



Appeal Decision

Site visit made on 15 December 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/Q3115/X/20/3256683

84 Gidley Way, Horspath, Oxfordshire OX33 1TG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) 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 Tariq Khuja against the decision of South Oxfordshire District Council.
 - The application Ref P20/S1141/LDP, dated 24 March 2020, was refused by notice dated 19 June 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 described as "The construction of a garage with a dual pitched roof eaves 2.5m high and roof 3.8 metres high."
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Decision

1. The appeal is dismissed.

Main Issues

2. I am required to determine whether the Council's decision to refuse the application was well founded. The Council considered that the proposed garage would not be 'permitted development' under the provisions of Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015, as amended (GPDO).
3. The garage is proposed to be positioned close to the south-eastern corner of the appeal site (which I have taken as the area outlined in blue on the "site location plan"). The Council does not dispute that the building would meet the size limitations as set out in paragraph E.1. of Class E of the GPDO. However, their first concern and my main issue, is whether the position of the building would be within the curtilage of a dwellinghouse, which is the overriding requirement for developments to be permitted by Schedule 2, Part 1 of the GPDO.
4. A second main issue in dispute is only necessary to consider if I conclude that the proposed location of the building would be within the curtilage of a dwellinghouse. That is whether, from the information available, it would seem that the proposed purpose of the building would be incidental to the enjoyment of the dwellinghouse as such, in order to accord with Class E (a).
5. The onus is upon the appellant to prove, on the balance of probabilities, that the development would be lawful.

Reasons

6. The term Curtilage does not relate to a use of land and is derived from conveyancing law. Any building may have a curtilage regardless of the use of that building, not just dwellinghouses. Furthermore, the term should not be confused with the concept of the planning unit. It may be, for instance in general terms rather than the specifics of this case, that the position of a building could be within the same planning unit as a dwellinghouse but not within its curtilage. That may also raise other issues concerning lawfulness which I do not need to go into within this decision.
7. As the Council point out and the appellant accepts, there is no absolute definitive designation of what constitutes 'curtilage'. It is a matter of fact and degree and comes about through various legal authorities. It has been generally held that for land to fall within the curtilage of a building, it must be intimately associated with that building to support the conclusion that it forms part and parcel with it, although it is not necessarily the case that it must always be a small area. It is primarily a matter for the decision maker to decide what weight should be given to 3 relevant factors which are, (i) the physical layout of the building and land; (ii) ownership past and present; and (iii) use or function past and present.
8. The dwellinghouse at No 84 Gidley Way is a large detached building close to the access lane to the north-west of the appeal site. It is in the opposite corner of the appeal site from the proposed location for the garage. The site includes a large area of lawned garden close to the house which is screened by a robust coniferous hedge along the side of the narrow lane leading to the site. The lane serves the vehicular and pedestrian access close to the house, another access is next to some buildings on the south-west corner of the site. There is a camping site and some residential developments further to the south that are also reached via the lane. I did not go into the buildings to the south-west of the appeal site although one of them has a sign at the front saying "Robin's Nest" which may be the flat that has been referred to in some correspondence between the Council and the appellant.
9. The conifer hedge along with some fencing and walling which return into the appeal site, perpendicular with the land define the side of the driveway into the southern part of the site. The hedge, fencing and wall provide a strong degree of separation between the lawn and the driveway although there is a pedestrian access through, towards the house. The formal block-pavement surface of the driveway ends near a large gate into the southern part of the site. The surface then turns to concrete just past the gate and then to gravel further along and which continues within the southern part of the site, petering out to an area with a mixture of grass and gravel with some trees close to the proposed location of the building. The gravel surface that runs along the front of the 2 large existing garages, defines the edge of the lawn.
10. The Council has provided, in their officer report, aerial images with dates that are not disputed by the appellant. The image dated 4 September 2017 shows an even stronger degree of subdivision, possibly by some fencing, between the southern part of the site and the more formalised lawn nearer to the dwelling which approximates to the line currently demarcated by the gravel. The subsequent image dated 5 October 2018 shows the establishment of the gravel area as well as the roofs of the 2 large existing garages. There was still at that

time what appears to be a more distinct linear separation between the area to the south and the more formalised lawn nearer to the dwelling. The appellant has referred to some fencing having been temporary whilst the existing garages were being constructed. There are also a large number of cars in view in the later image whereas in the first from 2017, I cannot see cars in this area with vehicles apparently contained to the surroundings of "Robin's Nest".

11. The appellant refers to the site being a "campsite plot" and it is not explained what that means although there is a campsite immediately to the south. The area roughly demarcated by the gravel and concrete surface is currently used extensively for the storage of cars both inside and outside of the very large existing garage buildings that dominate the character of this part of the appeal site. From the lane, the access to the south appears more closely related to the cluster of buildings including "Robin's Nest" and those alongside it rather than the dwellinghouse at No 84. This access is not an obvious way to get into the dwellinghouse as it seems on approach that you may have gone too far. I noticed that there is a small sign on one of the buildings to clarify the situation. Otherwise, this appeared to me to all intents and purposes to be the way to get into those very separate buildings and the large garages and other outbuildings that are distinctly divorced from the main house by the lawn and then the robust conifer hedge and walling. It is not until one is inside the site that it opens out and there is a degree of interconnectivity between the different areas.
12. Despite removal of what appear to have been possibly temporary boundary features separating out the various parts of the land, the southern part of the site continues to be a distinct from the remainder in my view with a different character from the more obvious domestically used lawned garden. Although the cars are owned by the appellant as part of his hobby use, the character of this area of land is dominated by the vehicles and the 2 existing large buildings. This is in stark contrast to the character of the lawned area which is more closely and intimately related to the dwelling and includes children's' play equipment, a patio and landscaping in a very domestic arrangement.
13. A degree of separation of the southern part of the site is apparent although it is not clearly explained what the history of the land has been such as whether the purpose of the southern part of the site has historically been part and parcel of the residential use of the site. However, in my view overall, the area on which the garage is proposed is not intimately associated with the dwellinghouse, is of very different character to the clearly domestic part of the site and although it may be all in one ownership, as a matter of fact and degree I do not consider that it is the curtilage of the dwellinghouse at No 84 Gidley Way.
14. In 2017, the appellant submitted a "Do I Need Planning Permission" enquiry to the Council asking for advice on whether a garage in a different position, nearer to the buildings by the entrance of the site, would need planning permission. It did not relate to the currently proposed building although is roughly where one of the large existing garages has been erected. The indicated location was therefore also along the southern part of the site. The advice stated that subject to changes to the position of the proposed building, it would fall within the criteria for permitted development. That letter also made it clear however that it was not a formal opinion, for which an application for an LDC would be necessary. The advice draws attention to specific aspects of Class E of the GPDO.

15. The submission in that case included little information about the land but the forms did not require much detail. Notwithstanding the limitations of that process, it has been held that informal determinations are not binding upon Councils given that there is a formal process allowed for within the Act by the submission of an application for a LDC. It is also not binding upon me. I have reached my own views based upon the evidence submitted and what I saw.
16. On the basis of that available information before me, I therefore consider that the proposed garage would be on land that is not within the curtilage of the dwellinghouse. It consequently would not be permitted by Schedule 2, Part 1, Class E of the GPDO. In making this judgement, it is unnecessary for me to consider whether the proposed purpose of the building would be a purpose incidental to the enjoyment of the dwellinghouse.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a garage with a dual pitched roof eaves 2.5m high and roof 3.8 metres high, 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.

A Harwood
INSPECTOR