
Appeal Decisions

Site visit made on 8 November 2016

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 November 2016

Appeal A Appeal Ref: APP/E3715/C/16/3152393

Appeal B Appeal Ref: APP/E3715/C/16/3152394

Land to the west side of Gypsy Lane (to the rear of Rosemere, Hinckley Road), Wolvey (O.S. reference 443283 289446).

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr John Mac (Appeal A) and Mrs Heather Mac (Appeal B) against an enforcement notice issued by Rugby Borough Council.
 - The Council's reference is ENF/2016/0170.
 - The notice was issued on 04 May 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission excavation of land and laying foundations and the erection of a wooden structure.
 - The requirements of the notice are: 1) Excavate the concrete foundations laid and remove from the land; 2) Fill the excavated hole with soil to the existing ground level and re-seed; 3) Restore the land to its former condition; and 4) Remove the wooden structure from the land.
 - The period for compliance with the requirements is two months from the date the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A and Appeal B:

1. The enforcement notice is corrected by the deletion of the words "shown edged in red on the attached plan" from the description of the 'Land Affected' at section 2 and the substitution of the words "shown edged and hatched in black on the attached plan" and the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

Procedural Matter

2. Two appeals have been made against the notice; one by Mr John Mac and the other by Mrs Heather Mac. Although the grounds of appeal are identical in both appeals, it is common practice for the Planning Inspectorate assign a separate reference number to each appeal where multiple appellants are named on the same appeal form. Accordingly, I have referred to the two appeals as Appeal A and Appeal B, as set out in the banner heading, above.

The Appeals on Ground (c)

3. The principal dispute between the parties relates to whether the land upon which the development is sited forms part of the curtilage of the dwelling known as The Chalet and, more specifically, whether the development benefits from planning permission by virtue of 'permitted development rights' contained within Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). Class E permits *'the provision within the curtilage of the dwellinghouse' of; '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure'*. Those development rights are subject to a number of restrictions and limitations, set out at paragraphs E.1 to E.4 of Class E.
4. If the land was deemed to fall within the curtilage of the dwellinghouse the Council do not dispute that the wooden shed/ play house would fall within the scope of 'permitted development rights' granted by virtue of Class E. With regard to the other element of the alleged breach, 'the excavation of land and laying of concrete foundations', the appellants maintain that these works were undertaken in association with a proposed building that was intended to be used for a purpose incidental to the enjoyment of their dwellinghouse; The Chalet. They contend that the intended size and use of the structure would be in compliance with the limitations of Class E.
5. Based on the extent of the foundations, the Council do not dispute that the structure could meet the limitations of Class E in terms of footprint and scale but have questioned whether the intended use would be incidental to the enjoyment of the dwellinghouse citing the difference between answers given by the appellants when responding to a Planning Contravention Notice (PCN), when they suggested the intention was for a garage and home office, and the appeal statement, which indicates a storage use. Clearly, it is difficult to assess the use of a building when it has only been constructed to foundation level. Whilst no plans have been submitted I have no reason to doubt that the intended use would be incidental to the enjoyment of the dwellinghouse at The Chalet. Use for any other purpose would take the building outside the scope of permitted development rights under Class C.
6. Thus, the nub of the dispute in relation to ground (c) is whether the land forms part of the 'curtilage' of The Chalet. If it does, the works described in the alleged breach would amount to permitted development. Conversely, if the land does not form part of the curtilage of the dwelling, the works would not benefit from deemed planning permission, as granted by the GPDO. In that circumstance, in the absence of any planning permission, the works would amount to a breach of planning control.
7. The term 'curtilage' is not defined within the GPDO. In reaching my decision I have had regard to established case law relating to the definition including *Dyer v Dorest CC* (Dyer)¹ and *McAlpine v SSE* (McAlpine)². In the case of Dyer, the Oxford English Dictionary definition of curtilage was deemed to be adequate, namely; 'a small court, yard, garth, or piece of ground attached to a dwellinghouse, and forming one enclosure with it, or so regarded by the law;

¹ Dyer v Dorset CC [1988] 3 WLR 213

² McAlpine v SSE [1995] JPL B43

the area attached to and containing a dwellinghouse and its outbuildings'. Relevant authorities were more recently reviewed in *McAlpine* which defined a number of characteristics of 'curtilage' land. Those characteristics are that curtilage is confined to a small area about a building and that it has an intimate association with land which is within the curtilage. In addition, physical enclosure is not necessary for an area of land to be within the curtilage of a property.

