
Appeal Decision

Site visit made on 17 December 2018

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 10 January 2019

Appeal Ref: APP/J1860/X/17/3192335

1-2 Upper Strand Cottages, A451 Dunley, Dunley DY13 0UE

- 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 Daniel Morris against the decision of Malvern Hills District Council.
 - The application Ref 17/00987/CLPU, dated 13 June 2017, was refused by notice dated 8 August 2017.
 - 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 erection of steel framed garage within existing rear garden area of the house. Also the installation of heavy duty grass protection road matting from the existing hard standing at the rear of the property with a small area of hard standing in front of the access doors.
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Decision

1. The appeal is dismissed.

Main Issue

2. A LDC is sought for the erection of a garage (operational development) and the installation of, in effect, a means of access to it (an engineering operation). Both parties have considered the means of access as facilitating the proposed garage development rather than as a development in its own right. I have addressed the appeal on that basis. Certainly the appellant, upon whom the onus lies, has made no case that the installation of the matting would be development permitted by any Class of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).
3. The appellant argues that at the date of the application the development proposed would have been permitted development by virtue of Schedule 2, Part 1, Class E of the (GPDO). The Council does not dispute that the development would comply with limitations set out in the Class. However, it does not consider that the development would be within the curtilage of the dwelling house. In its view the provision of the garage would not therefore be permitted development.
4. The main issue for the determination of this appeal is therefore whether the land on which the garage would be erected and the access matting installed is within the curtilage of the dwelling.

Reasons

5. The appeal property is on the outskirts of the village on Dunley. It was formerly one of a row of four cottages which were converted into two semi-detached dwellings in 1958. The dwelling is set back from the main A451 and appears from the planning history provided by the Council to have been extended to the rear. The evidence from the neighbouring occupier, given in the form of a Statutory Declaration (SD), is that the appellant moved into the appeal property in September 2013.
6. The arrangement of the land around the property is critical to the determination of this appeal.
7. There is a drive to the side of the dwelling which leads down a slope and past an extension and a sun room to the rear of the building to an area of hard standing and a garage. The hard standing is large enough for several cars to be parked; it also provides turning space so that all vehicles may exit the property in forward gear.
8. To the rear of the dwelling the land is laid out as follows:
 - (a) In the immediate area to the rear enclosed by the rear elevation of the house, the side extension/sun room and the common boundary with the adjoining dwelling is an area laid to decking with a low hedge at the end opposite the rear elevation.
 - (b) Down via steps from the decking, but still bound on either side by the side extension/sun room and the common boundary, is a paved area.
 - (c) Beyond that and enclosed by the drive way to one side, the common boundary to the other and a post-and-rail fence at the end, is an area of grass.
 - (d) Beyond that, is the hard standing with, to the common boundary side, a further, small, area of grass where there was a rotary washing line.
 - (e) Beyond the hard standing through a five-bar gate in a further rail fence is an area of rough grass. The garage, which would be retained, extends into this area on the other side-boundary of the property. Also in this area at intervals along this boundary are a children's climbing frame, a Wendy House and a garden-sized shed.
9. The proposed garage would be situated between the Wendy House and the small shed some 48m, on the Council's evidence, into the land beyond the hard standing.
10. The parties have referred in their evidence to the principal case law relevant to the consideration of curtilage. Several principles have been established by the courts:
 - (a) The Oxford English Dictionary definition in 1989 that it amounted, in summary, to a small piece of ground attached to a dwelling and containing the dwelling and its outbuildings was adequate for most purposes.
 - (b) It need not be marked off or enclosed in any way as it was enough that it serves the purpose of the house in some reasonably useful way.

- (c) In three separate judgements¹ Inspectors' findings that areas of rough or extensive grass beyond the well-cut lawns or cultivated gardens near the dwelling did not form part of the curtilage of the respective dwelling were upheld.
- (d) In all cases whether land is within the curtilage is a matter of fact and degree assessment.
11. The appellant's evidence is limited to images that appear to date from 1999, 2004, 2005, 2006 and 2013 and the interpretation of them and the neighbour's SD. There is no actual direct evidence of the way the land has been used. Rather, inferences are drawn about the way it must have been used given the nature of the structures and the appearance of the land, particularly when compared with other properties nearby that are drawn to my attention and which are said to similarly have extensive residential curtilages.
12. Dealing first with the SD, Betty Phillips helpfully explains the history of the cottages before confirming that the bundle of documents shown to her '...has been used as part of what (she) would regard as a domestic garden to (the appeal property).' She concludes by saying that the appellant and his wife moved in as stated above and '...continued to use the area as garden land as did the previous owners.' I have no reason not to accept what she says but I have no way of knowing why she regarded the land as 'domestic garden'.
13. In my view, the aerial images show the opposite of what the appellant claims for the land beyond what is now the hard standing. As far as I can tell, in each of them the land looks little different to the rough grass that I saw during my site inspection. There is no evidence that it is mown or otherwise cultivated as a domestic garden and there is no evidence in any image of any use at all. In fact, the contrast with the similarly lengthy area of land to the rear of a nearby property is quite stark. That appears to show considerable evidence of being landscaped over part at least of its length although it is not clear from the 2013 image what is taking place.
14. I have no doubt that the climbing frame and the Wendy House would be used by children for play. However, I do not consider that such use, even if frequent when the weather permits (and no evidence has been put forward about that), can justify a conclusion that the whole of the appeal site therefore forms the curtilage of the dwelling.
15. As a matter of fact and degree assessment of the evidence that has been submitted my conclusion is that the curtilage of the dwelling is confined to the areas of garden immediately adjacent to the house that I have described in some detail above, the hard standing and the garage. These are the areas of the landholding that have an intimate association with the dwelling and serve it in some reasonably useful way. None of the land beyond the fence at the end of the hard standing has such an association and is, in my judgement, outside the curtilage.
16. I have had regard to the appeal decision² brought to my attention by the appellant. However, as the court has held and the appellant acknowledges, each case will turn on its own facts. There do seem to me to be a number of

¹ *Collins v Secretary of State for the Environment* [1989] E.G.C.S. 15; *James v Secretary of State for the Environment* [1991] 1 P.L.R. 58; *McAlpine v Secretary of State for the Environment* [1994] E.G.C.S. 189

² APP/Y3615/X/12/2184465

distinguishing facts in that appeal case. These include the fact that it was a large house standing in its own grounds, there was photographic evidence of actual uses of the land in question, such as a children's party, and other aerial images of use by children of the land near to the outbuildings and what the Inspector concluded was little difference in appearance between the areas either side of the fence. She found that, in that case, there was an intimate relationship between the house, the garden immediately adjoining the house and the site of the proposed building. For the reasons that I have set out that is not my conclusion on the facts before me in this case.

Conclusion

17. 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 steel framed garage within existing rear garden area of the house. Also the installation of heavy duty grass protection road matting from the existing hard standing at the rear of the property with a small area of hard standing in front of the access doors. 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.

Brian Cook

Inspector