



Appeal Decision

Site visit made on 10 March 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2020

Appeal Ref: APP/H1033/X/19/3238375

113 Padfield Main Road, Padfield, Glossop SK13 1ET

- 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 Ms D Galvin against the decision of High Peak Borough Council.
 - The application Ref HPK/2019/0094, dated 2 March 2019, was refused by notice dated 4 June 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 described as *"Rebuilding existing stone shed. Refurbishing garden wall. Creation of a garden room"*.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of the development in the banner heading above is taken from the application form. The Council's description in the First Schedule of the refusal notice states "Proposed rebuilding of existing stone shed, refurbishing garden wall, creation of a garden room and creation of a studio/home office". Neither descriptions fully tally with the submitted Proposed Plan¹ which clearly shows two rooms being created – one annotated as a 'Summer House/Day Room/Studio' in the refurbished section of the shed, and the other as a 'Study/Home Office' in the new section.
3. Nonetheless, I find the Council's description more accurately describes the development as it includes the creation of two different types of rooms – one more for relaxation and the other more for home working/study. I have therefore based my decision on this and the proposed plans, notwithstanding the description above.
4. The use of the words 'studio', 'home office' or 'study' and 'garden room', 'day room' and 'summer house' are relatively interchangeable and fluid. Similarly how the rooms are furnished and used on a daily or seasonal basis, if the appeal were to be allowed, could be interchangeable. Despite the different nomenclature, I am satisfied that the appellant's range of intended uses would be those generally synonymous with uses incidental to the enjoyment of the dwellinghouse.

¹ Drawing No. 0519.P.0102 Rev A.

Reasons

5. The main issue to consider is whether the Council's decision to refuse the LDC is not well-founded.
6. The Council's only reason to refuse the LDC was that the proposed refurbishment and extension to the stone shed and proposed use as a garden room would fail to satisfy the terms of Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 as amended (the 'Order'), because the stone shed was not within the curtilage of the dwellinghouse No.113 Padfield Main Road (No.113).
7. In this appeal, the relevant part of Class E sets out permitted development ('PD') rights, subject to conditions and limitations set out in paragraphs E.1, E.2, E.3 and E.4, for 'The provision within the *curtilage of the dwellinghouse* [my emphasis] of... any building or enclosure... required for a purpose incidental to the enjoyment of the dwellinghouse as such...'.²
8. For PD rights to apply the stone shed must be within the curtilage of the dwellinghouse and it must also be required for a purpose incidental to the enjoyment of No.113 as a dwellinghouse. The development would not benefit from PD rights if it fails either of these two requirements, and in that case there would be no need to apply the physical criteria set out in Class E.
9. There is no dispute between the parties that the intended use of the outbuilding is for purposes incidental to the enjoyment of the dwellinghouse. In this case, the only matter in dispute is whether the stone shed and the land on which it is sited, lie within the curtilage of the dwellinghouse.
10. The appellant had been granted a certificate of lawfulness² (set out in Appendix 1 of the Council's Statement) for use of two areas of land. Within a designated area (shown red on the associated aerial photograph) a lawful use (Use A) was granted for "*Use for any purpose incidental to the enjoyment of the dwellinghouse, No.113 Padfield Main Road*". The land is sited immediately in front of the stone shed in question but excludes it. This 'Use A' land lies within the red edge site boundary of the current appeal site.
11. Within an adjacent designated area (shown blue on the associated aerial photograph) a lawful use (Use B) was granted for "*Use for the purposes of horticulture or as a 'garden' to the extent that is limited to the cultivation, planting or growing of grass, trees, seeds, vegetables, fruit, plants, shrubs, bushes or flowers; and the tending to and enjoyment of such land by persons who have a private right to access and enter the land either because they are the land owners or because they rent residential property belonging to the owners ('enjoyment' in these respects includes sitting, walking, roaming, running and play that does not involve the use of installed or fixed apparatus or equipment)*". The 'Use B' land does not form part of the appeal site and also excludes the stone shed.
12. Notwithstanding the certificate of lawfulness above, the Courts have held, following the *Burford*³ case, that lawful 'residential' use of land incidental to the enjoyment of a dwellinghouse does not, in itself, mean such land is part of the curtilage of the dwellinghouse.

