
Appeal Decision

Site visit made on 26 June 2017

by Andrew R Hammond MSc MA CEng MIET MRTPI

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

Decision date: 03 July 2017

Appeal Ref: APP/V3310/X/17/3167323

Hill House, Spring Lane, Moorlinch, Bridgwater TA7 9DD

- 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 Richard Hennah against the decision of Sedgemoor District Council.
 - The application Ref 35/15/0004, dated 9 September 2015, was refused by notice dated 13 November 2015.
 - 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 described as the erection of a building within the constraints of permitted development on domestic curtilage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are whether the proposed development lies within the curtilage of Hill House and whether the purpose of the proposed development is incidental to the enjoyment of the dwellinghouse as such.

Reasons

3. The development for which an LDC is sought would be a substantial building associated with Hill House, a 5 bedroom house in around 3 acres of grounds at the end of a Spring Lane in the village of Moorlinch. The grounds of Hill House comprise formal gardens to the north and south of the house, steeply rising land to the east, used as pasture, and a plateau area above backing onto open farmland. The plateau area is elevated above Hill House with wide ranging views across the Somerset Levels.
4. The development would be located upon the plateau area which is currently rough mown grassland accessed by a recently resurfaced track climbing around the northern part of the pasture, or a footpath running steeply through the pasture land between two hedges to the formal garden area. At the time of the site visit, in addition to the foundations of the proposed building, there was a trailer, touring caravan, a washing line, a storm damaged trampoline and, at the southerly extremity, a vegetable plot and shed, all on the plateau area. The appellant has also provided photographic evidence that there was a modest

timber summerhouse on the site which, with an earlier structure, was said to have been destroyed by storms.

Curtilage

5. The appellant argues that the site of the proposed building is within the curtilage of Hill House and the development is, therefore, permitted development under Schedule 2 Part 1 Class E of the Town and Country (General Permitted Development) (England) Order (1995) (GPDO).
6. In 2014 the appellant was granted a certificate of lawful use for a substantial part of the grounds of Hill House as garden area (Ref 35/14/00002). An area of the hillside pasture to the southern part of the site was not included. The appellant suggests that the application for the certificate referred to the use as curtilage and that the change of the description to 'garden' by the Council 'muddies the waters'.
7. 'Curtilage' or 'domestic curtilage' is not a use of land but defines an area of land in relation to a building. There is no authoritative definition of the term and it is used in different contexts within the planning system. On the basis of the evidence provided by the appellant at the time, the Council acted reasonably in changing the description in the certificate to 'garden'.
8. Permitted development rights under Part 1 of Schedule 2 of the GPDO 1995 apply only to land within the curtilage of the dwellinghouse and, where the residential planning unit is larger than the curtilage; those rights will not apply to the larger area beyond the curtilage.
9. Both the appellant and the Council have cited case law in their arguments that the site of the proposed building is within and outside the curtilage respectively, with the appellant contending that, whilst curtilage may extend beyond a garden, the whole of a garden must lie within the curtilage.
10. That contention is not correct. What is required is that the land serves the purpose of the building in some necessary or useful manner but whilst it is usual for garden area and curtilage to coincide it is not necessarily the case that the curtilage must include, by definition, all of the area used as garden. An area of garden physically or effectively detached or otherwise apart from the dwelling could be determined not to be within the curtilage.
11. In the absence of any statutory or authoritative 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; and in *McAlpine v SSE* [1995] JPL B43152 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 undoubtedly curtilage land; and,
 - c. physical enclosure is not necessary.
12. More recently, however, the Court of Appeal in *Skerritts of Nottingham Ltd v SSETR* [200] 2 PLR102 [2001] JPL 1025 considered that whilst the decision in

Dyer was correct it had gone further than necessary in expressing the view that the curtilage of a building must **always** be small (emphasis added).

13. The Technical Guidance to the GPDO explains that whilst the term 'curtilage' is not defined in the order, it is understood to *be land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.*
14. Although it is accepted that it is not unusual for residential properties on the edge of villages or the countryside to be set in extensive grounds as is the case with other nearby properties, it does not follow that the entire grounds, even if used for purposes associated with the dwelling, including garden area are, by definition, within the curtilage. It follows that what constitutes the curtilage of a dwelling is a matter of fact and degree and will vary from case to case.
15. Hill House is a fairly substantial dwelling set in extensive grounds of over 1 hectare. Although a substantial part of the grounds may benefit from the certificate of Lawful Use as garden, the area is divided predominantly into 3 distinct areas; the laid out garden areas adjacent to the house, the hillside used as grazing land, upon which sheep had been grazed, and the elevated plateau upon which the proposed development would be located.
16. Although the plateau is within the area defined in the Certificate of Lawful Use as garden, it is separated from the more restricted area within which the house sits by the hillside grazing land and the distance along the access around that land from the house is some 70m. The house is generally not visible from the plateau area which in turn is not visible from the land within which the house sits.
17. In conclusion, although forming part of the garden area of Hill House, the elevated plateau upon which the proposed development would be located is separated from the dwelling and its immediate surroundings and does not form part of the curtilage for the purposes of the GPDO.

Incidental Use

18. In order to benefit from the provisions of Schedule 2 Part 1 of the GPDO the proposed building should be required for a purpose incidental to the enjoyment of the dwellinghouse as such. The proposed building, which would be within the dimensional constraints of the GPDO, is described by the appellant as providing a versatile studio and office space for home working and study. (*Justification Statement*).
19. The drawings provided by the appellant show a central games/meeting/party room of some 10m x 6m separating two areas each comprising an office, a storage room and a wc/cloakroom. The appellant argues that the building would be used to provide study, storage and leisure facilities not available in the main house.
20. Whilst Hill House is a substantial house, it is understood that facilities for entertaining and leisure are limited. The Council, however, contend that the proposed use is vague and that the appellant has not demonstrated that the use would be incidental to the enjoyment of the dwelling.

21. Whilst the physical size of the proposed building is substantial, with a footprint comparable to that of the main dwelling, it would be within any size constraints of Class E of Part 1 of Schedule 2 of the GPDO.
22. Although the Council suggests that the use would not be incidental to the enjoyment of the dwellinghouse, no firm evidence has been put forward to cast doubt on the appellant's assertions that it would. There is no doubt or dispute that Hill House is let out periodically on 'Airbnb' as a holiday let but the appellant explains that this is merely on occasions when the family are away.
23. The proposed use of the building would accord with the requirements of Class E of Part 1 Schedule 2 of the GPDO.

Overall Conclusion

24. The projected building would be for a proposed use incidental to the enjoyment of Hill House and would be within the size limitations of the GPDO. However, it is concluded that the location of the building would be outwith the curtilage of the dwelling, as opposed to the garden area, and as such would not benefit from the provisions of Class E of Schedule 2 Part 1 the Town and Country Planning (General Permitted Development) (England) Order 2015.
25. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a building within the grounds of Hill House, Spring Lane, Moorlinch, Somerset TA7 9DD 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.

Andrew Hammond

Inspector