
Appeal Decision

Site visit made on 27 March 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/Z4718/X/16/3163422

5 Coachgates, Flockton, Wakefield, WF4 4TT

- 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 Adrian Harris against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/CL/92434E, dated 19 July 2016, was refused by notice dated 13 October 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 proposed erection of a detached swimming pool and detached barn store.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed development which is considered to be lawful.

Preliminary matters

2. Where an LDC is sought, the burden of proving relevant facts rests with the appellant, and the test of the evidence is the balance of probability. The relevant date for determining lawfulness is 19 July 2016, the date of the application.
3. A number of planning appeal decisions have been referred to by the parties. While they are similar in terms of the subject matter of this appeal and contain references to case law, I do not have knowledge of the plans or particulars of those appealed matters or the detailed relevant circumstances upon which those decisions were made. I therefore attach no weight to them in reaching my decision which I make on the facts and circumstances of the particular case before me.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well founded. This turns on the point of dispute between the parties as to whether or not the land upon which the outbuildings are proposed to be sited falls within the curtilage of the dwelling; a necessary prerequisite of Class E permitted development under the GPDO¹.

¹ Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO)

Reasons

5. Planning permission was granted in 2000 for a large two storey detached dwelling house within a roughly square plot of land at No. 5 Coachgates. The land subject of this appeal ("the appeal site") is also roughly square in shape located immediately to the north and adjoining the residential plot granted planning permission in 2000. It was annotated on the submitted 2000 application plans as being a field.
6. Planning applications for a livestock building and stables within the appeal site land were submitted in 2001 and 2002. The plans in those applications replicated the annotation of land use as shown in the 2000 planning permission. A further application for extensions to No.5 in 2015 also indicated the same demarcation of land use.
7. Notwithstanding the above, in 2015 an application for an LDC was submitted for the appeal site land seeking to confirm its lawfulness as a domestic garden. The evidence of its use as a garden since 2002 included photographs and affidavits from the previous owner and from gardeners contracted to maintain the land as a garden. It is clear from all the submitted evidence that the annotations indicating the different land uses on the plans submitted to the Council in the 2001, 2002 and 2015 planning applications were unreliable indicators of the actual use being made of the appeal site land. The Council granted the LDC confirming use of the appeal site land as a domestic garden in 2016, and its use as such is therefore beyond doubt.
8. However, 'garden' use is not synonymous with 'curtilage'. Curtilage is a legal term describing the relationship of land to a building; it is not a use of land for planning purposes. Hence the use of the appeal site land as a domestic garden is only one of a number of relevant factors in determining the extent of a building's curtilage. Other factors to be considered are set out in established case law which I discuss in the following paragraphs.
9. There is no authoritative or precise definition of the term 'curtilage'. However, to fall within the curtilage of a building, land should serve the purpose of the building in some reasonably necessary or useful manner. This was established in *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195. In *Methuen-Campbell v Walters* [1979] 1 QB 525 (CA) it was found that for land to fall within the curtilage of a building or other land there must be an intimate association. In *Dyer v Dorset CC* [1988] 3 WLR 213 it was held that curtilage is a small area forming part and parcel with the house or building which it contained or to which it was attached. In that context, Nourse LJ commented that the kind of ground most usually attached to a dwelling house is a garden.
10. These authorities, including *Methuen-Campbell*, were reviewed in the later judgement referred to by the parties in *McAlpine v SSE* [1995] JPL B43 which indicated, amongst other things, that curtilage is a small area about a building, that the curtilage land must be intimately associated with the building, and that the size of the area of ground is a matter of fact and degree. *McAlpine* also reiterated the finding in *Sinclair-Lockhart* that curtilage land should serve the purpose of the building within it in some reasonably necessary or useful manner.
11. The appellant also refers to the High Court case of *Sumption v London Borough of Greenwich and Rokos* [2007] EWHC 2776 (Admin). However, *Sumption* does

not undo the precedent set by the Court of Appeal, and so does not establish, as a matter of law, that the curtilage of a dwellinghouse can be expanded simply by annexing adjoining land, which itself is being used for garden purposes. Clearly then all relevant circumstances, as outlined by the Court of Appeal in *Methuen-Campbell*, and in *McAlpine*, should be considered and the decision in any particular case will very much depend on the particular facts.

12. In this case the original residential plot and the appeal site (garden) land had no physical barrier or other visible separation between them at the date of the application. Both appeared from the evidence before me as an integrated and single unit of land enclosed together with the house by the driveway and long established boundaries separating the whole parcel of land from adjoining land to the north, east and west. Both parts of the land appeared to be in use for the same purpose as a residential garden to the house.
13. Smallness (*Dyer*) of the land in question is a relative factor; a matter of fact and degree. The appeal site land is approximately the same size as the original residential plot. In my view it is not disproportionately large in width, length or area given the large size of the detached dwelling house and its original plot. As a matter of fact and degree, I consider it to be small *relative* to the size of the dwelling. Moreover, it is not so large that the furthest extent of it could be said to be unable to have an *intimate association* (*Methuen-Campbell*) with the house. Its use as a cultivated garden with play equipment, still in situ at the time of my visit, indicates to me that it does have an intimate association with the use of the house, and as a domestic garden it serves the purpose of the dwelling house in a *reasonably useful manner* (*Sinclair-Lockhart*). This appears likely to have been the case for a number of years prior to the date of the application.
14. On the balance of all the evidence before me I conclude as a matter of fact and degree that the appeal site land forms part of the curtilage of the dwelling. Consequently, an LDC can be granted for the proposed outbuildings as they would be permitted development within Schedule 2, Part 1, Class E of the GPDO.

Conclusion

15. For all the above reasons, I conclude that the Council's refusal to issue an LDC was not well founded. The appeal succeeds accordingly and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Thomas Shields

INSPECTOR



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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 19 July 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 construction of the detached swimming pool and detached barn store is permitted development within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015.

Signed

Thomas Shields

INSPECTOR

Date 12 May 2017

Reference: APP/Z4718/X/16/3163422

IMPORTANT NOTES – SEE OVER

NOTES

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 May 2017

by Thomas Shields MA DipURP MRTPI

Land at: 5 Coachgates, Flockton, Wakefield, WF4 4TT

Reference: APP/Z4718/X/16/3163422

Scale: DO NOT SCALE

