The Planning Inspectorate

Appeal Decision

Site visit made on 22 October 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 13 November 2019

Appeal Ref: APP/N4720/X/19/3221837
40 Park Drive, Farnley, Leeds LS12 6JB

- 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 by Mr Proctor against the decision of Leeds City Council.
- The application ref.18/07458/CLP, dated 2 December 2018, was refused by notice dated 30 January 2019.
- 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 construction of a garden store to the rear of the property.

Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

3. In LDC appeals the burden of proof is on the appellant to show that on the balance of probabilities the proposed development would be lawful.

Reasons

4. The appeal property is a relatively recently built detached house within an estate of broadly similar houses. It stands close to the end of Park Drive at the corner of Dixon Court, a short cul-de-sac which curves around the back of no. 40. The back garden of the property is bounded by a brick wall with piers between which are close-boarded timber fence panels. Outside that boundary is a narrow landscaped strip along the northern flank of the house, which widens out to become a mown grassy area with a low hedge at the back of the property.

5. The proposal is to demolish part of the boundary wall and construct a brick building with a flat roof. It would be 6 metres square, and the internal ceiling height would be 2.325 metres. It would be sited at the eastern end of the back garden. Part of the boundary wall/fence would be removed, and the building would stand with about two-thirds within the garden area, and one third within the mown grassy area.

6. Class E of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) includes an allowance for the provision within the curtilage of the dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such. This is subject to a number of exclusions set out in paragraphs E.1 to E.3 of the GPDO, including limitations on the area and height of proposed buildings. However, none of these exclusions are applicable to this proposal. Furthermore, the parties agree that the building would be for a purpose incidental to the enjoyment of the dwellinghouse.

7. In this case the main issue is whether the Council's decision to refuse the LDC application was well-founded. In that regard the main question is whether the proposed building would stand within the curtilage of the dwellinghouse.

8. It is long-standing law that there are three principal criteria for considering curtilage – the physical layout of the building and site; their use and function, past and present, and the ownership of the land, past and present. Furthermore, the areas of land should be so intimately associated that one forms part and parcel of the other.

9. Regarding ownership, it is clear from the Land Registry title that the appellant owns the area of land outside the boundary wall/fence along the side of, and to the rear of the house. As to physical layout, the back garden of no. 40 is very clearly separated from the grassy area by the boundary wall/fence. Furthermore, the grassy area extends along the back of the plot neighbouring the appeal property – no. 42 - and partly across the front of no. 2 Dixon Court. It appears as a single piece of land, uniformly maintained.

10. The fact of ownership does not in itself predicate the use of land. Indeed, land in the same ownership can well be in several uses. I understand this area is shown on the approved plans for the estate as a landscape buffer behind the back gardens of nos. 40 and 42. In my opinion this area functions as part of the landscaping of the estate rather than being used in conjunction with the dwellings themselves.

11. The grassy area is separate and distinct from the back garden attached to the house, and those two pieces of land do not have the appearance of being within the same enclosure. In my opinion on the balance of probabilities the grassy area cannot be said to be part and parcel of the garden land immediately associated with the house and does not therefore form part of the curtilage of no. 40. It follows that the proposed construction of a garden store does not benefit from the allowances under Class E of Part 1 to Schedule 2 of the GPDO.

Conclusions

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed garden store to the rear of no. 40 Park Drive, Farnley, Leeds LS12 6JB 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.

Stephen Brown

INSPECTOR