The Planning Inspectorate

# Appeal Decision

Site visits made on 30 September and 20 October 2020

**by Roy Merrett Bsc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29th October 2020**

**Appeal Ref: APP/N1920/X/20/3252671**
**1 Allandale Crescent, Potters Bar EN6 2JY**

- 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 and Mrs Emery against the decision of Hertsmere Borough Council.
- The application Ref 19/1677/CLP, dated 10 October 2019, was refused by notice dated 13 December 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 erection of detached outbuilding to form gym and garden store.

## Decision

1. The appeal is dismissed.

## Main Issue

2. The main issue is whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 1, Class E(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

## Reasons

3. In order for an LDC to be granted under s192, it is necessary for the appellant to show, on the balance of probabilities, that the development would be lawful. Under Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development, subject to various provisos. There is no dispute between the parties that the proposed building would comply with the physical limitations set out in paragraph E.1. of Class E.

4. The area of dispute between the parties is limited to the question of whether or not the proposed structure lies within the curtilage of the dwelling. The appellants have referenced two sources as a basis for identifying the criteria against which curtilage should be assessed and whether a structure would be within the curtilage.

5. Firstly, within the Government's technical guidance for householder permitted development rights, curtilage is defined 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.*"[1] Secondly, a High Court case has been referred to[2]. The judgement in that case referred to three relevant factors, namely i) the physical layout of the building and structure; ii) their ownership past and present and iii) their use or function past and present. The judgement noted that whether something falls within the curtilage is a question of fact and degree.

6. Furthermore, the case drew on the findings of previous judgements, notably *Dyer v Dorset CC [1989]*. In that case the Oxford English Dictionary definition of the word "curtilage", was endorsed as adequate for most present day purposes 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*." It was found that the curtilage is the land attached to the dwelling and forming one enclosure with it. The judgement in *Skerritts of Nottingham Ltd v SSETR [2001]* was also referenced. This judgement found that smallness is not relevant to the concept of curtilage.

7. From my site visit I was able to see that the appellants' property comprises a two-storey semi-detached dwelling with long rear garden. The garden is broadly divided into distinct areas which are quite different in character. Firstly, the area immediately adjoining the rear of the dwelling is characterised by a patio and lawn with some garden furniture present. This area is enclosed by a combination of walls and fencing to the side and rear, and is accessed either via the house or a timber entrance gate. Beyond this area, the garden is significantly more overgrown and enclosed by a breeze block wall and fencing, whilst being accessed via a separate timber gate. It is within this area that it is proposed to site the building subject to this appeal. An existing outbuilding and driveway area situated between the two parts of the garden serve to reinforce the strong sense of enclosure and separation of the respective areas.

8. I have no reason to doubt that both areas are within the same land ownership and collectively form part of the rear garden of the appeal site, as opined previously by the Council and a Planning Inspector when dealing with a different development proposal at the property. However whilst both the use and ownership of land are relevant to considering the curtilage boundary, neither are necessarily decisive.

9. Whilst I accept that variation in boundary treatment and the way the garden is kept may not be determinative in the identification of curtilage, I am mindful of the case law above which refers to the relevance of physical layout and also of the aforementioned technical guidance which indicates that the curtilage may be smaller than the overall garden area in the case of houses in large grounds. I am also mindful of the finding in the *Burford* judgement which endorsed the view that the curtilage is an area of land "attached to" a house and "forming one enclosure with it".

10. I am in no doubt that the lawned area of garden can be regarded as attached to the house and forming one enclosure with it. However I am not persuaded that the part of the site where it is proposed to locate the building subject to

[1] Permitted development rights for householders Technical Guidance September 2019
[2] *Burford v Secretary of State for Communities and Local Government & Anor [2017]*

this appeal can be regarded in the same way. I conclude, as a matter of fact and degree, that the aforementioned physical characteristics of the land in this case, that is to say the strongly delineated separation of the lawned area from the unkempt, evidently less well used land beyond, and which is clearly outside a single enclosure with the dwelling serve to place the site of the proposed building outside the curtilage area of the dwelling. The proposed building is not therefore permitted development in accordance with the GPDO.

11. I have taken into account the appellants' arguments that the garden area is proportionate to the size of dwelling it serves and comparable to the grain, character and pattern of neighbouring plots, also that the appeal site is visible and easily accessible from the dwelling. This however does not alter my conclusions, each case needing to be determined on its individual merits. Accordingly, the previous appeal decisions cited by the Council have not influenced my findings in this case.

12. Therefore, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "proposed erection of detached outbuilding to form gym and garden store" at 1 Allandale Crescent, Potters Bar EN6 2JY 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.

*Roy Merrett*

INSPECTOR