



Appeal Decision

Site visit made on 14 February 2020

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 April 2020

Appeal Ref: APP/C2741/X/19/3233177

Cherry Tree Cottage, Millfield Lane, Nether Poppleton, York YO26 6NX

- 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 Martin Reynolds against the decision of City of York Council.
 - The application Ref 19/00880/CPD, dated 29 April 2019, was refused by notice dated 26 June 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 poultry shed/store and a garage for a motorhome.
-

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 19 February 2020.

Decision

1. The appeal is dismissed in respect of the proposed poultry shed/store. The appeal is allowed in respect of the proposed garage for a motorhome and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Procedural Matter

2. The LDC application form and accompanying elevation and floor plan refers to a 'poultry shed and store' and not a 'poultry run' as described in the Council's refusal notice. In the interests of precision, I have amended the description of development in the banner heading above and this has been agreed by the main parties.

Main Issue

3. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed poultry shed/store and garage are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether it has been demonstrated that the proposed poultry shed/store and garage would fall within the curtilage

of the dwellinghouse known as Cherry Tree Cottage taking into account Class E of Part 1 of Schedule 2 of the Town and County Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).

Reasons

5. In order for the garage and poultry shed/store to be permitted development under Class E of the Order they must fall within the '*curtilage of the dwellinghouse*'. This is the point of contention between the main parties. I agree with the main parties that if the land (i.e. that shown as area 1 and area 2 on submitted location plan) did fall within the curtilage of the dwellinghouse known as Cherry Tree Cottage, the buildings would be permitted development in respect of compliance with all of the other restrictions set out within paragraphs E.1 to E.4 of the Order.
6. There is no statutory definition of '*curtilage*'. The Permitted Development Rights for Householders Technical Guidance 2019 refers to it 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*'. I recognise that in respect of part of the appeal site (i.e. area 1) the Council has issued a lawful development certificate confirming that it can lawfully be used as a residential garden. However, curtilage should not be confused with land use.
7. In the case of *Adrian Burford V SSCLG and Test Valley BC* (2017) EWHC 1493 (admin) the judge identified curtilage as being '*(i) the physical layout of the listed building and structure; (ii) their ownership past and present; (iii) their use or function past or present*'. Such a judgment goes on to say that whether something falls within a curtilage is a question of fact and degree for the decision maker. I have approached this appeal on the basis of the most recent case law.
8. I have carefully reviewed the photographs, statements and statutory declarations submitted as part of this appeal. The evidence before me does indicate that areas 1 and 2 have respectively been used for purposes incidental to the enjoyment of the dwellinghouse from about 1996, when the appellant bought the appeal dwellinghouse, and from about 2005 when he bought the area 2 land. However, before that time, the evidence before me is not persuasive in terms of the whole of area 1 or area 2 forming part of the ownership or associated residential use/function of Cherry Tree Cottage. Indeed, in respect of area 1, the appellant says that "*in December 1996 we purchased that adjacent plot of land which was previously part of Cherry Tree Farm, but had not been used for agricultural purposes for over 50 years*". He also says that such land "*included a brick-built building which we are told was originally used as a dairy*".
9. In respect of area 2, historic photographs and other information show that this land originally formed part of an agricultural field and was in separate ownership. Whilst I do not doubt that the land has been used as a chicken run and vegetable garden for about 14 years, the evidence indicates that this was not the case when the appellant bought the property. This land was purchased by the appellant in about 2005 and whilst it may have been used for the said purposes since this time, the evidence before me indicates that this has not always been the case.

10. Furthermore, I was able to see on my site visit that the area 2 land was separated from the lawful LDC residential garden (i.e. area 1) by means of timber post/rail fencing and indeed was subdivided into two separate enclosures. Whilst it is possible to gain access onto this land, it nevertheless appears physically separate from the lawned garden. The poultry shed/store would very definitely and obviously be erected on land that is separated from the rest of the land currently used as a garden and has all the characteristics of a self-contained enclosure quite distinct from the rest of the appeal land.
11. The Courts have held that the size of a curtilage in terms of the concept of smallness is not relevant in determining the size of the curtilage. Indeed, a substantial listed building, for example, could have a substantial curtilage. However, in my view while size and smallness are not part of the definition of curtilage proportionality can be. In this case, there is no doubt that when area 1 is considered alongside area 2, the land shown as a proportion of the size of Cherry Tree Cottage is significant. Whilst this is not a determinative matter, it does add to my view that area 2 does not form part of the curtilage of Cherry Tree Cottage.
12. I have considered the historic photographs showing the appeal site. There is no dispute between the parties that there was once a farmhouse on the site until about the 1950s when it is understood that it was destroyed in a fire. This is shown in the 1931 OS map provided by the appellant which also included a Cow Byre which I am informed was removed in 2010 to make way for the caravan site entrance and other buildings. Some of these buildings and foundations are no doubt those that were on the appeal site when Cherry Tree Cottage was bought by the appellant in 1996. This evidence casts sufficient doubt about the whole of area 1 being part of the curtilage of Cherry Tree Cottage at this time.
13. Notwithstanding the above, I have taken into account the position of the former farmhouse (i.e. away from surrounding outbuildings) as shown on the 1931 O/S map and the position of Cherry Tree Cottage. The proposed garage would be positioned immediately to the side of Cherry Tree Cottage and on land which appears to be being used in connection with the use of such a property. The 1931 O/S map does not show this land as including any outbuildings. Furthermore, on my site visit I could see that there were some stone flags leading to this area. I consider that on the evidence that is before me, and on the balance of probabilities, that this part of the area 1 land does form part of the curtilage of Cherry Tree Cottage. There is nothing before me which casts reasonable doubt that it has not always been used as part of the curtilage of Cherry Tree Cottage.
14. Notwithstanding the above, it is not necessary for me to reach a conclusion in respect of whether the whole of area 1 forms part of the curtilage of Cherry Tree Cottage: I only need to consider whether the proposed garage would be erected on land forming part of such a curtilage. In this case, the evidence demonstrates that, in terms of land use, matters have evolved over time. However, that does not mean that all of the appeal land, which has been subsequently purchased by the appellant, now forms part of the curtilage of Cherry Tree Cottage.
15. Taking into account all of the above considerations, and as a matter of fact and degree, I find that area 2 does not form part of the curtilage of Cherry Tree

