 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 "garaging, domestic curtilage, garden and orchard".
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The description of the development on the application form, as set out in the 5th bullet point above, was varied by the Council to "unauthorised extension of domestic curtilage" on the decision notice. This latter description was used by the appellant on the appeal form and is presumed to be agreed. It appears logical that the original reference to "garaging" was deleted as the appeal site boundary excludes the adjoining garages. However, as the Council has subsequently, and in my view correctly, indicated in its representations, the term "curtilage" does not describe a use of land and is also not necessarily co-extensive with the planning unit. Therefore, it appears to me that what is being claimed as lawful is the use of the appeal site as a domestic garden associated with no.4 The Green.

Reasons

3. In a case of this type, the onus is on the appellant to demonstrate, on the balance of probability, that the claimed use has continued for a period of 10 years prior to the date of the application.
4. The appellant's site plan indicates that he owns a long and relatively narrow, rectangular area of land with a frontage in excess of 150m to Osbaldeston Lane. At the southern end is the appellant's dwelling, no.4, The Green, an end terraced house. This dwelling has an adjoining, enclosed garden which I would have no hesitation in describing as its residential curtilage. Immediately to the north of this garden is a series of linked, industrial scale buildings, the exact

use of which has not been clarified by either party, although the representations indicate the appellant has an interest in specialist cars and commercial vehicles. To the north of these buildings are a detached single and a double garage. The appeal site lies immediately to the north of these garages and comprises an area of land with a frontage to Osbaldeston Lane of around 70m. At its nearest point, it is around 70m from the appellant's house.

5. The appellant has lived in the area and been associated with the appeal site for over 60 years. His letter states that from the 1940s to the early 1960s, Mr and Mrs Cummins of no.1, The Green owned the land. They had little garden area attached to their dwelling and so they gardened at least part the appeal site and had a greenhouse with a stone base. The aerial photograph from the 1940s is said to show this, although the image is rather fuzzy and inconclusive.
6. From the 1960s to the mid 1980s, the appeal site had several owners with varied levels of use and the greenhouse became a ruin. A Mr Harrison cleared the land of trees and unsuccessfully applied to build two houses.
7. Mr Mitchell's letter indicates that, from 1986 to 1989, he resided at no.1, The Green and also owned the appeal site. At the time of purchase, it included a double garage and the remains of a greenhouse. He states the land was neglected but there was an indication of the presence of some remnant garden plants. He created an area of floodlit hard standing, which he used amongst other things for the storage of a sea going boat.
8. The appellant's letter goes on to indicate that, from 1989 to 2000, his aunt owned no.1, The Green and the appeal site. He states that he cleared the remains of the greenhouse, mowed a circular path, planted fruit trees, shrubs and flowering bulbs and installed seating to the NE side. His aunt, mother, wife and self all spent leisure time there. The hard standing was used for accumulating building stone and parking.
9. In 2000, on the death of his aunt, the appellant inherited the appeal site and, as his then house at no.2, The Green had only a modest garden, continued to use the site as a recreational cum garden area.
10. The appellant states that, from 2003-2004, he enlarged the hard standing to store vehicles, caravan, timber for household fuel and building materials. He also used it as a nursery for trees to be planted in woodland he owns. A letter from Mr Wilson states that he has visited the plot on many occasions since 2002. He indicates the hard standing was used to store building materials, caravans, various vehicles, top soil, firewood and steam coal. He confirms that the northern end was planted as an orchard and the plot was partly mown to create a path to a lawned garden area with seating.
11. In 2007, the appellant purchased his present dwelling, no.4, The Green, and continues to use the appeal site. He has scraped the site to expose the hard standing. I saw during my site visit that this is presently in use for parking/storage of a variety of vehicles, including a derelict classic car, a trailer, a caravan and a horse box, together with the storage of various building and other materials.
12. Whilst the land in question is owned by the appellant, it does not appear to me to have a close, functional link with his dwelling by dint of its distant separation, the intervening buildings/uses and its own mix of uses, some of

which appear not to be domestic in nature. It has its own access from Osbaldeston Lane and appears to effectively operate as a separate planning unit.

13. Turning to whether a continuous 10 year period of domestic garden use can be demonstrated, the Planning Practice Guidance indicates that, 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.
14. In this case, the evidence from the Council comprises a series of aerial photographs from 2009, 2015 and 2017. Each of these appear to show vehicles parked on the hardstanding in the southern part of the site, albeit that the hardstanding had become somewhat overgrown by 2017. The use of the vegetated remainder of the site appears unclear. This evidence is not particularly persuasive one way or the other.
15. The appellant's evidence is rather imprecise in terms the exact area of the land on which each activity is said to have taken place and the frequency or duration of such activities. Whilst there appears to have been some gardening use of the land from the 1940s by Mr and Mrs Cummins, including the erection of a greenhouse, it is not clear as to the physical extent or the duration of this use. Evidence of the use from the 1960s to the mid-1980s is rather piecemeal and Mr Mitchell's evidence of forming a hardstanding and storing a sea going boat does not necessarily indicate a domestic use. There again appears to have been some domestic use of the land from 1989 to 2000 but there is no indication of the physical extent of the use or the degree of continuity of the use throughout that period.
16. Soon after acquiring the land in 2000, the appellant appears to have extended the hardstanding but the use indicated by himself and Mr Wilson indicates the storage of a variety of items, some of which do not appear to be domestic in nature. It is not clear whether the tree nursery was for private or commercial purposes. By the time of my site visit, the site showed little trace of being in domestic use.
17. To my mind, the appellant's evidence is not sufficiently precise and unambiguous to justify the grant of a certificate relating to domestic use. Indeed, I find insufficient evidence of a specific use or mix of uses on which a certificate could reliably be based. Accordingly, I find the Council's decision to refuse to issue a certificate to be well founded and therefore the appeal fails.

B.S. Rogers

Inspector

