



Appeal Decision

Site visit made on 22 September 2020

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06/10/2020

Appeal Ref: APP/Z4718/X/20/3251056

16 Dean Street, Oakes, Huddersfield, HD3 3EU

- 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 Miss Shaw against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/CL/90102/W, dated 14 January 2019, was refused by notice dated 16 October 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 proposed access, driveway and garage for purposes incidental to the enjoyment of the dwellinghouse.
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Decision

1. The appeal is dismissed.

Main Issue

2. The planning merits of the development are not relevant to this appeal. The main issue is whether the Council's decision to refuse the application for a certificate of lawfulness was well founded. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

3. The LDC application seeks to confirm that the creation of an access, driveway and construction of a garage at the appeal site would be lawful on the basis that it would be granted planning permission by Article 3(1) of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
4. Part 1 of Schedule 2 of the GPDO sets out several classes of development within the curtilage of a dwellinghouse which are deemed to be permitted development and thus granted permission by Article 3(1).
5. Class E(a) of Part 1 sets out that the provision within the curtilage of the dwellinghouse of 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,

- is permitted development, provided it meets the limitations set out in paragraphs E.1, E.2 and E.3.
6. Class F(a) of Part 1 states that development consisting of the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such is permitted development, provided it meets the limitations set out in paragraph F.1 and the conditions set out in paragraph F.2.
 7. It is the Council's position that the land on which the garage and driveway would be located is not within the curtilage of the dwellinghouse. As a result, it is said that the garage and driveway would not be permitted development under Class E or Class F and would not therefore be lawful. It is necessary therefore in this appeal to establish whether the proposed development would be within the curtilage of 16 Dean Street.
 8. The GPDO does not define the term 'curtilage'. The Permitted Development for Householders: Technical Guidance April 2017¹ explains that the term 'curtilage' for the purposes of Part 1 of the GPDO means "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."
 9. Case law has established that 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 way. Other considerations, such as past and present relationships of ownership, size and function must also be taken into account. The extent to which the land in question has been used for purposes incidental to the enjoyment of a dwellinghouse is not in itself determinative.
 10. The appeal property comprises a mid-terraced property with a rear garden which is defined by walls on its boundary with the gardens of No 14 and No 18. There is a low-level wall to the rear boundary demarcating it from the appeal site. The boundary wall is a continuation of a broadly straight line of the rear boundaries of the properties which make up the terrace as a whole.
 11. The appeal site is a rectangular strip of land which lies between the rear gardens of 16-20 Dean Street and 85a Wellington Street and two garages which have already been erected on adjacent land. I saw from my site visit that it is presently vegetated with some trees, raised beds and fencing. Whilst one can move freely between the rear garden of No 16 and the land because of a gate within the wall, the appeal site appears both functionally and physically separate from the rear garden. Moreover, it is an area which is significantly larger than the rear garden area of the property. The Council suggests it is approximately double the size. I have no reason to believe that is not the case.
 12. The Council also indicates that its own historical imagery shows that the shape and extent of the rear garden has remained unchanged since 1893. Likewise has the rectangular pattern of the rear gardens on the terrace. Whilst the Council has not provided this imagery, the appellant has provided no evidence which suggests that is not the case.

¹ That being the version of the guidance in force at the time the LDC application was submitted.

13. Consequently, in my view, the proposed development would be on land which is outside the smaller area associated with the house and which does not form part and parcel with the house. It would not, therefore, be on land within the curtilage of the dwellinghouse. As a result, I find, on the balance of probabilities, that the proposed garage and driveway would not be permitted development under Class E and Class F of Part 1 of Schedule 2 of the GPDO. The development would not therefore benefit from planning permission by virtue of Article 3(1) of the GPDO and, as a result, would not have been lawful at the date the application was made.
14. In terms of the proposed access, Class B of Part 2 of Schedule 2 of the GPDO states that the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road is permitted development. However, this is only the case where that access is required in connection with development which is permitted by any other class of development in Schedule 2. As set out above, that would not be the case here, since the access is required in connection with a driveway and garage which I have found would not be permitted development. As a result, I also conclude, on the balance of probabilities, that the access would not benefit from planning permission by virtue of Article 3(1) of the GPDO and, as a result, would not have been lawful at the date the application was made.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed access, driveway and garage for purposes incidental to the enjoyment of the dwellinghouse 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.

J Whitfield

INSPECTOR