



Appeal Decision

Site visit made on 2 June 2020

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2020

Appeal Ref: APP/Z4718/C/19/3224569

Land to the north of Thorntree Farm, 83 Drub Lane, Drub, Cleckheaton BD19 4BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Gary Sedgewick against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 4 February 2019.
- The breach of planning control as alleged in the notice is the construction of a shed and the construction of a hard surface.
- The requirements of the notice are to demolish the shed and remove the hard surfaces including all base layers and any other debris resulting from those operations and restore the field to its previous condition using clean top soil and seed with grass.
- The period for compliance with the requirements is 42 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Procedural Matter

1. The appellant has stated that there is no blue hatching on the location plan which accompanies the enforcement notice. However, the copy I have clearly shows a blue hatched area showing the hard surface which is part of the alleged breach of planning control.

The Appeal on ground (c)

2. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The appellant contends that the shed is mounted on a towable steel frame and is not a permanent structure. Although it may not be physically attached to the ground, as a consequence of its overall weight it does not need to be fixed to stay securely in place. Whilst it may be capable of being moved that does not mean it is a mobile structure. It also appears to me that the shed has been in place for a considerable period of time and it is not actually intended to be moved. Consequently, the absence of a means of fastening the shed to the ground does not mean a building operation has not taken place in this particular case.
3. The appellant contends that the shed and hard surface benefit from permitted development rights by virtue of the provisions of Schedule 2, Part 1, Class E and Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Part 1 relates to development within the curtilage of a dwellinghouse and therefore in order to

benefit from permitted development the matters alleged to be breaches of planning control as identified in the enforcement notice must be within the curtilage of a dwellinghouse. If the land in question did not form part of the curtilage of the dwellinghouse at the time the enforcement notice was served, the shed and hard surface would not benefit from deemed planning permission granted by the GPDO.

4. 'Curtilage' is not defined in the GPDO and therefore in reaching my decision I have had regard to relevant case law relating to the definition and other historic cases which are directly relevant to the case before me. In *Attorney - General ex rel Sutcliffe v Calderdale BC*¹ the judge identified three factors that must be taken into account when determining what constitutes the curtilage of a building; those being physical layout, past and present ownership and the past or present function of the area of land in question. *Burford v SSCLG & Test Valley*² affirmed that the criteria laid down in the *Calderdale* case applied to non-listed building cases and held that the Inspector was entitled to conclude that land in question was not curtilage because it was physically separated from that which was curtilage because it was physically separated by hedges and trees. The judge held that whether or not something is within curtilage is a question of fact and degree and therefore primarily a matter for the decision-maker.
5. In addition to these cases I also refer to other established case law in *Dyer v Dorset*³ and *McAlpine v SSE*⁴. In the case of *Dyer*, the Oxford English Dictionary definition of curtilage was deemed to be adequate, namely; 'a small court, yard, garth, or piece of ground attached to a dwellinghouse, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwellinghouse and its outbuildings'. The *McAlpine* case established a number of characteristics which a number of characteristics of curtilage land. Those characteristics are that curtilage is confined to a small area about a building and that it has an intimate association with land which is within the curtilage. Additionally, physical enclosure is not necessary for an area of land to be within the curtilage of a property. Subsequent to the *McAlpine* case *Skerritts of Nottingham v SSETR*⁵ upheld the principles established in *Dyer* but established that the curtilage of a building need not necessarily be small.
6. In *Collins v SSE*⁶ an area of rough grass, beyond the well-cut lawns of a dwellinghouse, was outside the curtilage because it did not serve the purpose of the dwellinghouse in some necessary or useful manner. Therefore, having regard to established case law it is clear to me that curtilage defines an area of land in relation to a building and not the use of land. The fact that an area of land may be in residential use or used as a garden for example, does not imply that it will form part of the curtilage of a particular property. Each case will be dealt with as a matter of fact or degree and is primarily a matter for the decision-maker. In this case that will depend on the physical layout of the land, ownership and the use and function of the land.

¹ *Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310

² *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin)

