



## Appeal Decision

Site visit made on 8 December 2021

**by Elaine Gray MA(Hons) MSc IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 January 2022**

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### **Appeal Ref: APP/H0738/X/21/3282153**

### **Land adj Tees View, Worsall Road, Yarm TS15 9EF**

- 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 J Davison against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 20/1621/CPE, dated 20 July 2020, was refused by notice dated 11 August 2021.
  - 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 land as garden within curtilage of Tees View'.
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### **Decision**

1. The appeal is dismissed.

### **Preliminary Matters**

2. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The burden of proof regarding decisive matters of fact rests on the appellant. The relevant test of the evidence is 'the balance of probability'.

### **Main Issue**

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

### **Reasons**

4. Tees View is a detached dwelling sitting on its own plot of land. The appeal site comprises a roughly square piece of land that abuts the property at Tees View.
5. For lawfulness to accrue, the appeal site must have been used continuously for the relevant period for such purposes with an intensity, regularity and frequency that is more than de minimis, so as to have triggered a material change of use. The appellant therefore needs to demonstrate on the balance of probabilities that it has been used continuously for purposes ancillary to the enjoyment of the dwellinghouse at Tees View for ten years or more prior to 20 July 2020, which is the LDC application date.

6. The judgment in *Gabbitas v SSE & Newham LBC* [1985] JPL 630 makes it clear that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason not to grant an LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.
7. Previously, the appeal site formed part of a small holding and was used for the grazing of sheep and cattle. The appellant provides with the statement of case an aerial photograph from Google Earth taken in December 2000 which shows the land in this context. In March 2001, the previous owner of Tees View, Mr Peter Clemmet, decided to subsume the appeal site into the wider curtilage of Tees View. The land was fenced off from the field behind, as shown in the Google Earth photographs of December 2005 and December 2008. The appellant contends that, since these changes, the land has been used solely as an enlarged garden area serving Tees View.
8. There is some discussion between the main parties as to the boundary treatments associated with the appeal site. I note also, from the photographs, that the land has been tended to in a different manner from the land behind. However, these matters are not in themselves determinative. Instead, it is the use of the land and its functional relationship to the dwelling that fall to be considered.
9. Two statutory declarations have been submitted in support of the appeal. A statutory declaration is a formal statement made under the provisions of the *Statutory Declarations Act 1835* to affirm that something is true to the best knowledge of the person making the declaration. A statutory declaration must be witnessed by and signed in the presence of a solicitor or other authorised person, who should add their signature and details. It should also include the form of words set out in the Schedule to the 1835 Act.
10. The first statutory declaration was signed by Peter Clemmet on 14 July 2020 and the second was signed by Peter and Elizabeth Clemmet, dated 4 November 2020. I note that neither document refers to the 1835 Act. The November document includes the solicitor's stamp, but the July 2020 document has only a signature, with no further identifying details.
11. Nonetheless, turning to the information they contain, the July statement says that Mr and Mrs Clemmet and their family occupied Tees View from 1979 until 2017. Mr Clemmet says that the land became part of the domestic garden in 2001 and was used as a garden thereafter. Throughout this time, the land was mown and tended to, serving the property solely in a domestic sense, and at no time was it used for grazing or other agricultural activities after 2001. However, there is a notable lack of detail of exactly what use was made of the land, or at what sort of intensity following the boundary change.
12. The November statement gives slightly more information, saying that: the land was frequently used for various activities associated with the residential occupation of Tees View, including the planting of trees as a hobby and the collection of grass and plant cuttings for compost; the land was also used frequently for football and other games and sports by the Clemmets' grandchildren and their friends; and, between 2005 and 2017, the site was used for training, walking and playing with their pet dog.

13. However, these activities could equally have been carried out in a paddock or agricultural area. I note from the submitted photographs that there is little visual evidence of these activities being undertaken on the site. Moreover, there is little evidence that these activities occurred on the continuous basis that is needed to establish lawfulness.
14. At Appendix 3 of his statement of case, the appellant provides three further photographs, which are undated. Unfortunately, these photographs add little to the body of evidence. The first two show only a limited part of the appeal site. Of these, one is a view from the appeal site towards the gate, showing a single tree with its lower branches lopped. The second shows what appears to be the same lopped branches being loaded into a small van. However, the management of trees does not in itself indicate domestic use.
15. The third shows a larger piece of land with fencing to the right-hand side, with two gentlemen standing on the land in conversation, one of whom is holding a dog on a lead. From what can be seen of the land itself, its appearance is nondescript, with a pile of earth on one side, and wildflowers growing amongst patchy grass. The use of the land is difficult to discern from this image alone.
16. The Council have provided an aerial image from 2012 showing two horses on the appeal site. The appellant acknowledges this but states that, as the site was not in his ownership at the time, he cannot say for certain why the horses were there, or for how long.
17. It is clear from the declarations of the Clemmets that they owned the site in 2012. They are therefore best positioned to advise on the circumstances whereby the horses came to be on the land, and for how long, and yet they provide no explanation. As it stands, the 2012 image of the horses contradicts the statement of the Clemmets that at no point has the site been used for grazing or other agricultural activities since 2001.
18. The appellant argues that the area is not big enough to keep horses on permanently, although in my experience, this circumstance is not always sufficient to deter people from doing so. It may be that the horses were present for such a short time that it would not form a material break in continuity for planning purposes. The lack of equestrian paraphernalia may well point to a shorter time frame. The appellant asserts that it is clear from the other visual evidence that they were not there for long. However, neither he nor the Clemmets have provided a precise timeframe.
19. I have taken account of appeal decision APP/A2335/X/10/2141112, whereby the Inspector concluded that the keeping of pet horses on domestic land could be taken as incidental to the enjoyment of a domestic dwelling. However, in view of the lack of relevant detail in this particular case, I am unable to reach any meaningful conclusion on the status of the horses in the 2012 photograph. This appeal decision is therefore neutral in my consideration.
20. The appellant states that the property was vacated for a short period of time in 2018 for what he describes as 'major renovations'. He says that his brother stayed in the property during the work, but did not devote any time to activities on the appeal site. It is therefore evident that there was a cessation of the use of the site for ancillary purposes. As the appellant does not specify the exact length of time in question, I cannot be certain whether this gap may be regarded as *de minimis* for the purposes of this appeal.

21. Had lawfulness of the appeal site as a garden been accrued over a continuous ten year period prior to 2017, then the absence of the owners would not and could not cause that lawfulness to lapse. However, this has not been established, and so the pattern of occupation between 2017 and 2020 constitutes a further gap in the evidence before me.

### **Conclusion**

22. Taking the evidence as a whole, the appellant's case relating to the use of the appeal site lacks sufficient precision for the purposes of *Gabbitas*. The fact that the land was subsumed into the ownership of Tees View at a certain date does not in itself amount to a material change of use. The limited evidence before me is simply too sparse to demonstrate, on the balance of probabilities, that the claimed change of use from agricultural to residential land commenced and then continued without a material break for the requisite ten years before the LDC application date.
23. Crucially, the Council's evidence relating to the presence of the horses on the land in 2012 appears to contradict the Clemmets' statement that no grazing took place after 2001. Despite having had ample opportunity through the appeal process, the appellant does not offer any convincing explanation for this disparity.
24. As set out in the Planning Policy Guidance at paragraph 005, the refusal of an LDC does not preclude another application being submitted at a later date, if more information can be produced.
25. Nevertheless, on this occasion, I conclude that the Council's refusal to grant an LDC for the use of the land as garden ancillary to the adjacent house was well founded and that the appeal should fail.

*Elaine Gray*

INSPECTOR