Cottage. Consequently, the proposed poultry shed/store would not be permitted development in respect of Class E of the Order. In respect of the proposed garage, and on the balance of probabilities, I find that it would fall within the curtilage of Cherry Tree Cottage. Consequently, the proposed garage would be permitted development in respect of Class E of the Order.

Conclusion

16. I conclude that the Council's refusal to grant a certificate of lawful development in respect of the proposed poultry shed/store was well-founded and that in that regard the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended. I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed garage was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

D Hartley

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 29 April 2019 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed garage for a motorhome was permitted development by virtue of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Daniel Hartley
Inspector

Date

Reference: APP/C2741/X/19/3233177

First Schedule

Garage for motorhome

Second Schedule

Land at Cherry Tree Cottage, Millfield Lane, Nether Poppleton, York YO26 6NX



Plan

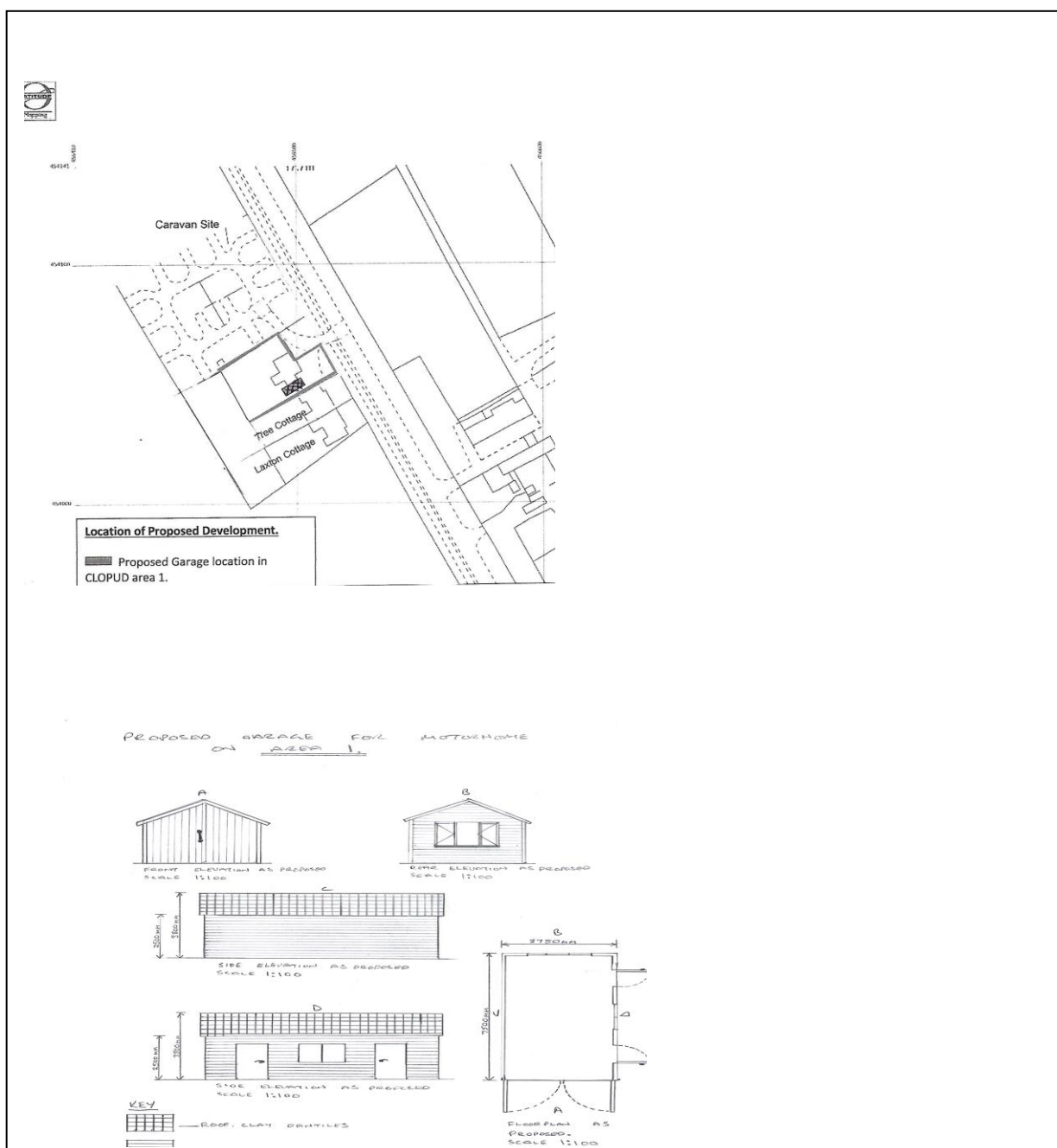
This is the plan referred to in the Lawful Development Certificate dated:

by D Hartley BA (Hons), MTP, MBA, MRTPI

Land at: Cherry Tree Cottage, Millfield Lane, Nether Poppleton, York YO26 6NX

Reference: APP/C2741/X/19/3233177

Scale: DO NOT SCALE



NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.