



Appeal Decision

Site visit made on 30 December 2019

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2020

Appeal Ref: APP/F0114/X/19/3232969

Moret, Hursley Hill, Publow, Bristol BS14 0QZ

- 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 Stephen Reed against the decision of Bath & North East Somerset Council.
 - The application Ref 18/04618/CLPU, dated 11 October 2018, was refused by notice dated 15 January 2019.
 - 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 a single storey double garage".
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed double-garage would be positioned within the residential curtilage of the dwelling known as Moret. If so, it would then be necessary to consider whether it constitutes permitted development under the provisions of Article 3, Schedule 2, Part 1, Class E of the GPDO¹. The planning merits of the proposal are not relevant to this appeal which will turn on matters of law with the onus of proof being upon the appellant.

Reasons

3. The appeal site includes a dwelling known as "Moret", the land immediately to the front and rear of it as well as a substantial strip of land to the south on which the garage is proposed to be sited.
4. There is no statutory definition of what curtilage means. The Technical Guidance² provides a helpful starting point. It states that curtilage is "land which forms part and parcel with the house" and that it is usually "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."

¹Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

² Permitted development rights for householders Technical Guidance (the Technical Guidance), September 2019

5. There are also various legal authorities relevant to how curtilage should be considered which in my view are consistent with the simplified advice in the Technical Guidance. It has been held that the term curtilage 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. Furthermore, the Oxford English Dictionary definition has been endorsed as adequate for most present day purposes, namely "a small court, yard, garth, or piece of ground attached to a dwellinghouse, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwellinghouse and its outbuildings."
6. Frequently the residential curtilage will also equate with the residential planning unit, for example, the house and garden plot on a housing estate. The representations in this case include a lot of information from both parties regarding the historic use of the land. However, given the above defining criteria, it is clear that curtilage defines an area of land in relation to a building and not a use of land. It can be material to take into account past and present use or function as well as ownership. However, it is not uncommon for land used for incidental purposes to a dwelling to extend beyond what can be considered as the curtilage of the dwelling.
7. To the north of the site the dwelling is set behind a landscaped front garden with a lawn, plants as well as an access from the main road with a neatly surfaced driveway. Aerial images submitted by the appellant indicate that the rearward part of the garden also has an orderly, landscaped appearance. The garage in this case would be positioned to the southern side of the dwellinghouse. There is a hedge, wall as well as the side of the dwelling close to the boundary and these provide well-defined separation between what are 2 distinct parts of the site in my opinion. The submitted aerial images also show that the boundary between the 2 parts of the site has historically been robustly defined as it is now. Even though access is possible between the 2 areas, the southern part is not intimately associated with the dwellinghouse.
8. The southern part of the site has a separate access installed or improved around 1976 with an informal track leading into the site. This area appears generally less manicured and less formalised than the northern part of the site and the difference in character provides a further distinction between the 2 areas. The appellant states this part of the appeal site was cleared and used as a garden in around 1975/6 but has also been used for other purposes in connection with those living at the dwelling, including the appellant's building business. Consistent with this, I could see a skip and building materials such as window frames, insulation sheets, and plastic buckets set back from but clearly visible from the main road. There was a small fire burning at the time of my visit as well. The builders' yard use may not have been continuous or an intense use as indicated in previous appeals on the site including APP/F0114/W15/3011477 as referred to by the appellant. It has been referred to as a builder's yard in another appeal, APP/F0114/W/17/3166414. However, these matters are not decisive and these appeals related to proposals for planning permission rather than LDCs and the Inspectors were not determining matters concerning the lawful use of the site.
9. The aerial images also show a pool to the rear which also appears to be distinctly separate from where the garage is proposed. Whilst the appellant refers to the pool being "permitted development – part E", I have no evidence

to confirm that this has been agreed through a formal determination such as a LDC. Even if that pool is on land considered by the Council to be curtilage, it does not follow that the rest of the southern part of the site is as well.

10. The garage would therefore be positioned on an area of land that is distinctly separated from the dwellinghouse, that lacks intimacy with it and which appears to have functioned in a different manner from the land more closely related to it and its residential occupation. As a matter of fact and degree, I consider that the garage would not be positioned within the curtilage of the dwellinghouse and could not therefore benefit from permitted development rights under the provisions of Article 3, Schedule 2, Part 1, Class E of the GPDO.

Conclusion

11. 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 single storey double garage, 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.

A Harwood

INSPECTOR