



Appeal Decision

Site visit made on 17 March 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 15 May 2020

Appeal Ref: APP/W1905/X/19/3226106

Elmhurst, Appleby Street, Cheshunt, EN7 6PT

- 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 Steven Pearce against the decision of Broxbourne Borough Council.
 - The application Ref 07/19/0175/LDP, dated 25 February 2019, was refused by notice dated 25 March 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 described as *'Erection of a garage to securely store vintage vehicles as ancillary use to the main house. New area of brick paver hard surface for vehicular access to the front of the proposed new building. Refer to drawing No. 2018-04/02A.'*
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Decision

1. The appeal is allowed, and attached to this decision is a certificate of lawful use or development describing the development which is considered to be lawful.

Preliminary Matters

2. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 25 February 2019. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisted at the time of the application which, hereafter, I shall refer to as "the GPDO".
3. In an appeal under s195 of the Act against the refusal of a LDC the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant.
4. The site lies within the Metropolitan Green Belt but, as explained above, this is not material to the application.

Main Issue

5. The legislation, under Article 3, Schedule 2, Part 1, Class E of the GPDO, grants planning permission for, amongst other things, any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse.

6. The GPDO's Technical Guidance document, which provides clarification as to the interpretation of householder permitted development (PD) rights, indicates that Class E also allows, subject to certain conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings and garages as long as they can be properly be described as having a purpose incidental to the enjoyment of the house
7. The main issue in this appeal is whether the development would conflict with Part 1, E(a) and, on this basis, whether the Council's decision to refuse the LDC was well founded.

Reasons

8. Class E has a series of specified limitations. One such proviso is that any part of the proposed building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. In this instance the dwelling's principal elevation would appear as its frontage, or that facing towards Appleby Street, and the proposed building would be significantly set back from the dwelling's building line. Another restriction includes a requirement that the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage, excluding the ground area of the original dwellinghouse. Neither this, nor the height restrictions specified for outbuildings, would be contravened by the proposal.
9. In the circumstances I am satisfied that the proposed development, which would also involve the property's driveway being extended, would meet the various requirements of the PD entitlement under Class E.
10. There are two issues of contention in this appeal. Firstly, the Council has raised objections to the proposal due to its consideration that the proposed building would fall outside the dwelling's domestic curtilage and, secondly, that the building's stated use, for the storage of vintage vehicles, would not be ancillary to the enjoyment of the dwellinghouse. The appellant argues otherwise.

Curtilage

11. In terms of what can be reasonably considered as residential curtilage it was held in *Dyer v Dorset CC* [1989] that curtilage constitutes a piece of ground attached to a dwellinghouse and forming one enclosure with it; thereby the area attached to and containing a dwellinghouse and its outbuildings. The case of *McAlpine v Secretary of State for the Environment* [1995] did not depart from the above judgement save for the mention of it being constrained to a small area around a building, whilst the Court of Appeal in *Secretary of State for the Environment, Transport, and the Regions v Skerritts of Nottingham* [2000] decided that the definition of a curtilage in relation to a building must remain a question of fact and degree in each case.
12. At my site visit I observed that the side garden area, upon which the proposed outbuilding would be sited, appears as reasonably tended garden lawn. Positioned on the opposite side of the driveway from the dwelling, the piece of land which, although I accept is not of inconsiderable size, is relative to the size of the dwelling and serves as the property's main external amenity space.

13. Against the driveway the said land is bounded by a section of relatively low level, timber post and rail fencing. This provides for an essentially open character as the form of this fence does not represent a definite physical demarcation from the dwelling and the land immediately surrounding it. I noted the presence of play equipment, in the form of small, moveable goal posts and associated nets on the said land, along with what appeared as a small seat hanging from a willow tree. I also witnessed some peripheral wooden sheds, of modest size, towards the land's north boundary and also a substantial two-storey building described as a garage and office. However, in the contextual setting, the latter does not appear out of place.
14. My findings largely reflect that evident from the images in the photographs already provided by both the appellant and the Council in the appeal papers and, to summarise, I saw nothing which would suggest that the land was used for anything other than domestic curtilage. I also understand that the dwelling, and the surrounding land to its north and east, along with the garden area to the west of the driveway, are in common ownership. Indeed, although the Council, in its representations, indicates that the piece of land was once used as a separate orchard it accepts, that since at least 1999, the land has been in use as residential garden.
15. Accordingly, from the evidence available, I conclude that the proposed development, which may be built under Class E, would be erected within residential curtilage.

Incidental use

16. Although the original application referred to the building's intended use for the storage of vintage vehicles "as ancillary to the main house", this goes without saying as, should the building be used for purposes other than could be considered as incidental to the enjoyment of the dwellinghouse, then an assessment would need to be made as to whether it constituted a breach of planning control that required the benefit of a planning permission for its lawful continuation.
17. The primary consideration in this appeal is whether the proposed building would fall within the parameters of Class E, and I have found that it would. As to whether, once erected, the use to which the building is put would be an incidental use for this residential site is a separate matter and does not pre-determine the primary consideration.
18. Nonetheless, on the face of it, I am satisfied that the extent and nature of the storage use as described by the appellant and indicated on the submitted Drawing No 2018-04 02 Rev A, is consistent with that of a hobby, and is in accordance with the limitations of Class E.
19. The Council has referred to previous cases and has attempted to draw parallels with the development now at appeal. No relevant papers have been provided, though, so as a fuller picture might be gleaned. Even so, as mentioned, should the operational development proceed, and the building's use is found to be so materially different from that described by the appellant as to amount to a material change in the use of the land, then the Council would be free to use its remedial enforcement powers as it saw fit.

20. In the circumstances, and in accordance with the Council's description of the development on its decision notice, I shall issue the certificate with the wording limited to the erection of a garage along with associated hard surfacing. This better focusses on the actual development involved.

Conclusion

21. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a LDC in respect of the proposed erection of a garage with hard surfacing to its front at Elmhurst, Appleby Street, Cheshunt, Herts EN7 6PT was not well founded, and that the appeal should succeed. Accordingly, I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

APPEAL REF. APP/W1905/X/19/3226106

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

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

IT IS HEREBY CERTIFIED that on 25 February 2019 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown edged in red on the plan attached to this certificate was lawful within the meaning of section 192(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed operations which involve the erection of a garage and the laying of hardstanding to the front constitute permitted development within the terms of Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Timothy C King

INSPECTOR

Date: 15 May 2020

First Schedule

Erection of a garage with associated hard surfacing to front, as shown on Drawing No 2018-04 02 Rev A.

Second Schedule

Elmhurst, Appleby Street, Cheshunt, Herts EN7 6PT

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the 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, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.
4. 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.

Plan

This is the plan attached to the Lawful Development Certificate dated: 15 May 2020
by **Timothy C King BA (Hons) MRTPI**

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