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## Appeal Decision

Site visit made on 12 January 2021

**by K Stephens BSc (Hons) MTP MRTPI**

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

**Decision date: 28 January 2021**

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**Appeal Ref: APP/X0415/X/20/3259711**

**Chiltern View, Leighton Road, Edlesborough LU6 2ES**

- 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 Martyn Murphy against the decision of Buckinghamshire Council.
  - The application Ref 20/01055/ACL, dated 23 March 2020, was refused by notice dated 20 July 2020.
  - The application was made under section 192(1)(a) 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 proposed erection of a new outbuilding.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. This appeal against the LDC above follows refusal of a previous LDC<sup>1</sup>. I understand the appellant has submitted additional evidence since then to support the later application, the subject of this appeal. I have determined the appeal on the evidence before me.
3. An LDC is not a planning application. Therefore the planning merits of the case are irrelevant and do not fall to be considered. My decision depends on factual evidence of the history and planning status of the building and land in question and the interpretation of relevant planning law and judicial authority.
4. The purpose of an LDC application is to determine whether specified uses or operations would have been lawful on the date the application was made. In this case I must determine whether the proposed erection of a new outbuilding would have been lawful on the 23 March 2020, against the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO') in force at that time. The burden of proof rests with the appellant and the test of the evidence is made on the balance of probabilities.

### Main Issue

5. The main issue is whether the Council's decision to refuse the LDC application was well-founded.

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<sup>1</sup> LPA ref: 19/04468/ACL

## Reasons

6. The Council's only reason to refuse the application was that the proposed erection of the outbuilding would fail to satisfy the terms of Article 3, Schedule 2, Part 1, Class E of the GPDO, because the proposed outbuilding would not be situated within the residential curtilage of the dwellinghouse, known as Chiltern View.
7. In this appeal, the relevant part of Class E sets out permitted development ('PD') rights, subject to conditions and limitations listed in paragraphs E.1, E.2, E.3 and E.4, for 'The provision within the *curtilage of the dwellinghouse* [my emphasis] of... any building or enclosure... required for a purpose incidental to the enjoyment of the dwellinghouse as such...'.<sup>2</sup>
8. For PD rights to apply the proposed outbuilding must be within the curtilage of the dwellinghouse and it must also be required for a purpose incidental to the enjoyment of Chiltern View. In addition, the proposed building must be within the specific size limitations set out in the GPDO. The development will not benefit from PD rights if it fails any of these requirements.
9. From the Council's reason for refusal, there is no dispute that the intended use of the outbuilding is for purposes 'incidental' to the enjoyment of the dwellinghouse, or that the size of the proposed building exceeds any of the limitations of PD. Therefore, the only matter in dispute is whether the proposed building and the land on which it would be sited within the curtilage of the dwellinghouse.
10. Curtilage has no precise definition in the GPDO. The Technical Guidance<sup>2</sup> explains that 'curtilage' is not defined in the GPDO but is understood to mean "*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.*" The Oxford English Dictionary definition is of 'an area of land attached to a house and forming one enclosure with it'.
11. The Courts have assisted with the consideration of the concept of 'curtilage' and to which both parties refer. In *Sinclair-Lockhart's Trustees*<sup>3</sup> the courts found curtilage could be regarded as land used for the comfortable enjoyment of a house or other buildings; that it was an integral part although it did not need to be marked off, and it served the house and buildings in some necessary or reasonably useful way. The *Methuen-Campbell*<sup>4</sup> case found that curtilage had to have some intimate association with the building to support the conclusion that it forms part and parcel of the building.
12. Following *Sutcliffe*<sup>5</sup> the Courts held that three tests applied in determining whether a structure or object is within the curtilage of another building, regardless of any 'strict conveyancing interpretation': namely (a) the physical layout of the building and the other structure; (b) their ownership (past and present), and (c) their use or function (past and present).

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<sup>2</sup> Permitted development rights for householders: Technical Guidance - published by the Ministry of Housing, Communities and Local Government September 2019

<sup>3</sup> *Sinclair-Lockhart's Trustees v Central Land Board* (1950) 1 P&CR 195

<sup>4</sup> *Methuen-Campbell v Walters* [1979] 1 QB 525

<sup>5</sup> *Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310

13. In *McAlpine*<sup>6</sup> it was held 'there was no rigid definition of curtilage' but that there were three relevant characteristics of curtilage: first it was confined to a small area about a building; second it had an intimate association in order to make the land under consideration part and parcel of that undoubted curtilage land; and third, it was not necessary for there to be physical enclosure of that land which was within the curtilage, but the land in question at least needed to be regarded in law as part of one enclosure with the house.
14. In *Dyer*<sup>7</sup> it was held that curtilage is a 'small area forming part and parcel with the house or building which it contained or to which it was attached', although the size of the area was not a determinative factor alone, but a question of fact and degree.
15. Following the more recent *Burford*<sup>8</sup> case, it was held that even a lawful 'residential' use of land incidental to the enjoyment of a dwellinghouse does not, in itself, mean such land is part of the curtilage of the dwellinghouse. 'Whether something falls within the curtilage is a question of fact and degree and thus primarily a matter for the decision-maker'.
16. What emerges from these various judicial authorities is that the determination of curtilage is a matter of fact and degree pertinent to the particular circumstances in each case. In order to determine the extent of curtilage at the date of the application, consideration of both the past history of the land, and how the site is laid out and used at the time of the application is required.
17. The appellant also refers to an appeal decision in Kirklees to support his case, but I have not been provided with either a copy of the appeal decision or the appeal reference number. However, the appellant's summary of that Inspector's views on curtilage would appear to follow the case law arguments above. It is my view that whilst other appeal decisions are material considerations, all decisions turn on their own particular circumstances based on the evidence before those Inspectors at the time. Therefore I give this decision limited weight.
18. Looking at the physical layout of the site, there is a two storey detached dwelling with attached double garage that sits within a large plot. This plot now forms one enclosure, bounded by fence and hedgerow around its outer perimeter. There are a series of redundant outbuildings to the rear of the dwelling, set some distance from the back of the dwelling. There is an area of maintained lawn between these buildings and the dwelling. These outbuildings were apparently part of the site's previous function as a smallholding/farming use which ceased some years ago. Close to the dwelling and road is an existing timber outbuilding.
19. The property has been subject to a number of extensions and alterations over the years and the evidence shows that the surrounding grounds have also been altered and landscaped. Indeed, the appellant confirmed to the Council that since submitting the LDC application he has continued to landscape the property and therefore its appearance has evolved from that previously shown on the plans.

