The Planning Inspectorate

Appeal Decision

Site visit made on 17 October 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 October 2022

Appeal Ref: APP/C3430/X/22/3297850
Land to the rear of 25 Deacons Field, Brewood ST19 9GA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 N and Mrs J Williams against the decision of South Staffordshire Council.
- The application Ref 21/00566/LUP, dated 19 May 2021, was refused by notice dated 5 November 2021.
- The application was made under section 192(1)(a) of the 1990 Act as amended.
- The use for which an LDC is sought is an allotment in agricultural use.

Decision

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

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellants with the relevant test of the evidence being the balance of probabilities. The planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act. I note the comments of a neighbour concerning previous works but these appear to relate to those carried out by the former landowner. In any event, I must confine my reasoning to the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

3. The application was seeking to establish that the use of the land as an allotment would have been lawful had it been instituted at the date of the application. Section 191(2) of the 1990 Act provides that uses 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 or for any other reason).

Main Issue

4. The application sought confirmation that the use of land to the rear of No 25 as an allotment would be lawful. This is on the basis that the authorised use of the land is agriculture and the land would remain in agricultural use as an allotment. The use of land and buildings occupied with the land for agriculture and forestry is excluded from the definition of development under Section 55(2)(e) of the 1990 Act and so, it is argued, planning permission would not be required to use the land as described.

5. The Council is of the opinion that the intensity of the proposed use could not be considered to be agricultural. It would amount to a material change of use to residential, which would be development under Section 55(1) of the 1990 Act and would require planning permission. Hence, it would not be a lawful use of the land. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

6. The appeal site is a rectangular piece of land to the rear of No 25 Deacons Field. The land forms part of a wider strip which extends either side of the site. The appellants intend to use the land as an allotment to grow fruit and vegetables. A table showing estimated output from the land in 2021 has been provided. The land would be separated from the garden area at the rear of the house by a fence with a gate for access. The other boundaries would be delineated by post and rail fencing, and hedges planted with native species.

7. The appellants have also provided an informal written agreement between the occupants of Nos 25, 31 and 35 to use the land as allotments for the private and non-commercial cultivation of vegetables, fruit, flowers, eggs or other domestically used crops.

8. As explained above, the main issue is whether the proposed allotment would be an agricultural use and thus lawful. 'Agriculture' is defined in Section 336 as including but not necessarily being limited to a list of activities - horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.

9. The appellants draw my attention to the judgement in *Crowborough*[1]. The case concerned the proposed use of agricultural land for allotments. The Secretary of State took the view that "allotments" were not "agriculture", as defined in Section 290 of 1971 Act due to the sub-division of the land and the increase in the number of people working it. The Court held that it was correct to look at s290, but it was necessary to consider if allotments could be included in any of the activities set out in that definition. In the Court's view, what is done on allotments could be said to be "horticulture", "fruit growing", perhaps even "seed growing". It was held that allotments fell within the definition of agriculture in Section 290(1) of the 1971 Act.

10. The case is not recent but there is no reason for me to dismiss the judgment for that reason alone. The definition of agriculture is unchanged and the facts of the case are very similar to those before me. I must consider whether the proposed use could properly be said to be included in any of the things that are set out in the definition of the "agriculture" or in any other way could be said to be "agriculture".

11. The proposed use includes the growing and cultivation of fruit and vegetables. These are all firmly within the definition of agriculture. Areas left unmown and

[1] *Crowborough Parish Council v SSE & Wealden DC* [1981] WL 186859 (1980).

planted with rye grass could be considered to be meadow land. The Council maintains that the proposed use would not be agricultural due to the limited area used for growing fruit and vegetables, and the relatively low intensity of use. It is considered that the proposal would be more akin to domestic garden use. However, there is very little evidence to support this assertion. For a material change of use to take place, there has to be a significant difference in the character of activities from what has taken place previously. There is no suggestion that the land would be used for residential purposes, which would be characterised by, for example, a maintained lawn and flower beds, formal or informal seating areas, areas for drying laundry, patios/decking, play equipment and ornamental features.

12. I am also provided with appeal decisions which concerned the alleged change of use to private gardens[2]. The appeals are limited in their relevance because, crucially, the issues were different to those before me. The Inspector was considering whether the appeal land was within the curtilage of the dwellings and whether its use as garden would amount to development. The appeals considered the use of the land for horticulture as part of an argument on the 'fallback' position and the potential impact of such a use on the character of the area. The argument was not accepted by the Inspector, who afforded the matter little weight because the growing of vegetables in a garden does not necessary result in a horticultural use. The Inspector also commented on the suitability of one plot for horticulture, given its size. From the brief comments of the Inspector, it does not follow that the relative size of the plot nor the intensity of vegetable growing should be deciding factors, as the Council indicates.

13. The Council also refers to other appeal decisions[3], but these are not provided and I am unable to locate the decision letters from the references given. However, it seems that these appeals concerned an unauthorised change of use of land to residential. It is not clear on what basis the Inspector concluded that the plots in that case were residential in character and I cannot draw any comparisons with the matters at issue in this appeal.

14. I find, as a matter of fact and degree, that the proposed use of the land as an allotment would fall within the definition of agriculture provided by Section 336 of the 1990 Act. Thus, the use would not be development under the provisions of Section 55(2)(e) and planning permission would not be required for the use as an allotment as described in the application. Consequently, it would be lawful.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an allotment in agricultural use 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.

Debbie Moore Inspector

[2] Ref APP/R0335/C/16/3156893, APP/R0335/C/16/3156896, APP/R0335/X/16/3161500 and APP/R0335/X/16/3165123 dated 21 September 2017.
[3] Ref APP/G2435/C/09/2100303 and APP/G2435/C/09/2100304.

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 19 May 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (the 1990 Act) as amended, for the following reason:

The proposed use of the land as an allotment would fall within the definition of agriculture provided by Section 336 of the 1990 Act. Thus, the use would not amount to development by virtue of the provisions of Section 55(2)(e) of the 1990 Act. Planning permission would not be required for use as an allotment.

Signed

Debbie Moore

Inspector

Date: 26 October 2022
Reference: APP/C3430/X/22/3297850

First Schedule

An allotment in agricultural use

Second Schedule

Land to the rear of 25 Deacons Field, Brewood ST19 9GA

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 26 October 2022

by Debbie Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC

Land to the rear of 25 Deacons Field, Brewood ST19 9GA

Ref: APP/C3430/X/22/3297850

Scale: NTS