



Appeal Decision

Site visit made on 11 May 2021

by N Thomas MA MRTPI

An Inspector appointed by the Secretary of State

Decision date: 22 June 2021

Appeal Ref: APP/C3810/X/20/3261144

3 Homing Gardens, Bersted PO22 9AJ

- 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 Glenn Travers against the decision of Arun District Council.
 - The application Ref BE/69/20/CLP, dated 10 July 2020, was refused by notice dated 22 September 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 to replace a 20+ year old current, metal framed/wood panel, garage/workshop with a brick-built one.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the proposal given on the application form for the banner heading above and removed superfluous wording.
3. The appellant has provided an amended drawing for the proposed garage following the submission of the appeal, attached to an email dated 18 January 2021. This proposed that the garage door would be omitted and a high level window would be in its place. As a result, access to the garage would only be through the garden of No 3. The appellant advised that on the basis of the revised design, the neighbour at 7 Homing Gardens would allow him to 'key in' to his adjacent garage. However, my role is to consider whether the Council's decision to refuse the application was well-founded, on the basis of the details that were submitted to and determined by the Council. I have not therefore had regard to the revised drawing provided with the appeal.
4. 3 Homing Gardens is an end of terrace dwelling at the end of a short cul-de-sac, with a roughly rectangular shaped rear garden. The appeal relates to a rectangular area of land to the side of the rear garden, containing hardstanding, on which is sited a timber outbuilding, adjacent to the side boundary fence of the garden. The footprint of the existing building covers most of the site, with a small passageway to one side and to the rear. It is adjacent to a row of garages. There is a hard surfaced forecourt to the front of the garages, and vehicular access to the forecourt and garages is from the cul-de-sac. The house and most of the rear garden of No 3 are in a Conservation Area (CA). The CA boundary runs through the proposed siting of the garage.

Reasons

5. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support his case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
6. The appellant's case is that the site is within the curtilage of the dwelling and meets the limitations of Class E Schedule 2 Part 1 of the GPDO¹, so that an application for planning permission is not required. The land was originally part of the garden and therefore falls within the curtilage. Moreover, there is an existing garage on the site and the additional footprint would lie outside the boundary of the CA. The Council however considers that the land on which the garage would be built falls outside the curtilage of the dwelling as the site is within the garage compound.
7. The Technical Guidance² states that the definition of curtilage is understood to be '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'. To be clear, the term does not refer to a use of the land. It is a judgement for the decision-maker as to whether land falls within the curtilage of a dwellinghouse, given the ordinary meaning of words, and is a matter of fact and degree.
8. Case law indicates that the curtilage connotes a piece of land attached to a dwelling house and forming one enclosure with it. There are three primary tests to be considered, which are physical layout, ownership (past and present), and use or function (past and present).
9. In terms of physical layout, the area of land on which the garage would be sited is adjacent to but outside the fenced rear garden of the dwelling. As currently laid out, access to the site from the house is either from its front door and via the vehicular access to the garages, or via a side access into the forecourt from the rear garden, along a path running between two of the existing garages in the compound. The appellant states that the site was previously part of the garden, which was L-shaped, when he purchased the property in the mid-1990s. He does not state when the site was separated from the rest of the garden.
10. Representations from local residents who own adjacent properties corroborate the appellant's claim that there was previously a fence separating the forecourt from the garden of No 3, which was removed to allow access to use the shed for storage. However, the site is now separated from the rest of the garden by a fence. From what I saw on site, it did not appear to me that the fence had been installed recently. It was weathered and it would be reasonable to assume that it had been in place for some considerable time. The main door to the existing shed faces onto the forecourt, and there is no door opening towards

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

² Permitted development rights for householders: Technical Guidance September 2019.

the rest of the garden of No 3. The site does not comprise land that is attached to the house and does not fall within one enclosure with it, as it is separated from it by a fence, and can only be accessed by passing over the forecourt.

11. There is no question that the land has been within the same ownership as the rest of the property. Turning to its use or function, the appellant states that it has been used as a garage/workshop for more than 20 years, and I have no reason to doubt that the land and building have been used for a purpose related to the residential use of the dwelling at No 3. Nonetheless, as a result of my conclusions in relation to the physical layout, I conclude that the land is not within the curtilage of the dwelling. The proposal therefore would not benefit from the Class E permitted development (PD) right and planning permission is required.
12. I note that the site is partly within the CA, where Class E PD rights are restricted by paragraph E.3. However, as I have found that the site is not within the curtilage of the dwellinghouse I have not considered this matter further.

Conclusion

13. The basis of the application is that the proposal benefits from PD rights under Class E of Schedule 2 Part 1 of the GPDO, but I have found that it would not be within the curtilage of the dwellinghouse and therefore requires planning permission.
14. I conclude that the Council's refusal to grant a certificate of lawful use or development to replace a 20+ year old current, metal framed/wood panel, garage/workshop with a brick-built one is 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.

N Thomas

INSPECTOR