

Appeal Decision

Site visit made on 8 June 2017

by Martin Joyce DipTP MRTPI

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

Decision date: 19 June 2017

Appeal Ref: APP/Y0435/X/16/3165132

10 Arkwright Mews, Oakridge Park, Milton Keynes, Bucks MK14 6FT

- 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 Ralph Redpath against the decision of the Milton Keynes Council.
- The application, Ref: 16/02767/CLUP, dated 14 September 2016, was refused by notice dated 28 November 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 a proposed change in area from grass to block paving, which would accommodate the parking of a car.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The application was made under Section 192(1)(b) to ascertain whether a proposed development would be lawful. However, the application form states that the development had already commenced, through the removal of the grass verge and its replacement with crushed stone as preparation for block paving to create a hardstanding, and I saw at my inspection that the block paving has now been completed. In these circumstances, I shall deal with the appeal as though the application had been made under Section 191(1)(b) with the appellant seeking a Certificate of Lawful Existing Use or Development (CLEUD).
2. On a further matter concerning the terms of the application, and the subsequent appeal before me, the description of the development given above is taken from the application form. The Council, in their decision notice, however, refer to the proposal the "proposed creation of a paved parking area". I have seen nothing to indicate that the appellant agreed to such a change in the description of the development, thus I shall deal with the appeal on the basis of the wording provided in the application.

The Case for the Appellant

3. The appellant contends that the current in-curtilage parking provision can only accommodate two cars, which is inadequate for a five-bedroom house. He has, therefore, parked a car on the area in question since purchase of the house in 2012. In this context he says that the house-builder informed him that the area could be changed from grass to block paving when he commenced
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occupation of the house. Inadequate parking provision has been made elsewhere on the estate, with visitor bays frequently used by other residents for their own cars.

4. Contrary to the Council's decision, the appellant contends that the area in question does fall within the boundary of the property and is part of his land. The provision of a block-paved area would better accommodate a car than the original grass and would have no adverse effect on the overall look of the area.

The Case for the Council

5. The Council consider that the main issue in this case is whether the proposal falls within the scope of "permitted development". It is necessary, therefore, to assess the development against the provisions of Class F¹ of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development (England) Order 2015 as amended (GPDO). This would permit the provision of a hardstanding area within the curtilage of a dwellinghouse, for purposes incidental to the enjoyment of the dwelling. However, in this case, the curtilage does not extend as far as the area in question, rather it only includes a small front garden at the house, and does not include a shared driveway, beyond which is the paved area. The site therefore lies outside the curtilage of the dwelling and the proposal is not permitted development under Class F.

Appraisal

6. The main issue in this appeal is the question of whether or not the area that has been block paved for use as a parking area falls within the curtilage of the dwellinghouse at 10 Arkwright Mews so that the development would be permitted by virtue of the provisions of Class F of Part 1 of Schedule 2 to the GPDO. In considering this issue, it is necessary to state at the outset that the planning merits of the development are not before me in this appeal, only the question of whether or not the provision of a paved parking area is lawful. Further, I draw attention to the fact that the burden of proof in an appeal on legal grounds such as this lies with the appellant, having regard to national procedural guidance², as referred to in the Planning Practice Guidance, and pertinent case law³, with the relevant test being on the balance of probabilities⁴.
7. The area in question measures about 11m in length and is of variable width up to about 2m. It was originally part of a grass verge on the southern side of a shared access driveway that runs along the front of Nos 8-14 (even) Arkwright Mews. The remainder of the appellant's property, including his house, a private driveway leading to a detached garage, and an enclosed rear garden lie to the north of this shared access, albeit that the appellant owns the whole parcel of land, including both the shared access in front of the dwelling and the part of the grass verge that he has now paved. There is also a small garden area, planted with shrubs, of about 1m in width, immediately in front of the house.

¹ Development consisting of - (a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or (b) the replacement in whole or in part of such a surface.

² Annexe E of Procedural Guide "Enforcement Notice Appeals – England", 23 March 2016, Planning Inspectorate.

³ *Nelsovil v Minister of Housing and Local Government* [1962] 1 WLR 404.

⁴ *Thrasylvoulou v Secretary of State for the Environment No 1* [1984] JPL a732.

8. For the development to be permitted under the terms of Class F, the area in question has to lie within the curtilage of the dwellinghouse. There is, however, no authoritative definition of the term curtilage within either the GPDO or wider planning legislation. Its application derives from the conveyancing of property and the term is used in different contexts within the planning system, thus resulting in varying interpretations. Relevant case law⁵, however, has established that, in the absence of any statutory or authoritative definition the term bears its restricted and established meaning connoting a small area forming part and parcel with the house or building which it contains or to which it is attached. The Oxford English Dictionary definition was endorsed as adequate for most present day purposes, 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; the area attached to and containing a dwellinghouse and its outbuildings*".
9. The relevant authorities, including *Dyer*, were reviewed in *McAlpine*⁶ and the following characteristics of curtilage were 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.
10. Applying all of these principles, therefore, to the appeal before me, I find that the area in question lies outside the curtilage of the dwellinghouse at 10 Arkwright Mews. The curtilage is formed by the house itself, the small front garden area, the enclosed rear garden, the detached garage and the private driveway leading to that garage. The area that has been paved is not attached to the house, rather it is separated from it by a shared access driveway lawfully used by occupants of, and visitors to, neighbouring houses in this part of Arkwright Mews. The fact that the appellant owns both the driveway and the area beyond, which he has now paved, does not alter this definition of the curtilage. It follows that the development cannot be considered to be permitted under the terms of Class F of Part 1 of Schedule 2 to the GPDO, as it does not fall within the curtilage of the dwellinghouse.

Conclusions

11. For the reasons given above, and having regard to all other matters raised in the written representations, I conclude that the Council's refusal to grant a CLEUD in respect of a proposed change in area from grass to block paving, which would accommodate the parking of a car, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act as amended.

FORMAL DECISION

12. The appeal is dismissed.

Martin Joyce

INSPECTOR

⁵ *Dyer v Dorset County Council* [1988] 3 WLR 213.

⁶ *McAlpine v Secretary of State for the Environment* [1995] JPL B43.