8. More recently the matter was considered in *Skerritts of Nottingham Ltd v SSETR*³. Whilst broadly upholding the principles established in *Dyer*, the judgement in *Skerritts* established that the curtilage of a building need not necessarily be small. The curtilage of a substantial listed building, for example, was likely to extend to what were, or had been, in terms of ownership and function, ancillary buildings.
9. Having regard to established case law it is clear that curtilage defines an area of land in relation to a building and not a use of land. The fact that a piece of land may be in residential use does not imply that it will form part of the curtilage of a particular property.
10. In this case, the enforcement notice relates to an area of land in between Hinkley Road and Gypsy Lane, to the rear of the dwelling known as Rosemere. The appellants have identified the land covered by the notice as 'Area A' and 'Area B' within appendix i) of their statement. The operational development referred to within the notice has taken place in 'Area A'. The evidence indicates that 'Area A', which extends up to the boundary with Gypsy Lane, was part of the garden of Rosemere prior to being purchased by the appellants. The Council consider it likely that 'the authorised use of the land' was for residential purposes in association with Rosemere prior to being purchased by the appellants. Features on the ground including footpaths, apple trees and the relatively ornamental gate at the access onto Gypsy Lane would support that conclusion and the notice does not allege that a material change of use has occurred but relates purely to operational development.
11. 'Area A' is separated from a paddock to the south by a combination of a post and wire fence and hedgerow. The appellants have identified the paddock as 'Area B' and have confirmed that that parcel of land is also in their ownership. Thus, 'Area B' is physically separated from 'Area A' and appears to have a non-residential use. The appellants contend that 'Area B' should not be included in the plan attached to the notice because it is in a separate use and no development has taken place within it. The Council's statement suggests that 'Area B' was included because spoil relating to the excavations for the foundations had been stored on the land at the time of the enforcement investigation. Any material has now been removed and the Council are content that the plan attached to the notice could be amended to remove 'Area B' without prejudice to either party.
12. It is clear that 'Area B' is a separate entity to 'Area A' with a different use and the appellants do not contend that the land forms part of the residential curtilage of The Chalet. The operational development referred to in the alleged breach has not taken place on that parcel of land. Consequently, I have corrected the enforcement notice and substituted the revised plan, which

³ *Skerritts of Nottingham Ltd v SSETR* [2000] 2 PLR 102, [2001] JPL 1025

is attached to my decision (identifying land covered in 'Area A'), for the plan attached to the enforcement notice.

13. As set out, 'Area A' is situated to the rear of Rosemere, the detached dwelling which is located next to The Chalet. The wooden play house and excavated foundations are located within that area. A new fence has been erected to mark the foreshortened extent of the garden at Rosemere. However, an area of land exists between the newly erected fence and the western extent of 'Area A'. That parcel of land is identified as 'Area C' by the appellants in the plan at appendix i) of their statement. From the information provided, 'Area C' is not presently in the ownership of the appellants. Whilst it is their intention to purchase the land, a letter from their solicitor, dated 26 September 2016, highlights a number of uncertainties as to when that purchase will proceed. Therefore, at the time the works were undertaken, 'Area A' was separated from the garden of The Chalet by land associated with Rosemere that was not in the ownership of the appellants.
14. In order to get to 'Area A' from The Chalet it is necessary for the appellants to pass through the newly formed gap in the hedgerow at the bottom of their original garden and progress through the land at 'Area C'. A narrow strip of land appears to have been cordoned off from the paddock to the south to provide a link from the garden of The Chalet into 'Area C'. That strip of land falls outside the land identified in the enforcement notice and the Council are currently investigating whether a material change of use has taken place in relation to that section of land. That is a matter that falls outside the scope of this appeal which relates solely to operational development.
15. However, on the basis of the information before me, it seems likely that access to 'Area A' has been achieved by utilising an area of paddock that was not previously in residential use. No planning permission for the change of use of that parcel of land has been granted. Without going into the planning merits of such a change of use, which is not a matter before me, it is clear that the land upon which the operational development has taken place was previously separated from the garden associated with The Chalet by the paddock and 'Area C' which formed part of the garden of Rosemere. Whilst the appellants can gain access to the site by passing through 'Area C', that access would appear to be at the discretion of the owners of the neighbouring dwelling.
16. Unless access through those areas was possible it would be necessary for the appellants to access the land via the gate on Gypsy Lane or find an alternative means of access from the paddock to the south. Whilst planning is generally concerned with matters of use and not ownership, it appears to me that the ownership arrangements are relevant to the question of whether the land forms part of the curtilage of The Chalet, having regard to established case law. In particular, McAlpine identified that curtilage was defined as a small area of land about a building that has an intimate association with land that is within the curtilage. In that context, the original residential curtilage of The Chalet was very well defined by the garden boundaries on its four sides. The hedgerow along the eastern boundary marked the extent of that curtilage. 'Area A' is separated from that boundary by a section of former paddock and by the former garden of Rosemere in 'Area C'.
17. The land itself has no historical association with The Chalet and is somewhat removed in a physical sense from the dwelling and its original boundary. Prior

to the works to cordon off a section of the paddock the land would not have been physically attached to the dwelling, nor would it have formed an enclosure with it. Having considered all of the above, I conclude that the land does not form part of the residential curtilage of The Chalet.

18. Accordingly, the development that has been undertaken does not benefit from deemed planning permission under the terms of the GPDO and planning permission would be required for the works identified in the notice. No planning permission has been granted and those works represent a breach of planning control. Accordingly, the appeals on ground (c) must fail and I shall uphold the enforcement notice.

Chris Preston

INSPECTOR

Plan

This is the plan referred to in my decision dated: 17 November 2016

by Chris Preston BA(Hons) BPI MRTPI

**Land to the west side of Gypsy Lane (to the rear of Rosemere, Hinckley Road),
Wolvey (O.S. reference 443283 289446)**

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Scale: Not to Scale

