
Appeal Decision

Site visit made on 2 September 2020

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 October 2020

Appeal Ref: APP/P0240/X/20/3250085
16 Snow Hill, Maulden MK45 2BN

- 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 Jamie Nicholas against the decision of Central Bedfordshire Council.
 - The application Ref CB/20/00010/LDCP, dated 3 January 2020, was refused by notice dated 28 February 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 the erection of a double garage.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. When I arrived for the site visit there was no representative for the appellant at the site. However, I was able to see the site without intruding onto private areas. I therefore asked the Council's representative to leave me to complete my inspection of the site unaccompanied.

Main Issue

3. The main issue is whether the proposed double garage would be lawful due to the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This turns on whether the appeal site falls within the curtilage of the dwelling at 16 Snow Hill, Maulden.

Reasons

4. The relevant part of Class E permits:

The provision within the curtilage of the dwellinghouse of:

- (a) *any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.*

5. Class E includes various restrictions concerned with the size of the building and so on, but the Council raises no concerns regarding these. The dispute centres instead on the question of whether the appeal site falls within the curtilage of the dwellinghouse. If it does not, the proposed building cannot be permitted under Class E.
6. The Government's *Permitted development for householders - Technical Guidance* assists in the interpretation of the GPDO. It defines 'curtilage' 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.
7. I have also been referred to a wide range of judicial authorities by both parties. From these it is clear that the question of curtilage is a matter of judgement, highly dependent on the facts of the particular case. Relevant considerations are potentially wide-ranging and may include size, use, functional links, ownership and physical characteristics. Features such as paths do not necessarily place a piece of land outside of a curtilage.
8. In this current case, 16 Snow Hill is a semi-detached house, with a garden to the front and further small courtyard to the rear. The rear courtyard is fenced-off to create a private area. An access road serving the appeal property and a handful of other dwellings runs alongside No 16 and to the rear of the fenced courtyard. The appeal site lies to the other side of this access road.
9. Taking the definition from the Technical Guidance as a starting point, I consider that the land within which No 16 sits is the land immediately around it – including the front garden and the fenced courtyard area immediately to the rear. This area of land forms part and parcel with the house.
10. The appeal site, on the other hand, is a distinct and separate piece of land. It is very clearly separated from the land in which the house sits by the access road, which is about 3m wide and loose surfaced. The tall fencing around the land next to the house, and lower fencing around the appeal site, emphasise the separateness of the 2 plots. Although the 2 areas of land are close to one another, there is no obvious physical link and I do not consider that they form a single enclosure.
11. I appreciate that the appeal site is linked with No 16 by ownership and is used as garden in connection with it. Moreover, the land immediately around the house is small, which adds to the importance of this additional, fairly modest, garden area. Nevertheless, I do not regard this separate, fenced-off area as intimately associated with the house and the land it sits in. Even if it is desirable as garden (in accordance with the Council's Design Guide), it is not part of the curtilage of the dwelling in my judgement.
12. The appellant compares the access road to a conventional driveway, which might be considered to fall within the curtilage of a dwelling. However, in this case the access road serves other properties. Consequently, although lightly-used, the access road is not a private area intimately associated with No 16 and is not part of the curtilage. In my view it contributes very significantly to the separateness of the appeal site from the curtilage of No 16. The prospect of an ancillary garage on the appeal site does not alter my view that it is not part

of the curtilage of the house, and none of the judgements the appellant cites leads me to any different conclusion on that matter.

13. I have considered carefully the appeal decision relating to a site at Hexham¹ in which the inspector concluded that the appeal site fell within the curtilage of a dwelling, despite being separated from it by a public road. However, the question of curtilage is highly fact-sensitive and it is not possible, on the information before me, to adequately compare the two sites. Moreover, that case dated from 2008 and was an application for planning permission rather than an LDC. Accordingly, the Technical Guidance which I have taken into account would not have been before that inspector.
14. For the reasons given above I find that the appeal site is not within the curtilage of No 16 and therefore does not benefit from the permitted development rights within Class E. Consequently, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a double garage is 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.

Peter Willows

INSPECTOR

¹ APP/R2928/A/08/2077561