



Appeal Decision

Site visit made on 8 October 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2019

Appeal Ref: APP/C3620/X/18/3216746

Godstone House, Cobham Road, Fetcham, Leatherhead KT22 9SA

- 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 A and Mrs J Omatajo against the decision of Mole Valley District Council.
 - The application Ref MO/2018/1494/PCL, dated 24 August 2018, was refused by notice dated 24 October 2018.
 - The application was made under section 192(1)(a) 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 demolition of outbuildings, existing detached gym and brick walls, and the construction of 2 no. new garage buildings. Building 1 for old car collection and Building 2 for replacement gym and family cars.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr A and Mrs J Omatajo against Mole Valley District Council. This application is the subject of a separate Decision.

Procedural matter

3. The appellants have requested that I alter the description of the development for which a certificate is sought by omitting the words "*the demolition of outbuildings, existing detached gym and brick walls, and*" and to modify the rest of the description to read: "Construction of 2 no. new garage buildings. Building 1 for not more than 6 cars and Building 2 for a replacement gym and not more than 2 cars."
4. There is no express power in respect of applications under s.192 of the Act to allow modifications, although the Courts have held that a local planning authority may do so with the agreement of the applicant, this was in the context of narrowing the scope of a proposal to make it one that the planning authority could approve. In this case, the appellants want the demolition excluded to make it clear that any certificate would not be dependent on that demolition. I consider that little turns on this matter, and that the request can be acceded to without prejudice to any party. The Council objects to the amended description on the basis that the supporting information with the submitted proposal referred to 11 cars, and the proposal was dealt with on that

basis. However, the description of the application did not specify the numbers of cars that would be garaged, and the reality is that Building 1 could not physically accommodate 11 cars. I consider that there can be no material prejudice arising from proceeding on the basis of the amended description as proposed by the appellants.

Main Issue

5. Whether the proposal is one which is permitted under Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order").

Reasons

6. There are two matters in contention; the first is whether the site lies within the lawful curtilage of the dwellinghouse, and the second is whether the proposed use of building 1 for the storage of classic cars is a use incidental to the enjoyment of the dwellinghouse as such. The burden of proof in an appeal of this nature lies with the appellants.
7. Turning to the first issue, from what I saw on my visit, the land on which the buildings would be erected forms part of the existing curtilage of the dwelling. It is intimately associated with the dwelling and borders a hardsurfaced forecourt which wraps around the eastern and southern sides of the house. It falls within a larger area which is used in connection with the enjoyment of the dwellinghouse.
8. However, the Council maintains that the lawful curtilage extends to a line parallel with the front boundary just a metre or so beyond the northernmost part of the house, well short of the land on which the buildings are proposed. Article 3(5) of the Order provides that the permission granted by Schedule 2 does not apply if -
 - (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;
 - (b) in the case of permission granted in connection with an existing use, that use is unlawful.
9. The residential use of the site is lawful, if at the time of making the application, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Thus, it must be shown, on the balance of probabilities, that the change occurred before 24 August 2008.
10. It is undisputed that at one time there were at least two separate uses carried on within the application site, a horticultural nursery and a dwelling house. The land occupied by the nursery is now part of the grassed area attached to the dwelling. Thus, it needs to be determined whether the part of the site where the buildings are proposed lies within the lawful curtilage of the dwellinghouse.
11. A 1948 Ordnance Survey map shows a clear demarcation between the grounds of the dwelling and the land to the north, in the position which the Council claims represents the lawful curtilage. This is consistent with the Land Registry information submitted by the appellant, which shows this area to have been the subject of a separate title dating from 1910, with half of the nursery site (together with contiguous land to the east) being acquired in 1949, and the

- remainder (again, with contiguous land to the east) in 1951. The whole of the appeal site was acquired by the appellants in 2013, leaving land to the east in a separate title. All three areas of land were registered under one title in 1967.
12. The next chronological evidence is a 2012 Google Maps satellite photograph of the site which the appellants say dates from 2002. It shows what appear to be polytunnels on the northern part of the appeal site, but the detail is too indistinct to draw any clear conclusions on the use of the site.
 13. An appeal decision¹ dated 16 April 2003 relates to the site (then known as Mark Oak House). It dealt with an enforcement notice which alleged a change of use of the dwelling house on the land to a mixed use comprising business, educational and residential. The site plan attached to the notice showed the boundary of the site extending as far as, but not including a small outbuilding, which is still present today, and wraps round its western side before running westwards, in line with the rear wall of the outbuilding. Whilst I accept that the plan should not be scaled, it gives a very clear indication of the land encompassed by the notice. The proposed buildings would lie outside of the enforcement notice site.
 14. The Inspector described the land affected by the notice as being confined to the house and its garden. A linked Section 78 appeal for a similar use was also considered, the site of which comprised the house and garden together with the former nursery. The application plan shows the site as comprising the land to the east of the current appeal site as comprising the nursery, as well as the northernmost two-thirds of the current appeal site. An annotation on the plan indicates three areas of polytunnels, one of which occupies much of the northernmost part of the appeal site. The Inspector comments (at para 17) that "it is not apparent that a change of use of the nursery is intended. Its future use as part of the proposal or otherwise is not explained."
 15. Bearing in mind that in an appeal under Section 174 of the Act, the Inspector would have been under an obligation to ensure that the notice was correct, I attach considerable weight to this evidence, which indicates to me that the residential curtilage of Godstone House comprised only that land shown on the enforcement notice plan, and excludes most or all of the site on which the buildings are proposed. That appears to me to be the position as it stood in 2003. Even if the residential use of the whole of the enforcement notice site was not lawful when the notice was issued, by operation of s.173(11), once the enforcement notice was complied with, the residential use of the whole of the enforcement notice site would have the benefit of planning permission granted under this section.
 16. A planning application dated 14 October 2011 for the erection of a detached house and garage following demolition of the existing house, garage outbuildings and office was approved on 10 January 2012. The site plan was the same as the site plan in this case. There is no reference in the officer's report to a nursery use, or any other use of the nursery land, and therefore I consider that it is likely that the nursery area had been incorporated into the curtilage of the house by that date.
 17. The photographs submitted by the appellants which show the property in 2012, 2013 and 2014 indicate that there was a walled courtyard immediately to the

¹ Ref: APP/C3620/C/02/1102675

rear of the dwelling, together with a fenced lawned area on the eastern side of the house, and that the northern area was grassed. This appears to reinforce the likelihood that by 2011, the nursery area had been put to residential use as part of the curtilage of the dwelling.

18. However, there is no evidence about what happened between 2003 and 2011. It is clear to me that it is likely that a change occurred during this period, but, as the key date is 24 August 2008, the evidence is silent as to whether this change took place before that time. Thus, on the balance of probabilities, I cannot be satisfied that the use of all of the land on which the buildings are proposed to be erected would be within the lawful curtilage of the dwelling. It follows that the appellants cannot avail themselves of permitted development rights under Class E, and therefore the proposed development would not be lawful.
19. As the proposals fail on this first point, it is unnecessary for me to deal with the second point as to whether the uses proposed would be reasonably required for a purpose incidental to the use of the dwellinghouse as such.

Conclusion

20. I conclude that the proposed development would not be lawful and that the Council's decision to refuse the certificate of lawful development was well-founded. Accordingly, for the reasons given above, the appeal is dismissed.

JP Roberts

INSPECTOR