



Appeal Decision

Site visit made on 2 September 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/Q3630/C/19/3237974

Land at The Caduceus, Hardwick Lane, Lyne, Chertsey, Surrey KT16 0AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Helena Graham against an enforcement notice issued by Runnymede Borough Council.
- The enforcement notice was issued on 23 August 2019.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of two buildings edged black and marked A and B on the attached Plan.
- The requirements of the notice are:
 1. Demolish the buildings edged black and marked A and B on the attached Plan and remove all resultant material from the Land edged red on the attached Plan.
 2. Break up any concrete slab and/or hard floor surface beneath the buildings edged black and marked A and B on the attached Plan and remove all resultant material from the land edged red on the attached Plan.
- The period for compliance with the requirements is twelve months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld.

The Appeal on Ground (e)

1. Section 172 of the Act requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates. The appellant suggests that the Council should have served the notice on a person registered for home rights under the Family Law Act. Therefore, the main issue is whether the notice was served correctly on that person.
2. The Council have provided signed and dated certificates of when and how service of the enforcement notice was achieved. These state that service was effected on owners and occupiers including by handing three envelopes to the appellant, two of which were addressed to her and one to 'The Occupier'. The Council believe the person with rights under the Family Law Act lives at, and consequently is an occupier of, the property. No evidence has been provided to dispute that.
3. Taking account of all the above, I conclude that the method of service was sufficient to comply with Section 172 of the Act.
4. The appeal under ground (e) therefore fails.

The Appeal on Ground (b)

5. An appeal on this ground is that the matters described in the notice have not occurred. Supporting evidence has not been submitted relating to this ground and the evidence submitted on the other grounds suggests that the appellant does not dispute that the matters described in the notice have occurred.
6. For these reasons, I conclude that the appeal under ground (b) should fail.

The Appeal on Ground (c)

7. An appeal on this ground is that "those matters" (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
8. There is no dispute that the buildings constitute development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the buildings.
9. The buildings referred to in the breach of planning control are single storey buildings located some distance to the rear of The Caduceus. The appellant suggests that they benefit from planning permission granted by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This relates to buildings incidental to the enjoyment of the dwellinghouse located within the curtilage of a dwellinghouse.
10. The Council suggests that the buildings may not be located within the curtilage of the dwellinghouse. The GPDO does not attempt to define the term 'curtilage'. The Council refer to the definition in the Oxford English Dictionary as "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."
11. The appellant refers to *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195 where it was found that "The ground used for the comfortable enjoyment of a house or other building may be regarded as being within the curtilage of the house or building" and "it is enough that it serves the purpose of the house or building in some necessary or reasonably useful way." The Council accept this is the leading authority on this matter but draw attention to subsequent case law.
12. *Dyer v Dorset CC* [1988] 3 WLR 213 is referred to but the Council suggest this is not determinative, particularly with regard to the reference to "small" taken from the dictionary definition. In the Court of Appeal, *Skerritts of Nottingham Ltd v SSETR (No. 1)* [2000] EWCA Civ 60 described *Dyer* as plainly correct, although went further than necessary in the view that curtilage must always be small. This decision makes plain that there should not be a rigid application of the concept of size. Consequently, the definition of curtilage is a matter of fact and degree taking each individual case on its merits.
13. Nevertheless, subsequent case law, such as *Burford v SSCLG* [2017] EWHC 1493 (Admin), indicates that the use of land incidental of the enjoyment of a dwellinghouse is not determinative of the land being curtilage. As a result, it is possible that land may be in residential use but not within the curtilage of a

dwelling. The decision is also particularly relevant as it concerned the application of Class E of the GPDO, as arises here.

14. In this case, the property comprises a substantial area of land. It has a wide frontage with Hardwick Lane with the dwelling toward the front and to one side of the property. It then extends a substantial distance, with a tennis court to the rear of the dwelling, containers and what appears to be a working yard beyond that, then some woodland. The buildings subject of the notice are behind the woodland and within a landscaped area overlooking a lake. I understand that a previous dwelling may have been located further back in the plot. Nevertheless, the substantial separation from the dwelling indicates that the area in which the buildings are located is not within the curtilage of the dwellinghouse.
15. The land appears to have been in one ownership with the dwelling over a substantial period. Evidence has been provided in the form of Statutory Declarations from a previous owner and visitor to neighbouring properties that suggests the land may have been used in relation to the dwelling for a substantial period. Nevertheless, as set out above, even if the land were in residential use it would not necessarily be within the curtilage of a dwelling.
16. Taking account of the above factors, and having regard to all other evidence before me, I conclude that, on the balance of probability, the buildings are not within the curtilage of the dwelling. As such, they cannot be considered as outbuildings under the terms of Class E, Part 1, Schedule 2 of the GPDO.
17. In any event, the appellant acknowledges that one building (building B) is above the height permitted in Class E, Part 1, Schedule 2 of the GPDO. Building A appears to be a similar height to building B. The drawings provided show that building A is up to 4.7m high. As that is higher than the maximum permitted in this Class, even if they were within the curtilage, neither building would benefit from the planning permission conferred by the GPDO.
18. Since no planning permission has been granted for the development it thereby constitutes a breach of planning control.
19. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (f)

20. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to demolish the buildings and remove any resultant material, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
21. The appellant suggests that the buildings could be reduced in size to meet the terms of Class E, Part 1, Schedule 2 of the GPDO. However, I have concluded that the buildings are outside the curtilage of the dwellinghouse such that they would not benefit from the planning permission conferred by that class even if they were of a lower height.

22. Under the GPDO it is not possible for development to become permitted development retrospectively. Even if located within the curtilage the buildings would need to be completely removed prior to undertaking any new construction that might benefit from a planning permission granted by the GPDO.
23. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).
24. For these reasons, I conclude that the appeal under ground (f) should fail.

The Appeal on Ground (g)

25. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
26. I note the personal circumstances of the appellant and difficulties in complying with the enforcement notice. It is unclear what longer period of time would be required to comply with the notice. The Council have given 12 months for compliance and, taking account of all the matters raised, I consider that this is a reasonable period of time to enable compliance with the notice.
27. For these reasons, I conclude that the appeal under ground (g) should fail.

Formal Decision

28. The appeal is dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR