The Planning Inspectorate

Appeal Decision

Site visit made on 17 January 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 20 January 2017

Appeal Ref: APP/D0840/X/16/3155336
The Watch House, 1 Coastguard Cottages, Mullion, Helston, Cornwall, TR12 7EP

- 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 and Mrs Jon and Angela Larcombe against the decision of Cornwall Council.
- The application Ref PA16/03762, dated 20 April 2016, was refused by notice dated 17 June 2016.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the use of land as garden to the Watch House and erection of garage building.
- **Summary of decision: Appeal allowed**

Procedural matters

1. For the avoidance of doubt, I should explain that the planning merits of any future use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Relevant Planning History

2. In February 2014, an appeal was dismissed for a detached garage with hobby room above (APP/D0840/D/14/2211175). Although not an LDC appeal, the inspector observed that "there is evidence before me to indicate that it (the land) may form part of the residential curtilage of the property".

3. In June 2014 an LDC application was refused for the erection of a detached garage within the curtilage of the applicant's private dwelling house, including widening an existing vehicular access off a private track.

Main issue

4. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

5. The appeal property is an end of terrace dwelling forming one of a small group of residential properties. The property has a small yard at the rear within which is situated a garden shed. The land on the other side of a narrow un-metalled access track, which is also a public footpath, is the land the subject of this appeal. It is formed of two adjacent plots bounded by Cornish hedges. The south plot is relatively long and narrow and contains a single garage, beehive, bench and shed. The north plot is more compact in shape and contains a shed, dinghy and trailer Both plots are laid largely to grass.

6. The appellant wishes to site a garage building on a part of the land overlapping both plots close to the track.

7. The appellant submitted sufficient evidence with the application for the LDC for the Council not to challenge that the use of the land as garden land had become lawful through the passage of time and there is no reason for me to reach a different view. However, the difference between the parties is whether the two plots on the north side of the track form part of the residential curtilage of The Watch House.

8. To fall within the curtilage of a building, it is enough that land serves the purpose of a building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way (*Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195). However, in this case the land is enclosed but it is used as a garden and for other ancillary purposes to the dwelling.

9. In the absence of any statutory definition it was held in *Dyer v Dorset CC* [1988] 3 WLR 213 that the term bears its restricted and established meaning connoting a small area forming part and parcel with the house or building which it contained or to which it was attached. The land has been in the same freehold ownership as the dwelling since 1999.

10. The relevant authorities were reviewed in *McAlpine v SSE* [1995] JPL B43 and the following characteristics of curtilage defined:
    a. it is confined to a small area about a building;
    b. intimate association with land which is undoubtedly within the curtilage is necessary to make the land under consideration part and parcel of that undoubted curtilage land; and,
    c. physical enclosure is not necessary.

11. The Council considers that because the land is detached from the dwelling, it does not form part of the curtilage of the dwellinghouse. However, separation by an access track does not preclude the possibility that detached land could still form part of the residential curtilage. This is a matter of fact and degree.

12. I find based on the submitted evidence that the land subject to this appeal satisfies the characteristics of curtilage as identified by the Courts. As the land is within the curtilage of the dwellinghouse permitted development rights under the Town and Country (General Permitted Development) (England) Order 2015 would apply.

13. The Council considers that the proposed garage would not meet Schedule 1, Part 1, Class E conditions and limitations as they consider the size of the garage takes it outside the scope of what can be regarded as 'incidental to the enjoyment of the dwellinghouse' although they acknowledge that the

pproposed uses of the building could reasonably be considered as incidental, subordinate or secondary.

14. The Court in *Emin v SSE* [1989] JPL 909 confirmed that regard should be had to the use to which it was proposed to put a building and to consider the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be an important consideration but was not by itself conclusive. It was necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed buildings were genuinely and reasonably required or necessary in order to accommodate the proposed use and thus achieve that purpose.

15. The proposed garage would be substantial in size being 6m wide and 10m long internally having a flat roof with an overall height in of 2.5m. Its siting would require the removal of the existing single garage. Its purpose is to for the appellant's hobby of car restoration for two or three cars. I consider this to be genuinely and reasonably required for the proposed use.

16. The Parish Council objects to the proposed garage but as stated above the planning merits of the development are not relevant.

Conclusions

17. 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 the use of land as garden to the Watch House and erection of garage building 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.

Formal decision

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

P N Jarratt

INSPECTOR

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 20 April 2016 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross hatched in black 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 (as amended), for the following reason:

The lawful use of the land is as garden land which is within the residential curtilage of the dwellinghouse known as The Watch House. Permitted development rights under the Town and Country (General Permitted Development) (England) Order 2015 would therefore apply.

Signed

P N Jarratt
Inspector

Date **20 January 2017**
Reference: **APP/D0840/X/16/3155336**

First Schedule

Use of land as garden to The Watch House and erection of garage building.

Second Schedule

The Watch House, 1 Coastguard Cottages, Mullion, Helston, Cornwall, TR12 7EP

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 /operations 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 /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

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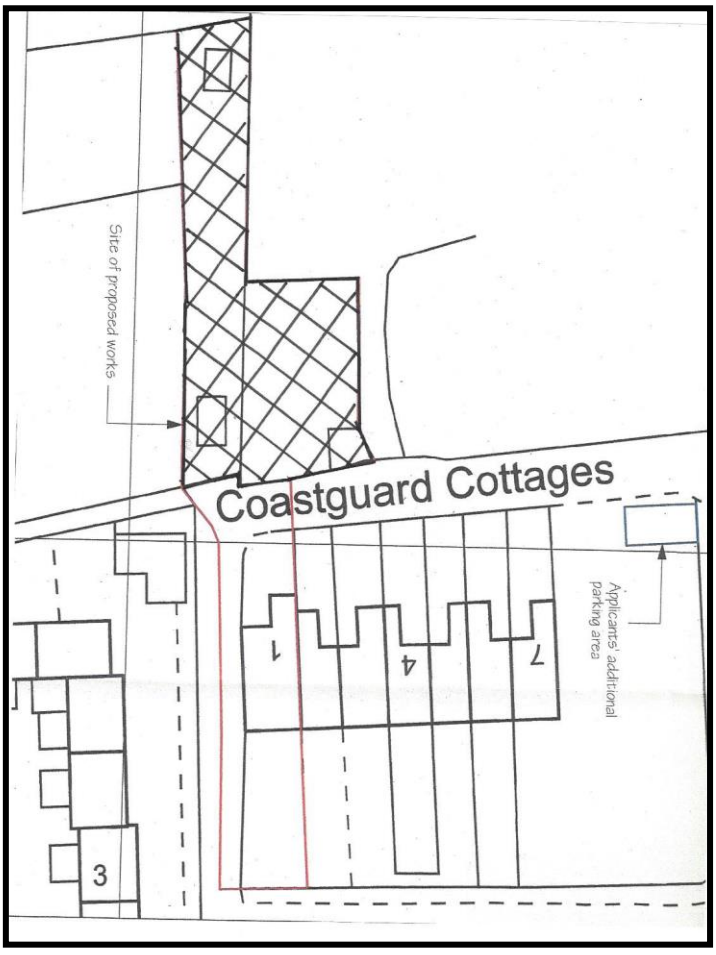
Plan

This is the plan referred to in the Lawful Development Certificate dated: **20 January 2017**

by P N Jarratt BA DipTP MRTPI

Land at The Watch House, 1 Coastguard Cottages, Mullion, Helston, Cornwall, TR12 7EP
Reference: APP/D0840/X/16/3155336

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