



Appeal Decision

Site visit made on 6 January 2020

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2020

Appeal Ref: APP/C2741/X/19/3228845

Rufforth Park House, Rufforth Park, Wetherby Road, Rufforth, York, North Yorkshire YO23 3QF

- 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 Alistair Ginley against the decision of City of York Council.
 - The application Ref 18/02939/CPD, dated 14 December 2018, was refused by notice dated 3 May 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 a garage/garden store block.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Section 4 of the application forms indicate that an LDC is sought for the carrying out of building or other operations. It does not indicate what those operations are. Nevertheless, elsewhere within the application form, and in the appeal form, the operations are described as a proposed garage/garden store block. Similarly, although not described on the application forms, the proposed plans show an area of block paving to the front of the garage which is also referenced within the original planning statement which accompanied the application. The Council considered the application on the basis that it comprised a garage/garden store block and area of hardstanding and I am satisfied that, taken the submission as a whole, that is the development for the LDC was sought. I have therefore dealt with the appeal on that basis.
3. It should be noted that the question as to whether or not the land on which the garage and driveway would be sited has a lawful use as residential garden is not a matter for me to determine at this appeal.
4. The appeal form indicates that the application was made under section 191 of the 1990 Act. However, the application was made under section 192(1)(b) of the 1990 Act and I have determined the appeal on the same basis.

Main Issue

5. Planning merits are not relevant to this appeal nor indeed is the handling of the application by the Council. The main issue is whether the Council's decision to

refuse the application for a certificate of lawfulness was well founded. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

6. The LDC application seeks to confirm that the erection of a garage/garden store block and hardstanding at the appeal site would be lawful on the basis that it would be granted planning permission by virtue of Article 3(1) of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Part 1 of Schedule 2 of the GPDO sets out several classes of development within the curtilage of a dwellinghouse which are deemed to be permitted development and thus granted permission by Article 3(1).
7. Class E(a) of Part 1 sets out that the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure, is permitted development, provided it meets the limitations set out in paragraphs E.1, E.2 and E.3. Class F(a) of Part 1 states that development consisting of the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such is permitted development, provided it meets the limitations set out in paragraph F.1 and the conditions set out in paragraph F.2.
8. The Council are satisfied that both the garage block and hardstanding would meet the respective limitations set out in paragraphs E.1, E.2 and E.3 of Class E and the limitations and conditions of paragraph F.1 and F.2 of Class F. However, it is the Council's position that the land on which the garage block and hardstanding are to be located are not within the curtilage of the dwellinghouse. As a result, it is said that the proposed development would not be permitted development under Class E or Class F and would not therefore be lawful as it would not be granted planning permission by virtue of Article 3(1). It is necessary therefore in this appeal to establish whether the proposed development would be within the curtilage of Rufforth Park House.
9. For the purposes of Part 1 of the GPDO, the term 'curtilage' is defined in the Permitted Development for Householders: Technical Guidance April 2017, that being the version of the guidance in force at the time the LDC application was submitted. Curtilage is defined as "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."
10. Case law has established that to fall within the curtilage of a building, it is enough that land serves the purpose of a building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way. Other considerations, such as past and present relationships of ownership and function, must also be taken into account. The extent to which the land in question has been used as a residential garden over a particular period of time is not in itself determinative.
11. Rufforth Park House comprises a large, detached house accessed via a long curving driveway. Upon entry to the appeal site, the house is located to the left

of the driveway with a grassed garden bound by mature vegetation to the front between the house and the road. To the rear of the house is a garden comprising driveway, grassed area, a summerhouse and a parking area. There is a garage block to the rear which lies outside the red line boundary. This rear garden area sits close to the house and is tightly contained by walls and mature vegetation.

12. The building and hardstanding would be sited on land which is presently grassed and sits on the opposite side of the driveway to the house and the front and rear gardens. Whilst I note that the appellant has had the area landscaped and regularly mows and maintains the land, it nevertheless seems to me that the area is very different in character to the front and rear gardens. It is extensive in size, predominately laid to grass and is bound by trees which are less dense and more sporadic than the boundary treatments of the front and rear gardens. Indeed, the sparser boundary treatment exposes views to the surrounding countryside much more readily than is possible from the gardens.
13. Thus whilst I note the appellant has made use of the area for domestic purposes with play equipment and other paraphernalia apparent at my site visit, I find its character is more akin to that of a paddock beyond the garden of the property. The area is separated from the house and gardens by the driveway whilst the garage would be sited behind a large, mature tree, some coniferous trees and an existing summerhouse in the rear garden.
14. I recognise that there is no boundary treatment to the side of the driveway and access between the house and the area is readily available. However, the scale of the land, its contrasting character to the house and its gardens and its sense of separation, leads me to conclude that this area cannot be said to be intimately associated with the house and the land on which it sits.
15. Consequently, in my view, the proposed development would be on land which is outside the smaller area associated with the house and which does not form part and parcel with the house. It would not, therefore, be on land within the curtilage of the dwellinghouse. As a result, the development would not be permitted development under Class E and Class F of Part 1 of Schedule 2 of the GPDO. It would not therefore benefit from planning permission by virtue of Article 3(1) of the GPDO and, as a result, would not have been lawful at the date the application was made.

Conclusion

16. 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 garage/garden store block and area of hardstanding 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.

J Whitfield

INSPECTOR