



Appeal Decision

Site visit made on 4 August 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 September 2020

Appeal Ref: APP/A0665/X/20/3251021

Stone Cottage, Guy Lane, Foulk Stapleford, Chester CH3 7RZ

- 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 R Bird against the decision of Cheshire West and Chester Council.
 - The application Ref 20/00209/LDC, dated 20 January 2020, was refused by notice dated 2 April 2020.
 - 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 alterations and extensions to existing dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 of the Act is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application. It is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
3. I note that prior approval has been granted in respect of a proposed rear extension and an application made for side extensions. However, my decision is based on the proposal and evidence before me and rests on the facts of the case and the interpretation of any relevant planning law. Consequently, the existence of an approval in respect of a rear extension has no bearing on my judgement about whether the proposed development constitutes permitted development.

Main Issue

4. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

5. The appeal relates to a detached single storey dwelling, now known as Maple Cottage, located to the side and towards the rear of Stone Cottage.

6. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) relates to development within the curtilage of a dwellinghouse and grants permission for the enlargement, improvement or other alteration of a dwellinghouse.
7. The Council argued that given the extent of the proposed developments that it amounted to re-building. The question of what is proposed and whether it would be an exercise of permitted development rights or the replacement of the dwellinghouse with a new dwellinghouse is a question of fact and degree.
8. The GPDO permits relatively extensive development and the extent of works which take place could be considerable. However, it has been established by the courts that there must be something significant by way of a structure that remains in order that there is a dwellinghouse left to enlarge, improve or alter. The complete replacement of one building with another does not constitute enlargement improvement or alteration of the original building.
9. In this case the existing side and rear elevations and internal walls would be removed, as would the entire roof structure such that little, if anything, would remain of the original dwellinghouse. The appellant stated that the front wall would be effectively 'untouched' however, the plans do not appear to reflect this. In any case, in my view, the effective demolition of the majority of the building would mean that there was no dwellinghouse left to enlarge, improve or alter.
10. I consider given the scale and amount of demolition that would take place that what is proposed is a new dwelling and not one that has been enlarged by alterations and enlargement.
11. The Council referred to the case of *CW Larkin v Basildon District Council [1980] JPL 407* which reinforces the principle that permitted development rights cannot be relied on if the original building is effectively replaced with a new building.
12. For the reasons given above, I do not consider that it is possible for the appellant to rely on the GPDO rights. Accordingly, it is not necessary for me to consider those arguments relating to classes A, B and C of Schedule 2 Part 1 of the GPDO.
13. However, in light of the submissions made in respect of the matter of curtilage, I will address those points as I am able to do based on the submitted evidence.

Curtilage

14. The dwelling is a former outbuilding, for which a certificate of lawful use in respect of its use as a self-contained dwellinghouse was granted, reference 19/02334/LDC. The red line relating to that certificate was drawn tightly around the building consequently, it did not purport to identify an area of 'curtilage' associated with the dwelling.
15. The Council did not argue that the proposed development, subject of the appeal, would not constitute permitted development because it would not be carried out within the curtilage of a dwellinghouse, albeit they stated that the

land on which the development would be carried out would be within the curtilage of Stone Cottage.

16. In order to constitute permitted development by virtue of Schedule 2 Part 1 Class A, development must fall within the curtilage of a dwellinghouse, being the one with which it will be associated. Whether or not land falls within the curtilage of a building is a matter of fact and degree. There is no statutory definition of 'curtilage', which does not describe a use of land but defines an area of land in relation to a building. The curtilage of a building is not necessarily the same as the planning unit within which that building stands.
17. Consequently, in this case it would be insufficient that the dwelling is located within the curtilage of Stone Cottage. In order to benefit from the GPDO rights it must have its own curtilage.
18. As established by caselaw, there are three factors to be taken into account when determining whether land constitutes curtilage, these include the physical layout of the building and attached land, the ownership, past and present; and their use or function; past and present.
19. I am aware that a lawful development certificate was granted for the use of an area of land, located to the side of the dwelling, separated by a fence, as domestic garden in association with the dwelling known as Stone Cottage, reference 17/00219/LDC. The appellant contended that this land together with an area of land closely surrounding the dwelling constitutes the curtilage of the dwelling. They provided no evidence or explanation to support this view.
20. The dwelling is not separated from Stone Cottage with any physical means of enclosure and I acknowledge that there may consequently be some overlap between the curtilages. However, I observed at my visit that there is a paved area between the side of the dwelling and the rear garden of Stone Cottage with some landscaping which denotes a degree of separation between the two. To the rear of the dwelling is a grassed area a short distance across which is an outbuilding which appears to be associated with the dwelling and forms the rear of the land. To the other side, between the dwelling and the domestic garden land subject of the LDC, is a further relatively narrow strip of land.
21. Whilst the domestic garden land subject of the LDC is located adjacent to the dwelling and may have some functional connection with the dwelling (albeit no evidence has been put forward about that), the land does not form part of the enclosure for the dwelling. I therefore find that there is no substantive evidence which can justify a conclusion that the whole of the land included in the application, forms the curtilage of the dwelling.
22. As a matter of fact and degree, on the basis of the limited submitted evidence and my site observations, I find that the curtilage of the dwelling is confined to the areas of land immediately adjacent and to the rear of the dwelling that I have described above. These are the areas of land that have an intimate association with the dwelling.

Other matters

23. The appellant's misgivings about the Council failing to provide a copy of caselaw referred to has no bearing on my decision which is confined to matters of planning law.

Conclusion

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

Felicity Thompson

INSPECTOR