² LPA ref: HPK/2018/0451 dated 16 November 2018

³ *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin)

13. Curtilage has no precise definition and assessment of it is a matter of fact and degree depending on the circumstances pertaining to the case in question. However, the courts have assisted with the consideration of the concept of 'curtilage'.
14. In *Dyer v Dorset CC*⁴ it was held that curtilage 'is a small area forming part and parcel with the house or building which it contained or to which it was attached', although size was not determinative alone. The Oxford English Dictionary definition is of 'an area of land attached to a house and forming one enclosure with it'.
15. Furthermore, the Courts have also held that three factors⁵ also need to be taken into account in determining whether a structure or object is within the curtilage of another building, namely (a) the physical layout of the building and the other structure; (b) their ownership (past and present) and (c) their use or function (past and present).
16. I turn first to the physical layout of the dwellinghouse to the stone shed. The appeal property is a mid-terraced cottage fronting Main Road. To the rear of the property there is a small patio area, which is not divided by fences or walls from the rear patio areas of the other terraced dwellings. There is then a larger lawned area owned by No.117 Padfield Main Road (a fact not disputed by the parties) but which appears to be shared by the occupiers of the properties that back onto it due to its open-plan arrangement and lack of individual means of enclosures. The patios and lawn were not subdivided by any other means of enclosure such as fencing, walling or hedgerows. The whole 'shared' garden is bounded and enclosed by stone walling, which looked to me to have been in situ for a considerable period of time. A five-bar timber gate gives access to the adjacent unmade lane and bridleway.
17. On my site visit I observed that the land on which the stone shed sits is located a substantial distance from the appeal property. Due to the intervening 'shared' garden, which is not in the appellant's ownership, and the stone wall boundary enclosing the 'shared' garden, this land cannot be regarded as being next to or adjacent to the appeal property or its rear patio. The land can only be accessed by walking across the shared garden through a pedestrian gate in the boundary wall and down a short flight of steps as the land is on a lower level. Alternatively, vehicular and pedestrian access can also be gained separately via the unmade lane/bridleway and double five-bar timber gates.
18. Therefore, in my view, due to the separation distance, the intervening third party land, and the presence of a boundary wall, the land is psychically and visually separate and detached from both the appeal property and the shared garden and does not function as one enclosed space with No.113. Nor is there an intimate association with the appeal property. On this factor alone, it is likely that the land does not form part of the curtilage of No.113. I accept that the rear wall of the stone shed is formed of the boundary wall with the shared garden, but this does not alter my view on this point.
19. From the appellant's chronology of the purchase of No.113, it is evident that the land did not form part of the house when the appellant bought it in 1999. The appellant bought the 'Use A' and 'Use B' land at a later date. I

⁴ *Dyer v Dorset CC* [1988] 3 WLR 213

⁵ *Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310

acknowledge that over time ownership of properties and land changes and that the larger terrace may well have been subdivided over time. However, I find the later purchase of the land a further indication that it did not, and does not, have a close relationship with No.113 so as to be regarded as curtilage.

20. With regards its use and function, the deeds may well show the land as 'garden land' and it may well have been used as such for years. And I accept that the appellant has used it as such since purchasing it in 2001. The Council has already accepted that part of the land (Use B) is garden with the grant of an LDC, but this excludes, and is not contiguous with, the land on which the stone shed sits. But this is not confirmation of curtilage, as already discussed above. I have no doubt that the land on which the stone shed sits, and the adjacent land beyond it, serves a necessary and reasonable purpose for the appellant as it provides, amongst other things, space for car parking and storage of a caravan and garden shed, and could be used for sitting and general recreation, and could provide privacy that the current open-plan patio and shared garden arrangement may not currently do. The size of the land is not in dispute.
21. This leads me to conclude, based on the evidence before me, what I observed on site, and the balance of probabilities, that the land on which the stone shed sits does not lie within the curtilage of No.113. It therefore follows, that the stone shed does not benefit from PD rights and that full planning permission is required for works to it and for its proposed use.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

K. Stephens
INSPECTOR