³ *Dyer v Dorset CC* [1988] 3 WLR 213

⁴ *McAlpine v SSE* [1995] JPL B43

⁵ *Skerritts of Nottingham Ltd v SSETR* [2000] JPL 789

⁶ *Collins v SSE & Epping Forest DC* [1989] EGCS 15

7. The land in question is a large, open area of well-manicured grass with some trees, hardstanding areas and a shed. It is accessed directly from the residential property known as Thorntree Farm, 83 Drub Lane and there is currently no physical means of separation from the curtilage of the residential property preventing that direct access such as a boundary fence or wall. Evidence of domestic paraphernalia on that land indicates to me that it is currently being used as a large extended garden area. The shed is currently used for the storage of garden equipment, cycles and other domestic paraphernalia. The hard surface comprises an area of block paving and stone slabs and is tantamount to the extension of the driveway and vehicle parking and manoeuvring area.
8. The appellant argues that the red line of a planning permission to demolish the previous farmhouse and replace it with a new dwelling did not limit the extent of curtilage. However, that argument carries little weight since it was clearly beyond the boundary of the land to which that application related. Furthermore, aerial photographs show that the garden attached to the previous farmhouse and the new dwelling was physically separated by a boundary feature (probably a wall) and the extent of domestic curtilage was substantially smaller than is now being claimed. It is a large area of land and cannot be described as being a small court or piece of land attached to the dwelling, but rather is a large field which has been altered to form an extended garden area associated with the dwellinghouse.
9. I recognise that curtilage need not necessarily be a small area and the land in question is undoubtedly attached to a dwelling, but it does not itself contain a dwelling nor does it have an intimate association with Thorntree Farm, 83 Drub Lane. It is within the same means of physical enclosure as the dwelling but it is clear that it was once separated from the original curtilage of the dwelling by a boundary feature which has been removed in order to extend the garden area. There is a lack of historic connection between the land and the dwelling which is a material consideration in identifying whether land is curtilage.
10. Although the land can be accessed from the rear of Thorntree Farm, its character is different to the original curtilage area. The appeal site does not naturally feel like part of the domestic curtilage of the dwellinghouse, but more like a piece of land which has been added beyond the curtilage of the property, lacking an intimate association with the host dwellinghouse and land which is within the original curtilage.
11. Consequently, as a matter of fact and degree I do not consider the land to have been part of the curtilage of the residential property on the date the enforcement notice was served. Accordingly, the shed and hard surface would not benefit from deemed planning permission granted by the GPDO.
12. The appeal on ground (c) fails

The appeal on ground (d)

13. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary to show that the shed and hard surface had been substantially completed four years before the enforcement notice was issued. In this case the material date is therefore 4 February 2015.

14. When dealing with an appeal on ground (d), the burden of proof is on the appellant and the standard of proof is the balance of probabilities. I am aware that, following the judgement of *Gabbittas*⁷ the evidence of an appellant should not be rejected simply because it is not corroborated. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, the appeal should be allowed.
15. It is clear to me that the development is new and the evidence submitted clarifies that when the site was inspected by the local planning authority on 18 October 2018 the large hard surface area was incomplete. An affidavit provided by a former resident of an adjacent property states that the land in question was always used as domestic garden and residential amenity space for 83 Drub Lane. That may be the case, but as described above, that does not automatically mean it is curtilage.
16. In addition, there is a lack of evidence with respect to the dates when the development was substantially completed. As such there is insufficient for me to conclude that at the time the enforcement notice was served, it was too late to take enforcement action against the matters alleged.
17. The appeal on ground (d) fails.

The appeal on ground (a)

18. The ground of appeal is that planning permission should be granted. The main issues are:
 - i. Whether the proposal would be inappropriate development for the purposes of the National Planning Policy Framework (the Framework);
 - ii. The effect of the proposal on the purposes of the Green Belt; and
 - iii. If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Whether or not the proposal is inappropriate development in the Green Belt

19. The construction of new buildings should be regarded as inappropriate in the Green Belt. The building is used for domestic storage and keeping garden equipment and therefore it does not fall within one of the exceptions set out in paragraph 145 of the Framework. The appellant states that if the land in question is not domestic curtilage the shed would be used for feed and tack for a pony he is looking to acquire, but this is not the case at present, nor was it at the time the enforcement notice was issued. As such it is inappropriate in the Green Belt.
20. Paragraph 90 of the Framework states that engineering operations are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. The construction of a hard surface constitutes an engineering operation involving excavation and the construction of a surface for the parking and manoeuvring of vehicles. My

⁷ *Gabbittas v SSE & Newham LBC* [1985] JPL 630

conclusions on the next issue will determine whether or not the development is inappropriate

Green Belt openness

21. The land in question was previously part of an agricultural field. The engineering operation has resulted in an extensive hard surface area in an area of previously undeveloped Green Belt. Such a development would constitute encroachment into the countryside which would conflict with one of the aims of Green Belt policy to safeguard the countryside from encroachment. Consequently the proposal would be inappropriate development and by definition harmful to the Green Belt.

Other considerations

22. When considering planning applications, substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the development, is clearly outweighed by other considerations.
23. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Although in this case the effects on openness and safeguarding the countryside from encroachment would be moderate, substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
24. I give limited weight to the previous surface that had become overgrown. The effect on the character and appearance of the area also goes against the development. The substantial weight to be given to the Green Belt harm is not clearly outweighed by other considerations sufficient to demonstrate very special circumstances.
25. Therefore the appeal on ground (a) fails.

Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

27. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR