

Appeal Decision

Site visit made on 20 June 2017

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

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

Decision date: 26 June 2017

Appeal Ref: APP/B2355/X/17/3166371

1 West View, Tong Lane, Bacup, Lancashire, OL13 9XB

- 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 Colin Stansfield against the decision of Rossendale Borough Council.
 - The application Ref 2016/0491, dated 13 October 2016, was refused by notice dated 12 December 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 double garage, goat and hen house, domestic store and hard standing.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

Preliminary Matter

3. On the site visit the Council officer indicated the area on the ground which the Council says is not domestic curtilage. This comprises a large area within the north eastern part of the site and which contains a goat run along the most easterly boundary. In his representations the Appellant indicates that the Council's reasons for refusal only refer to that part of the site which contains the goat run. Taking a purposive approach to interpretation, it seems to me that the whole of the north eastern area is disputed by the Council as being domestic curtilage.

Main Issue

4. The main issue is whether the proposed development would be granted planning permission by Article 3(1), Schedule 2, Part 1, Classes E(a) and F(a) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).
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Reasons

5. In order for a LDC to be granted under s192 of the Act, the Appellant must prove, on a balance of probabilities, that the proposed development would be lawful. Subject to conditions, Class E(a) of the GPDO permits certain development within the curtilage of a dwellinghouse, including buildings for a purpose incidental to the enjoyment of the dwellinghouse. Class F(a) permits the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse, again subject to conditions. Therefore, it must be shown that the land upon which the development is proposed is entirely within the curtilage of the dwellinghouse.
6. The existing dwellinghouse and garage lie within the southern part of the site and are surrounded by a small area of land which is in residential use and is undisputed curtilage. This area extends north eastwards up to a fence with gaps in it and an adjacent hedge, the line of which runs approximately in a north-westerly/south easterly direction across the width of the site. It is the relatively large area of the site beyond this line to the north east, where most of the proposed development would be sited. It is disputed that this area is residential curtilage.
7. A 1976 planning application refers to the land as previously being part of a smallholding, which was then vacant. On google earth aerial images from 2000, 2001 and 2003 it appears to be in agricultural use as a field adjoining the open land beyond. Later google earth images from 2005, 2007, 2009, 2011 and 2012 appear to show some changes to the use of a strip of the adjoining land adjacent to the north eastern boundary. However, they do not demonstrate that the north eastern part of the site was being used as garden land on those dates. Whilst the Appellant also refers to a google earth image of 2016, the image labelled "2016" actually bears an image date of 2005. In any event, an image from 2016 would have no bearing on my findings.
8. Currently the boundaries of the north eastern area are enclosed and it is maintained to grass with some trees. A goat run is located along the eastern stretch. Whilst the Appellant states that the north eastern area is used as a residential garden, for this to be a lawful use he would need to demonstrate that it had been in such use for 10 years or more in accordance with section 171B(3) of the Act.
9. I have considered the submitted, undated photographs and the Appellant's statutory declaration in which he states that the land to the rear and north east of the house was being used in its entirety as integral garden land to the house when he bought the property in 2006. However, in the absence of robust corroborating evidence, these documents are insufficient to demonstrate that the north eastern part of the site has been in residential use for 10 years or more.
10. Furthermore, as was held in *Dyer v Dorset County Council* [1988] 3WLR 213, the term "curtilage" usually connotes a small area forming part and parcel of the house which it contains. The north eastern area is substantial in size and does not fall within this connotation. Also, it is generally necessary to show that the land has an intimate association with the dwellinghouse and serves the building in some necessary and useful way, as established in *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1P&CR 195. This has not been demonstrated.

Conclusion

11. Consequently, for the reasons given, it cannot be said on a balance of probabilities that the north eastern area of the site is domestic curtilage. Therefore, the proposed development would not be granted planning permission by Article 3(1), Schedule 2, Part 1, Classes E(a) and F(a) of the GPDO and the appeal fails.
12. Given that I have found that the proposed development would not be located within the curtilage of the dwellinghouse, there is no need for me to consider the Council's remaining reasons for refusal.

Elizabeth. C. Ord

Inspector