

Appeal Decision

Site visit made on 21 January 2020

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 30 January 2020

Appeal ref: APP/J1915/X/19/3225452

**Ellenglaze, Bramfield House, Well Green, Bramfield, Hertford,
Hertfordshire SG14 2QT**

- 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 by the East Hertfordshire District Council to grant a certificate of lawful use or development.
- The appeal was made by Mr Chris Armstead.
- The application, ref. 3/18/2251/CLP, dated 11 October 2018 was refused by a notice dated 29 January 2019.
- The application was made under s.192(1)(b) of the Town and Country Planning Act 1990 as amended in respect of a proposed operational development.
- The development for which a certificate of lawful use or development was sought was described in the application as: "Construction of garage and home office", at Ellenglaze, Bramfield House, Well Green, Bramfield, Hertfordshire.

Summary of decision: A certificate of lawfulness is not issued.

Appeal land and proposal

1. The Appellant's house, Ellenglaze, stands within a group of buildings that formed Greenhall Farm, Well Green, Bramfield. Planning permission 3/62/1353 was granted in 1962 for the conversion of the former agricultural building to residential use now known as Ellenglaze. The house lies between the outbuildings to the farm and the dwelling to the south-west, Stable Cottage. Ellenglaze fronts immediately on to the roadway, Well Green. Ellenglaze land to the rear of the house extends to just over 1ha.
2. The Appellant, Mr Chris Armstead, wishes to build a garage and home office measuring 12.6m wide, 6.2m deep in plan on his land to immediately to the rear of the high rear garden wall to Stable Cottage. This part of the land has, according to the Council, been recently surfaced with stone to provide a parking area for Mr Armstead's vans. Part of the land to the rear of the farm outbuildings was being used to house domestic poultry and to grow vegetables. Most of the rest of the Ellenglaze land was open grassland.

East Hertfordshire District Council

3. The Council's reason for refusing to issue a Certificate of Lawfulness said the proposed outbuilding did not comply with Schedule 2, Part 1, Class E of the The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order). Planning permission to erect the building was required.

4. The Council said the curtilage to the dwelling was confined to the land to the rear of the dwelling Ellenglaze bounded by the rear wall of the house, the high wall to the adjoining side and rear of Stable Cottage on one side and the farm outbuildings' wall on the other side.

Inspector's considerations

5. Part 1 to Schedule 2 to the Order deals with concessions giving permitted development rights within the curtilage of a dwellinghouse. Class E to Part 1, Schedule 2 deals with buildings etc. incidental to the enjoyment of a dwellinghouse. The only issue here between the parties is whether the land on which the proposed garage/office would be built lies within the curtilage to the dwelling, Ellenglaze, the conditions and limitations of Class E being, in all other matters, met.
6. The Appellant, Mr Armstead, submitted plan EGB/52-B that showed the location of the proposed garage/office, just to the rear of the Stable Cottage garden wall. It also showed the tightly drawn Council suggested Ellenglaze curtilage line, from the corner of the end wall surrounding the Stable Cottage garden, running north-eastwards to the wall surrounding the farm outbuildings. The plan also showed the Appellant's alternative boundary to the curtilage. Mr Armstead's line would move the curtilage boundary out into the 1.2ha Ellenglaze land by about 40m, (as approximately scaled on plan EGB/52B), the boundary running approximately parallel with the Council's curtilage line.
7. Permitted development rights for householders, Technical Guidance, published by the Ministry of Housing, Communities and Local Government in September 2019 defines "Curtilage" - 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.*
8. A number of appeals to the Courts have dealt with the subject of the curtilage to a building and its extent. In the case of *Sinclair-Lockhart's Trustees v Central Land Board [1951] 1 P&CR 320*, the Court said: *"The ground used for the comfortable enjoyment of a house or other building may be regarded as being within the curtilage of the house or building and thereby an integral part of the same even though it has not been marked off in any way. It is enough that it serves the purpose of the house or building in some necessary or reasonably useful way."* In *Dyer v Dorset CC [1988] 3 WLR 213*, the curtilage was constrained to a small area about a building - *"The area attached to and containing a dwellinghouse and its outbuildings"*. The size of that area being a question of fact and degree. In the case of *Mc Alpine v Secretary of State for the Environment and Wycombe District Council [1994] E.G.C. 189*, Deputy Judge Nigel Macleod QC identified 3 characteristics of a curtilage:
 - (i) curtilage is constrained to a small area about a building;
 - (ii) an intimate association with land which is undoubtedly within the curtilage is required in order to make the land under consideration part and parcel of that undoubted curtilage land; and,
 - (iii) it is not necessary for there to be physical enclosure of that land which is within the curtilage, but the land in question at least needs to be regarded in law as part of one enclosure with the house.

9. In the present situation, I consider the Council's view boundary of the residential curtilage of Ellenglaze to be more realistic than that suggested by Mr Armstead. That line, put forward as a suggested compromise curtilage, with its boundary as shown on plan EGB/52B, appears more based upon the intended use of the land than a consideration of the normal characteristics of a curtilage. Mr Armstead's line would include the proposed garage/office building site, the poultry housing and land used for vegetable growing. Whilst Mr Armstead accepted that not all of his land was within the curtilage, his suggested curtilage would extend for some 40m beyond the Council's line. In my view, it would enclose much more land than could reasonably be said to be constrained about the house, or be said to serve the purpose of the house or building in some necessary or reasonably useful way. I would not regard the extended curtilage as part of one enclosure with the house, especially as there is nothing on the ground to suggest an enclosure boundary. Indeed, Mr Armstead acknowledged that it was difficult to determine the extent of the curtilage to Ellenglaze. Whilst it is understandable that a larger area than the Council's suggested curtilage land is currently used by Mr Armstead in association with the use of the dwelling, Ellenglaze, it does not follow that this use extends its curtilage.
10. The curtilage and the unit of occupation are not synonymous. In most situations, where the gardens, yards and open areas attached to a house may have formal boundaries of walls, fences or hedges, the whole of that unit of occupation is likely to be the residential curtilage to the house. Where a house has a large area of attached land, the curtilage may extend just to a cultivated garden. Other land, perhaps used as a paddock for livestock, would not be considered to lie within the residential curtilage to the house, even though it might lie within the unit of occupation. That is the situation here. I consider all that land to the south-east of a notional line drawn north-eastwards from the easternmost corner of the rear garden to Stable Cottage across to the south-western corner to the outbuilding to the house attached to Ellenglaze, (the Council's curtilage line on plan EGB/52-B), lies outside the residential curtilage to Ellenglaze. That would roughly align with the south-eastern boundaries of the properties on each side. The proposed garage/home office would be on Ellenglaze land, but outside its residential curtilage. It would therefore not benefit from the permitted development concessions in Class E to the Order.
11. I conclude that the Council's refusal to grant a certificate of lawful development in respect of the construction of a garage and home office at Ellenglaze, Bramfield House, Well Green, Bramfield, Hertfordshire SG14 2QT was correct and that the appeal should fail. I exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

FORMAL DECISION

12. The appeal is dismissed.

John Whalley

INSPECTOR