

DELEGATED DECISION REPORT

HPK/2024/0067 Valid 20/02/2024	HURSTFIELD HOUSE HAGUE BAR NEW MILLS	EXISTING USE FOR THE PURPOSES OF HORTICULTURE OR AS A ‘RESIDENTIAL GARDEN’ TO THE EXTENT THAT IS LIMITED TO THE CULTIVATION, PLANTING OR GROWING OF GRASS, TREES, SEEDS, VEGETABLES, FRUIT, PLANTS, SHRUBS, BUSHES OR FLOWERS; AND THE TENDING TO AND ENJOYMENT OF SUCH LAND BY PERSONS WHO HAVE A PRIVATE RIGHT TO ACCESS AND ENTER THE LAND (‘ENJOYMENT’ IN THESE RESPECTS INCLUDES SITTING, WALKING, ROAMING, RUNNING AND PLAY THAT DOES NOT INVOLVE THE USE OF INSTALLED OR FIXED APPARATUS OR EQUIPMENT). (CERTIFICATE OF LAWFULNESS - EXISTING)
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MAIN ISSUES

- Whether the use described is lawful based on the facts of the case in line with Section 191 of the Town and Country Planning Act 1990

DESCRIPTION OF SITE

The application site comprises a large parcel of land that sits south of the public highway Hague Bar, a short distance from New Mills, that lies outside of the built-up area boundary, in the open countryside, and in the Green Belt.

The land is within the control of the occupiers of Hurstfield House, a domestic residential dwellinghouse that sits immediately adjacent to the public highway, orientated with its gable fronting the road.

The site is characterised by maintained grassland and trees, and falls sharply and steeply away from the public highway defined by a stone retaining wall, southwards towards the railway line and the bottom of the valley, and extends eastwards beyond the rear boundaries of a cluster of two storey terraced properties positioned on Hague Bar.

A small proportion of the land nearest the public highway and Hurstfield House has been subject to a recent planning application for a split level detached garage/workshop that was refused by the LPA under HPK/2022/0215 and subsequently dismissed at appeal.

The Inspector found that the proposed garage amounted to inappropriate development in the Green Belt and that no Very Special Circumstances exist that outweighed the substantial harm to it by definition and other harm to openness.

Both the Delegated Report and the Appeal Decision refers to this (smaller) parcel of land as forming part of the 'garden' associated with Hurstfield House. However, it should be noted that the use of the land as a 'garden' (i.e. horticultural purposes) does not automatically infer or confirm that the land forms part of the domestic curtilage of the property.

PROPOSAL

The application as submitted seeks a Lawful Development Certificate for the Existing Use of the (larger) parcel of land for "the purpose of garden which is incidental to the enjoyment of the dwellinghouse."

The application is accompanied by a Planning Statement, Statutory Declaration from the applicant and current occupier Mr and Mrs Wood, emails and letters from friends, site photographs showing the use of the land for a social gathering/party, aerial photographs of the site, and relevant plans.

The application asserts the following, as set out within the supporting Planning Statement:

- Hurstfield House built following planning permission (HPK/0003/8031) which changed the use of a vacant office to living accommodation in 1999 – conversion taking place in the early 2000's
- The approved Site Plan associated with this permission shows an area to the side of the dwellinghouse edged red.
- Site edged red on the Location and Site Plan accompanying this application has been used continuously as residential garden since 2001, confirmed by all supporting documentation and evidence.

CONSULTATION COMMENTS

1no. representation has been received from a neighbouring resident that states the following:

We have no objection to the application insofar as our understanding of “incidental to the enjoyment of the dwellinghouse” means that such permitted use would NOT include the renting out of the garden to third parties (whether for commercial gain or not). Use of the garden by Mr and Mrs Wood and their relatives for family gatherings is absolutely fine by us.

OFFICER COMMENTS

Whether the use described is lawful based on the facts of the case in line with Section 191 of the Town and Country Planning Act 1990

Section 191 of the Town and Country Planning Act 1990 relate specifically to applications seeking a Certificate of Lawfulness of an Existing Use or Development.

Section 191(1) states:

If any person wishes to ascertain whether –

- (a) any existing use of buildings or other land is lawful*
- (b) any other matter constituting a failure to comply with any condition or limitation to which planning permission has been granted is lawful he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter*

Section 191(2) goes on to state:

“for the purposes of the Act uses and operations are lawful at any time if –

- (a) no enforcement action may then 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); and*
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

The online Planning Practice Guidance (PPG) originally published by DCLG in 2014 provides further guidance for applicants and Local Planning Authorities.

With regard to Lawful Development Certificates, the following guidance is considered to be relevant to the assessment and determination of the application:

The applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an

applicant who is seeking information that the authority may hold about the planning status of the land. A local planning authority is entitled to canvass evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter-evidence.

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.

In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.

Paragraph: 006 Reference ID: 17c-006-20140306
Revision date: 06 03 2014

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?"

