



Appeal Decision

Site visit made on 28 May 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 07 June 2021

Appeal Ref: APP/R0660/X/21/3269604

Sunnyhurst, 4 Mobberley Road, Knutsford WA16 8EF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ken Gates against Cheshire East Council.
 - The application Ref. 20/5298M is dated 25 November 2020.
 - The application was made under section 192(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is a detached outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, the planning merits of the proposal are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

Main Issue

3. The Council opposes the application and has indicated that it would have refused to grant a LDC had it made a determination. The main dispute between the parties concerns whether the building would be within the curtilage of the dwellinghouse. I must consider whether any such refusal would have been well-founded.

Reasons

4. The application sought a LDC for a detached outbuilding on land to the rear of the dwellinghouse. The appellant intends to use the outbuilding as a sauna, gym/recreation room.
5. The dwelling known as Sunnyhurst is a semi-detached property fronting Mobberley Road. It has a modest garden immediately behind the house, which is consistent in size with others in the immediate vicinity. In addition, there is a relatively large, irregular shaped area of land to the rear, which extends along the boundary with the adjoining houses. The outbuilding would be sited on this land, in line with Sunnyhurst.

6. The appellant's case is that the proposed development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings within the curtilage of a dwellinghouse. E.(a) states that *the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse* is permitted development subject to conditions and limitations.
7. The GPDO does not attempt to define the term 'curtilage' and there is no other all-encompassing, authoritative definition. The Courts have often addressed the meaning of 'curtilage', and I have considered all authorities of relevance below.
8. One of the earliest was the Court of Appeal decision in *Methuen-Campbell*¹. In that case it was held that for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building. It was possible that this may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway and so forth. A curtilage may consist of more than one parcel of land, need not have been conveyed or demised together and might even fall within another, broader curtilage.
9. The case of *Dyer*² provides authority that the term 'curtilage' bears its restricted and established meaning connoting a small area forming part and parcel with the house or building which it contained or to which it was attached. Subsequently, in *McAlpine*³ it was held that "there is no rigid definition to a curtilage", but that it is a feature constrained to a small area about a building; apparently in "intimate association" with such building; and no physical enclosure is necessary to define it, "but the considered land must be part of the enclosure with the house".
10. The Inspector's reasoning in *R (oao Sumption)*⁴ is relevant in that the smallness of land was a relative factor as a matter of fact and degree. The Inspector's decision was in fact quashed. The case is nonetheless noteworthy as authority that a lack of historic connection between the land and a [listed] building can be a relevant fact but it is not determinative. It is necessary to determine the status of the land from the factual situation existing at the date of the application. On the facts in *Sumption*, the curtilage did extend over a 'recently expanded garden' where the land was clearly capable of such use, some work had been done to it, there was access to it and it was part of the land attached to the building and being enjoyed with it. In those circumstances the historical lack of connection was not capable of carrying weight. The Court also made reference to the Oxford English Dictionary definition of 'curtilage' as 'an area of land attached to a house and forming one enclosure with it'.
11. In *Sinclair-Lockhart's Trustees*⁵ 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."

¹ *Methuen-Campbell v Walters* [1979] 1 QB 525.

² *Dyer v Dorset CC* [1988] 3 WLR 213.

³ *McAlpine v SSE* [1995] 159 L.G. Rev. 429.

⁴ *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin).

⁵ *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195.

12. The Court of Appeal in *Skerritts of Nottingham Ltd*⁶ described the decision in *Dyer* as plainly correct, though commenting that “this court went further than it was necessary to go in expressing the view that the curtilage of a building must always be small, or that the notion of smallness is inherent in the expression.” In addition, at first instance “the deputy judge was mistaken in treating *Dyer* as having such clear force as he thought it had.” Thus, the decision makes plain that there should not be a rigid application of the concept of size.
13. The High Court in *Lowe*⁷ found assistance from the *Dyer* judgment - “The expression ‘curtilage’ is a question of fact and degree. It connotes a building or piece of land attached to a dwelling and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers. It may include stables and other outbuildings, and certainly includes a garden, whether walled or not. It might include accommodation land such as a small paddock close to the house. However, it could not possibly include the whole of the parkland setting in which the house lay, nor the driveway along which the fence was erected”.
14. The concept of “curtilage” was more recently reviewed by the High Court in *Burford*⁸ where it was noted that the use of land as incidental to the enjoyment of a dwelling house is not determinative of the land being curtilage. The case reaffirmed the criteria laid down in *Calderdale*⁹ for identifying curtilage, namely: (1) the physical layout of the [listed] building and the structure; (2) their ownership, past and present; (3) their use or function, past and present.
15. Having regard to all the authorities it is apparent that whether land comprises ‘curtilage’ is a question of fact and degree to be considered on a case by case basis and, thus, primarily a matter for the decision maker.
16. Caselaw has confirmed that the curtilage land need not necessarily be small, but that does not mean the relative size between the building and its claimed curtilage is not a relevant consideration. The appellant is claiming the whole of the wider land as curtilage, as identified by the red line on the site plan and the evidence submitted. As such, the claimed curtilage would be extensive when compared with the dwelling and its immediate garden area. It may have been used as an extended garden for many years, nonetheless, as noted in *Burford*, curtilage defines an area of land in relation to a building and not a use of land.
17. *Lowe* refers to curtilage as being fairly described as part of the enclosure to the house to which it refers. The relationship of the land to the dwellinghouse is primarily associated with ownership as opposed to being part of one enclosure. Ownership is a relevant consideration but is not determinative. The size, location and relationship of the wider land to the neighbouring houses fronting Mobberley Road is such that any of these could identify and/or purchase part of it and claim curtilage. The 1950 conveyance plan provided by the appellant does not assist as it is not clear whether the land is associated with Sunnyhurst or one of the neighbouring houses to the south.

⁶ *Skerritts of Nottingham Ltd v SSETR (No. 1)* [2000] EWCA Civ 60.

⁷ *Lowe v First Secretary of State* [2003] EWHC 537 (Admin).

⁸ *Burford v SSCLG* [2017] J.P.L. 1300.

⁹ *Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council* [1983] 46 P&CR 399.

18. Overall, the evidence submitted does not support a finding that the land is intimately associated with the dwelling Sunnyhurst and that it forms part and parcel of the building. The size, physical layout, function and relationship of the land to Sunnyhurst is such that I do not consider it to be within its curtilage.
19. The appellant draws my attention to an LDC issued by the Council for an outbuilding at The Grange¹⁰. In that case, the outbuilding would have been located close to the dwelling, adjacent to a swimming pool. Although the proposed plans and elevations are very similar, the site-specific circumstances are entirely different and justify the Council reaching a different conclusion.

Conclusion

20. I find, as a matter of fact and degree, that the land on which the outbuilding would be sited would not be within the curtilage of the dwellinghouse. Accordingly, it would not be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.
21. For the reasons given above, I conclude that the Council's indicative refusal to grant a certificate of lawful use or development in respect of the construction of a detached outbuilding would have been 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.

Debbie Moore

Inspector

¹⁰ Ref 20/1674M at The Grange, Moss Lane, Ollerton,