



Appeal Decision

Site visit made on 20 February 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 02 June 2020

Appeal Ref: APP/Y3615/X/19/3234548

Oakmead Farm, Ockham Lane, Cobham KT11 1LY

- 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 Allen against the decision of Guildford Borough Council.
 - The application Ref 19/P/00675, dated 11 April 2019, was refused by notice dated 28 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 described as *'Proposed permitted development under Class E, Part 1, Schedule 2 of the General Permitted Development Order 2015 (as amended) for a garage and store building for cars, ancillary residential storage and garden maintenance'*.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 11 April 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.
5. In January 2020, during the appeal process, the appellant submitted a separate application (ref 20/P/00127) requesting a LDC, under s191, in respect of the land ringed in the site plan for the current appeal as having been used as residential curtilage for a period in excess of the past ten years. However, on 19 March 2020 the Council determined not to grant the Certificate requested on the basis that it considered that insufficient evidence had been adduced to confirm, on the balance of probability, the applicant's claim.

6. I am not aware as to whether a separate appeal has been lodged against the Council's decision on that particular case but, nonetheless, as my remit is to weigh up the evidence in respect of the current LDC appeal, I shall reach my decision on the various evidence before me and also the observations at my site visit.

Main Issue

7. 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.
8. 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
9. The laying of hard-surfacing to form the intended access driveway would, subject to limitations, be covered by the GPDO under Class F. It is intended that the hard-surfacing to be laid would be of a porous material and the Council is satisfied that the necessary provisos here would be met. Neither does the Council take issue with the various provisos under Class E, paragraph E.1, a-j. I agree with the Council's approach on both these points. As such, 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

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, it does not consider that the building's stated use to be as a garage and store for cars, ancillary residential storage and garden maintenance, given its floorspace, would be incidental to the enjoyment of the dwellinghouse. The appellants argue otherwise.

Curtilage

11. The term 'curtilage' is not defined in the 1990 Act nor in any other legislation, including the GPDO. Its meaning and application is derived, instead, from court judgements.
12. 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.

13. In the Court of Appeal's judgement regarding the case of *Sumption v LB Greenwich & Rokos* [2007] EWHC 2776 it was summarised that there were three tests to be used to address the question of curtilage. First, a single ownership is neither necessary nor sufficient to make land a single curtilage. Two, co-occupation of the house and land is not sufficient. Third, it is not necessary for the land to have been in use and now be useful, advantageous or necessary to the dwellinghouse for it to be regarded as part of the curtilage. The court also again emphasised that an assessment of such is a matter of fact and degree at the date the application was made, as had been established in *Dancey & Co v SoS & Lewes DC* [1980].
14. In rural areas there may be difficulties where parts of gardens are detached, where there is no physical definition at all or where there are paddocks or small fields adjoining dwellings. In this particular instance the Council is relying on, in the first instance, the historical situation involving a planning application (95/P/00358), granted permission in 1995 for the demolition of the then existing house and the erection of a replacement dwelling. The site, as ringed red at the time for the purposes of the application, was relatively tightly drawn, confined to roughly the north-east corner of the wider site, as apparent on the site plan.
15. In 1999, a further planning permission was granted, relating to the use of brick stables and stores to create additional living accommodation, apparently ancillary to that of the main dwelling, and the curtilage shown did not encompass the extent of the curtilage now claimed. It would appear, however, that since this time, tennis courts and a swimming pool have been constructed on land to the west of the dwelling whilst, a relatively defined rear garden area has been created to the south of the dwelling. At my site visit I also noted that the piece land adjacent to the western boundary of the tennis courts, appearing as well-managed and tended, accommodated a number of small trees planted within. This piece of land, in turn, is bounded by a tract of relatively rough land extending to the site's western limit.
16. It is proposed that the outbuilding would be erected within part of the area of land containing the small trees, referred to on the submitted drawing no 17007/PL/022, as an orchard, reasonably close to both the tennis courts and swimming pool, and behind the identified, projected, front elevation line of the dwelling. With the orchard itself also set behind a greenhouse and an adjacent vegetable patch I find that land which might have been previously identified as an area of outer garden has now been brought into, and subsumed within, the site's residential curtilage.
17. I acknowledge the Council's point as to the distance from the dwellinghouse and that the tennis courts act as a physical boundary. However, as a five-bedroom house, along with additional living accommodation contained in a nearby stable and store, I consider that the wider curtilage I have identified is proportionate to and, moreover, is also functional to this significantly sized dwellinghouse.
18. The various limits of the curtilage area across the whole of the site are a matter of interpretation but, in the particular part of the site for which I am concerned with, I find the identifiable boundary between the orchard and the rough tract of land most probably represents the functional limit of the curtilage at this point. I am also satisfied that this case is typical of instances

