



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 27 June 2020

Appeal Ref: APP/A4710/X/19/3242931

3 Fair View, Wood Hey Lane, Hebden Bridge HX7 6JQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 S Willis against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 19/00884/192, dated 26 July 2019, was refused by notice dated 2 December 2019.
 - The application was made under section 192(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is a detached garage.
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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 proposed operation which is found to be lawful.

Preliminary Matters

2. The Planning Inspectorate initially made arrangements for this appeal to be determined following a site visit. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance. The file has subsequently been reviewed to consider the optimal procedure for the appeal. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. The appellant and the Council have not raised any concerns about the appeal proceeding on this basis.
3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
4. For the avoidance of doubt, the planning merits of the proposal are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.

Background and Main Issue

5. The appellant's case is that the proposed development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings within the curtilage of a dwellinghouse. E.(a) states that *the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse* is permitted development subject to conditions and limitations. The Council argues that the site of the proposed garage would not fall within the domestic curtilage of No 3 Fair View, and so it would not be permitted development.
6. The dwelling known as No 3 Fair View forms the end house in a terrace. In 2017, the Council granted an LDC for the use of land at the side and rear of the dwelling, and also a relatively large, rectangular area of land to the south, as domestic garden area (Ref 17/00980/191). The proposed double garage would be sited towards the southern boundary of the land which benefits from the LDC.
7. In granting the 2017 LDC, the Council accepted the land had been in continuous residential use for a period of 10 years, prior to the date of the application. Nonetheless, the Council maintains that the proposed development would not be within the curtilage of the dwellinghouse. It is argued that historical maps establish that the dwelling was not intimately associated with the wider area of land in question when it was first built (between 1855 and 1894) and there is no evidence of any association for the following years. I understand the Council's online records go up to 1948. The Council insists that there is a clear difference in character between the land closer to the dwelling, at the immediate side and rear, and the larger area of land to the south, which is separated by a garden wall. It is suggested that the wall formed the original southern boundary of the garden. Also, the play equipment on the land is a recreational use and is not considered to be a use reasonably necessary for the enjoyment of the dwelling house.
8. It is clear that the dispute centres on whether the building would be within the curtilage of the dwellinghouse. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

9. Curtilage defines an area of land in relation to a building and not a use of land. There is no all-encompassing, authoritative definition of the term curtilage. The Technical Guidance¹ includes "curtilage", for Part 1 purposes, 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.
10. Generally, to fall within the curtilage of a building, it is enough that land serves the purpose of a building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way².

¹ Permitted Development for Householders: Technical Guidance (2019).

² *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195.

11. The land must be intimately associated with the building in order to support a conclusion that it forms part and parcel of that building³. However, other considerations, such as past and present relationships of ownership and function, must be taken into account. In the absence of any statutory or authoritative definition, it was held in *Dyer*⁴ that the term bears its restricted and established meaning connoting a small area forming part and parcel with the house or building which it contained or to which it was attached. The case of *Collins*⁵ affirmed previously established principles in deciding that 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.
12. The relevant authorities were reviewed in *McAlpine*⁶ and the following characteristics of curtilage defined: a) it is confined to a small area about a building; b) intimate association with land which is undoubtedly within the curtilage is necessary to make the land under consideration part and parcel of that undoubted curtilage land; and, c) physical enclosure is not necessary.
13. More recently the matter was considered in the context of listed building enforcement in *Skerritts*⁷. While regarding the decision in *Dyer* as correct, it was felt that the Court in that case had gone further than necessary in expressing the view that the curtilage of a building must always be small, or the notion of smallness is inherent in the expression. The recent case of *Burford*⁸ reaffirms the criteria laid down in *Sutcliffe*⁹ for identifying curtilage as being - a) the physical layout of the listed building and structure; b) ownership past and present; c) use or function past or present. Whether something falls within a curtilage is a question of fact and degree and, thus, primarily a matter for the decision maker, based on an assessment of the factual situation at the date of the application¹⁰.
14. The case of *O'Flynn*¹¹ established that, while maintenance and/or recreational use do not necessarily denote incidental residential use, it will depend on the facts of the case. These activities are quintessentially carried out by householders on land as incidental to their use of a dwelling and ought to be taken into account. Finally, *Challenge Fencing*¹² re-iterated propositions from relevant authorities, in particular, that determination of what is curtilage will involve a considerable amount of judgement taking into account physical layout, scale and evidence on the nature of uses.
15. From the evidence before me, I understand that the historic curtilage of the dwellings at Fair View extended about 6.5m to the rear and, in the case of no 3, also to the side of the dwelling. The area to the south was formerly a parcel of agricultural land that was purchased by the former owners of no 3. This land now has an established use as domestic garden area. While the historic function of the land to the south was not necessarily associated with no 3, it has been used for a substantial period for purposes in connection with the

³ *Methuen-Campbell v Walters* [1979] 1 QB 525.

⁴ *Dyer v Dorset CC* [1988] 3 WLR 213.

⁵ *Collins v SSE & Epping Forest DC* [1989] EGCS 15 (CO 1590/88).

⁶ *McAlpine v SSE* [1995] JPL B43154.

⁷ *Skerritts of Nottingham Ltd v SSETR* [2000] EWCA Civ 60; [2000] JPL 789.

⁸ *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin).

⁹ *Sutcliffe v Calderdale BC* [1983] JPL 310.

¹⁰ *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2776 (Admin).

¹¹ *O'Flynn v SSCLG & Warwick DC* [2016] EWHC 2984 (Admin).

¹² *Challenge Fencing Ltd v SSHCLG & Elmbridge BC* [2019] EWHC 553 (Admin).

dwellinghouse, as established by the 2017 LDC. Its current and more recent use is domestic garden area.

16. The dividing wall is a relevant consideration, as is the alleged change in character. The existing plan shows a garden wall surrounding the land in a location that would correspond with the historic curtilage. However, it is apparent that the situation has changed over the years. The larger area of land to the south is enclosed by a timber boundary fence and it contains a parking area, used in connection with the dwelling. This land may not be mown or maintained in the same way as the land immediately adjacent to the house, but this in itself is not a determining factor. Crucially, the land has a domestic use and is functionally related to the dwelling. It serves the purpose of the dwelling in a reasonably necessary or useful manner.
17. I appreciate that the garage would be sited some distance from the house. However, the curtilage does not necessarily have to be small in order for land to be part and parcel of the building. The play equipment in itself may not denote an incidental residential use but, nevertheless, the land has an established use as domestic garden and is intimately associated with the dwelling.
18. I consider that the use or function of the land has been associated with the dwellinghouse for several years. It has fallen within the same ownership for a significant period. The internal boundary, size and extent of domestic use are not indicative that the land falls outside of the curtilage in this instance. Therefore, I am satisfied that, as a matter of fact and degree, the land is within the curtilage of the dwellinghouse for Part 1 purposes.

Conclusion

19. The totality of the evidence presented in support of the appellant's claim shows that, on the balance of probability, the proposal would fall within the domestic curtilage of No 3 Fair View. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.
20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a detached 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.

Debbie Moore

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 26 July 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 totality of the evidence presented in support of the appellant's claim shows that, on the balance of probability, the proposal would fall within the domestic curtilage of No 3 Fair View. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Debbie Moore

Inspector

Date: 27 June 2020

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First Schedule

Detached Garage

Second Schedule

Land at 3 Fair View, Wood Hey Lane, Hebden Bridge HX7 6JQ

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 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, 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 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 June 2020

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Scale: NTS