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<sup>6</sup> *McAlpine v Secretary of State for the Environment* [1995] JPL B43

<sup>7</sup> *Dyer v Dorset CC* [1988] 3 WLR 213

<sup>8</sup> *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin)

20. I saw on my visit the vehicular access from the road leads to a wide gravelled drive and circular turning area based around a circular landscaped feature that conceals a septic tank. The land to the left of the driveway broadly comprises the dwelling and garage, the maintained lawn immediately to the rear of the dwelling and its patio, and redundant outbuildings. Due to the orientation of the garage, a second access remains in front of the dwelling, but this is now redundant and serves as a gated pedestrian route from the road to the front door. The land to the right of the driveway, separated in part by a timber ranch fence, comprises rougher grass and a wooded area to the northwest corner of the site. Overall the whole site is generally open in nature without subdivision of areas.
21. From the appellant's aerial photographs the line of a track is clearly visible passing straight through the site from the road to the rear site boundary. On the images this track leads into the field beyond the site's current rear boundary. This is confirmed by the appellant who describes that a 'worn area existed in the past to service the field to the rear when it was a smallholding'. Even though the track has become more grassed over, on my visit the alignment of the track is still just about visible. In addition, I saw the former gate posts on the rear site boundary with the adjacent field. The gate gap has been filled with wire fencing and now forms parts of the continuous rear site boundary. These gate posts are also annotated on the submitted plans and align approximately with the vehicular access and track.
22. This historic evidence of the presence of a farm-related track through the site, between the dwelling and the land for the proposed outbuilding, indicates to me that the land the subject of this appeal did not form part of the residential curtilage of the dwelling. Whilst the former track is less pronounced now, the newly gravelled current drive continues to separate the land from the dwelling.
23. Looking at the submitted plans, the nearest redundant outbuilding appears to be further away from the dwelling than the proposed outbuilding would be. Nonetheless, I saw that the redundant outbuildings are contiguous with the maintained lawn at the rear of the dwelling and so have a different physical relationship with the dwelling than the land for the proposed outbuilding. As such their situations are not comparable and distance alone is not a factor.
24. Due to the intervening gravelled driveway and past evidence of a former farm track, the land on which the outbuilding would sit is physically and visually separate from the dwelling. On this factor alone, it is likely that the land does not form part of the residential curtilage of the dwelling.
25. With regard to ownership, there is nothing to suggest that the appellant does not own all the land outlined in red on the submitted plans. I have not been provided with any substantive evidence to confirm the extent of the former smallholding or any historic maps, for example, that might show field boundaries or other demarcations. Nor have I been informed if the land for the proposed building formed part of the land sold with the dwelling. Nonetheless, land ownership alone does not provide evidence of curtilage, and I find it is not a determinative factor in this case.

26. With regard to the use and function of the land, I saw various domestic paraphernalia and children's play equipment around the site as a whole, including in the wooded area and near the site of the proposed outbuilding. All of this indicates to me that the whole plot is being used as a single residential use, and the appellant does not dispute this. I have no doubt that the land on which the proposed building would sit, and indeed the adjacent land beyond it, serves a necessary and reasonable purpose for the appellant and his family as it provides a larger garden.
27. Nevertheless, land can be used as garden without being part of its curtilage. Even if it were the case that lawful 'residential' use of land was incidental to the enjoyment of a dwellinghouse, *Burford* illustrates that does not mean such land is part of the curtilage of the dwellinghouse. For land to be regarded as curtilage it must have a close spatial and functional relationship with the dwelling. Whilst the site as a whole is now largely open and the trees form part of the overall plot with no separate demarcated areas of use, this does not indicate that it was always this way.
28. It is apparent from the submitted aerial photographs that the wooded area was more extensive than it is now, and I saw that the land on which the proposed outbuilding would sit has been substantially cleared of trees. I have no reason to doubt that trees have been felled for good arboricultural reasons. However, in my view from the evidence before me, the wooded area did and does not form part of the residential curtilage.
29. The land on which the proposed building would sit may have a functional residential relationship with the dwelling now, but the land is separated from the dwelling by the current intervening gravelled drive. It was also separated in the past from the evidence of a former farm track. Therefore, I find the land in question is not attached to the dwelling and is not physically close to it. In my view, the land cannot be described as having an intimate association with the dwelling.
30. Taking these various factors into account as a whole leads me to conclude, based on the evidence before me and what I observed on site and on the balance of probabilities, that the proposed outbuilding would not have been built on land comprising curtilage of the dwelling at Chiltern View when the LDC application was made.

### **Conclusion**

31. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the proposed erection of a new outbuilding was well-founded. Accordingly, I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended and dismiss the appeal.

*K Stephens*  
INSPECTOR