where, physical encroachment over time has effectively extended a property's residential curtilage. Here, the swimming pool, tennis courts and greenhouse, all positioned beyond the limit identified in the mid to late 1990s, indicates how curtilages, particularly those in rural areas can evolve, and they do not necessarily remain fixed over time.

19. I acknowledge the Council's position on this particular matter and have had due regard to its accompanying evidence to counter the appellant's case. However, given my findings, and from the totality of evidence put forward by both main parties, I conclude, on balance, that the proposed development would be erected within the curtilage of the dwellinghouse.

Incidental use

20. The courts have held that the term "required" in this part of the GPDO should be interpreted to mean "reasonably required." In the judgement of *Emin v SSE and Mid Sussex DC* [1989] JPL 909 it was held that when deciding whether the proposed use of a building would be incidental to the enjoyment of the dwellinghouse it was necessary to consider whether the building is genuinely and reasonably required or necessary to achieve that purpose. That principle was reiterated in *LB Croydon v Gladded* [1994] 1 PRL 2 and *Holding v FSS & Thurrock BC* [2004] JPL 1405.
21. In the current proposal the building's footprint would measure approximately 12.2m x 15.3m, or 187 sqm, with a substantial floor area of some 167 sqm. In comparison, the dwellinghouse has a floor area of some 500 sqm. However, although the Council says that the footprint of the outbuilding would represent 56% of that of the dwelling, the above dimensions indicate that it would be markedly less, equating to some 33%. Nonetheless, the outbuilding's extent and its stated central ridge height of 4m max would make for a considerable and expansive building. The appellant claims that the building would be used as a garage and store for classic cars, ancillary residential storage and also to store garden equipment.
22. The Council has raised the matter as to the absence of detail for the building's internal layout. Although I note the appellant's offer that he would be happy to consider a condition which would require the submission of documentation and confirmation as to the storage of cars this would not be possible as a LDC cannot be subject to conditions. Instead, the application made should specify the precise level or scale of use. In this connection, at my site visit, I noted that there are other outbuildings present closer to the dwelling, and I share the Council's concern that there has been little information put forward as to their current function and floorspace, and why these buildings could not be used for the purposes now intended.
23. As in the *Emin* case, a sense of objective reasonableness is required in all the various circumstances involved. The proposed outbuilding will not necessarily be reasonably required just because the householder says it is and it is for the appellant to show it is reasonably required and designed with incidental uses in mind. In this particular instance the appellant does not dispute the outbuilding's floorspace measurement, as put forward by the Council but says that this is not a consideration needed when deciding whether the proposal would be permitted development. I note there is no indicative illustration as to the intended floorspace split between the storage of cars and ancillary domestic and garden equipment storage. Although this is not a necessity in itself, given

the amount of floorspace proposed, I have concerns as to whether a building, of such height and size, would be genuinely and reasonably required for the purposes here claimed.

24. Taking all the above points together, it appears that the outbuilding would be far in excess of what might reasonably be required for the proposed uses. As a matter of fact and degree, the proposed outbuilding's floorspace and its physical form would be excessively large, which I find goes beyond that which could be regarded as incidental to the enjoyment of the dwellinghouse as such.

Overall Summary

25. In this type of case the onus of proof is on the appellant. The matter of what constitutes the residential curtilage, and its extent, I have found to be finely balanced, but slanted in favour of the appellant. However, as to the appellant proving here that the outbuilding would be incidental to the enjoyment of the dwellinghouse, I find there are too many doubts and uncertainties for me to find that the onus regarding this separate matter has been met.

Conclusion

26. For the reasons given above I conclude, on the evidence available, that on the balance of probability the proposal would conflict with Part 1, E(a) of Class E of the GPDO, and would not therefore be permitted development. Accordingly, I must also conclude find that the Council's refusal to grant a LDC in respect of the proposed erection of a garage and store building was well founded.
27. I shall exercise my powers under section 195(3) of the 1990 Act, as amended.

Timothy C King

INSPECTOR