Planning Inspectorate

Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2025

Appeal Ref: APP/A2525/X/24/3352949
Oak Cottage, Small Drove Lane, West Pinchbeck, Spalding, Lincolnshire PE11 3NL

- 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 John Bolton against the decision of South Holland District Council.
- The application ref H14-0338-24, dated 15 April 2024, was refused by notice dated 11 July 2024.
- The application was made under section 191(1)(a) of the Act.
- The use for which an LDC is sought is: To change the land from agricultural to garden as I've only ever used the land as a garden.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the use set out above is taken from the application form. Accordingly, the alternative description in the Council's decision notice "Use of land from agricultural to domestic garden" must in fact mean "*Change of use* of land from agricultural to domestic garden." On that basis, I shall determine the appeal on the understanding that the appellant claims that the change of use of the land to use as a domestic garden is lawful.

3. The parties were advised that a site visit would not be conducted.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC is well founded. The responsibility for providing sufficient information to support an LDC appeal primarily rests with the appellant. However, if no other evidence contradicts or otherwise makes his version of events less than probable, and provided his evidence is sufficiently precise and unambiguous, there is no good reason to withhold an LDC.

Reasons

5. Section 191(2) of the Act provides that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no evidence that the change of use of the land to use as a domestic garden contravenes any requirement of an enforcement notice, so only (a) needs to be considered further.

6. Section 171B of the Act provides that development comprising a material change of use of land may gain immunity from enforcement action after 10 years have

elapsed. In this case, the claimed use of the land as a domestic garden would be lawful if the appellant can demonstrate 2 things on the balance of probabilities. The first is that the change of use was made on or before 15 April 2014, 10 years before the date of the application. The second is that the use of the land as a domestic garden continued thereafter without significant interruption, so that enforcement action could have been taken against it at any point during the relevant 10-year period.

7. The appeal site and Oak Cottage were in separate ownership until the appellant bought them. In an affidavit he states that was in April 1990 and that he registered them as a single title the following month. His affidavit continues that the land was laid to grass and enclosed by fencing in the same year and has been used as Oak Cottage's primary residential garden since. The statement on the appeal form that the land has been garden land since 1988 may therefore be incorrect.

8. Photographs produced by the appellant and by the Council indicate that the dominant activity taking place on the land since 1990 has been horse and pony keeping. The land is divided into 2 paddocks by wooden fencing and some of the photographs show further divisions made with moveable fences intended to keep horses and ponies apart.

9. The appellant regards the horses and ponies as family pets, and he states that their presence has not prevented other activities being undertaken on the land. He identifies family gatherings, children's play, sitting out, dog walking, wider social gatherings, barbecues, swings, paddling pools, playing football and cricket and learning to ride bikes and motorbikes. However, his evidence of those other activities is very limited, and it is not stated where on the land they took place, or when, or how often.

10. Nevertheless, a photograph taken in 2024 shows a large trampoline and a children's playhouse in the paddock nearest Oak Cottage and the playhouse appears in another undated photograph. Part of a swing can be seen in a third photograph, also undated. There are, however, no other records of any activity apart from keeping horses and ponies taking place on the land.

11. In the photographs with the trampoline, the playhouse and the swing, a distinction can be seen between the mowed grass where those features stand and the adjacent areas grazed by horses and ponies. The mown and grazed areas are separated by moveable fencing, so it is not clear whether any part of the land has been consistently mowed or used for play or other activities accepted as consistent with use as a domestic garden. However, none of the appellant's evidence shows any domestic items or any activity other than horse and pony keeping in the paddock furthest from Oak Cottage.

12. In any event, the photographs of the trampoline, the playhouse and the swing cannot substantiate that those items were present or that any domestic activity was undertaken on the land on or before 15 April 2014. No domestic features can be seen on the land in Street View images from March 2009, October 2015, June 2016 and May 2017 provided by the Council. In all those images, the land appears to be entirely given over to horse and pony keeping. A caravan owned by the appellant is in the paddock nearest the house in the 2009 image, but he does not explain what it was there for, or whether it was on the land at any other time.

13. A letter of support written by someone who has known the appellant and his family for over 30 years and who walks past the land most days confirms that they have never seen crops growing on it. While they refer to regular pony grazing and mowing, they do not describe any activities common to use as a domestic garden. A second letter of support, written by people who have lived opposite Oak Cottage for over 22 years, states “In that time we have only ever seen their land used for recreation.” The letter does not explain what the writers mean by “recreation”, so it is not clear whether it means use as a domestic garden.

14. Viewing the available evidence in the round, it is probable that horses and ponies have been kept on the land continuously since 1990. However, I do not accept that this amounts to the use of the land as a domestic garden. While the appellant and his family may genuinely view the animals as pets, the evidence indicates that their presence on the land has not been part of anything commonly accepted as use as a domestic garden.

15. In summary, The appellant has produced some evidence of use of part of the paddock nearest Oak Cottage for purposes consistent with a domestic garden. However, that evidence is not sufficiently precise and unambiguous to demonstrate that any such use was instituted on or before 15 April 2014 or that it persisted for a 10-year period without significant interruption. It has therefore not been demonstrated, on the balance of probabilities, that enforcement action could not have been taken against the change of use when the application was made.

Conclusion

16. For the reasons given above, I conclude that the Council’s refusal to grant an LDC for change of use of land from agricultural use to domestic 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 Act.

Mark Harbottle

INSPECTOR