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. *It is, however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.*
(Our Emphasis)

Paragraph: 009 Reference ID: 17c-009-20140306
Revision date: 06 03 2014

Normally, when a land use is discussed in similar terms to that of "residential garden land" and it is inferred or taken for granted that this is inclusive of other general uses normally connected with the occupation of a dwelling, such as household storage, children's play, dining, washing lines, car parking etc. – either, the land falls within the curtilage of the dwellinghouse where Section 55(2)(d) exempts land uses for purposes incidental to the enjoyment of the dwellinghouse from the "meaning of development"; or the land falls within the same planning unit as land with a dwellinghouse on it and those other uses are protected by an ancillary link to primary dwellinghouse use of land.

Terms such as “domestic garden”, “domestic curtilage”, “residential garden” etc. are simply rather imprecise, perhaps clumsy, ways of describing land that falls within the curtilage or planning unit of a dwellinghouse. It is not the case that those ancillary or incidental uses automatically ‘piggy back’ on any use of land as a ‘garden’, in land use terms, is quite capable of existing and being enjoyed without any specific association with a dwellinghouse.

‘Garden’ itself is not a term recognised, defined or referred to anywhere in the Act. The definition of ‘Garden’ in the Oxford English Dictionary (OED) is “*a piece of ground used for growing flowers, fruit or vegetables*”. Additionally, the Collins English Dictionary defines garden as “*an area of land normally planted with grass, trees, flower beds etc.*” or alternatively “*an area of land used for the cultivation of ornamental plants, herbs, fruit, vegetables, trees etc.*”

The OED defines ‘horticulture’ as “the art or practice of garden cultivation and management”. The dictionary definitions for both horticulture and garden or gardening are apparently interchangeable to the extent that Officers are minded to conclude that the use of the land, where it is cultivated, enjoyed and tended to as a ‘garden’ in terms described above, amounts to ‘horticulture’. Horticultural activities fall within Section 336 of the Act and do not amount to development under Section 55 of the Act.

Having regard to the evidence submitted by the applicant, it is understood that in all probability, the applicant hopes to establish that the land could be lawfully used for something other than or in addition to agriculture or horticulture i.e. that its lawful use is something more than simply that of a garden as defined by the dictionary and considered to be ‘agriculture’ for the purposes of the Act.

There is nothing implied in the dictionary definitions that a ‘garden’ is always or often also used for purposes that are incidental or ancillary to a dwellinghouse. It just so happens that in many cases a ‘garden’ does also fall within land that is within the curtilage or planning unit of a dwellinghouse and therefore, it is often discussed or thought about in those terms. Outside the curtilage or planning unit of a dwelling there is no reason why a material change of use occurs if the ‘garden’ is tended to or enjoyed by nearby residential occupants.

In considering the applicant’s evidence, it is therefore necessary to establish whether there are other existing uses of the application site, outside of those recognised by the dictionary definitions of a ‘garden’ or considered to be horticulture, that amounted to a material change of use and have been continuous for 10 years prior to the date of the application.

The Planning Statement refers to a long list of activities set out in chronological order that includes (amongst other things), Family BBQ’s, Garden Parties, and a Wedding Reception.

It is considered that in land use terms, its impacts would be minimal, and by its nature will occur intermittently, occasionally and for a relatively short period of time. In any event, the land is cultivated and tended to as a garden, a horticultural land use to provide a pleasant environment and to attract wildlife. It is judged therefore that these uses amount to nothing other than those with private access to the land enjoying it as such. The enjoyment of the land by such persons is simply a part of or ancillary to that horticultural use.

Given the fact that the uses as presented within the Planning Statement do not amount to a material change of use of the land, having regard to Section 55 of the Act, it is not necessary to consider whether the asserted use has been continuous for a period of 10 years or more, as such activities are not at risk of any enforcement action.

With the above in mind, a consideration of these activities within the context of the photographic evidence submitted with the application and a site inspection by Officers, it is fully accepted that in general the land could overall be reasonably be described as a 'garden'.

However, it does not follow that because the land subject of this application is used as a 'garden', any specific part, or all, of the site lies within the domestic curtilage of Hurstfield House. The extent of domestic curtilage, as a consequence what benefits from Permitted Development rights, is a matter of planning judgement having regard to the specific characteristics of the site and relevant case law.

In light of the analysis above which sets out the distinction between what can be defined as a "garden" and what constitutes "domestic curtilage" the following revised description is considered to be more appropriate:

"Existing use for the purposes of horticulture or as a 'residential garden' to the extent that is limited to the cultivation, planting or growing of grass, trees, seeds, vegetables, fruit, plants, shrubs, bushes or flowers; and the tending to and enjoyment of such land by persons who have a private right to access and enter the land ('enjoyment' in these respects includes sitting, walking, roaming, running and play that does not involve the use of installed or fixed apparatus or equipment)."

Officers are in no doubt based on a site inspection and consideration of all documentary and photographic evidence submitted with the application that the land in question has been used for horticultural/garden use as described in detail above, having regard to the dictionary definition of such uses.

CONCLUSION / PLANNING BALANCE

Further to the above analysis, it is recommended that a Certificate be granted, having regard to the alternative wording of the First Schedule, that clearly defines the meaning of the term 'garden'.

OFFICER RECOMMENDATION : Grant Certificate

Case Officer: James Stannard

Recommendation Date: 7th June 2024

X *B.S. Haywood*

Signed by: Ben Haywood

On behalf of High Peak Borough Council