



Appeal Decision

Site visit made on 29 June 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2021

Appeal Ref: APP/Q1153/X/20/3265597

The Old Shippon, Road past Lower Hill Farm, Lamerton PL19 8RR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 T Faircloth of Fado Ltd against the decision of West Devon Borough Council.
 - The application Ref 2529/20/CLP, dated 12 August 2020, was refused by notice dated 5 October 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 "Erection of a curtilage building in accordance with the requirements of Schedule 2 Part 1 Class E of the GPDO."
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I am obliged to use the description of the proposed development as set out on the application form. The Council used a similar description on their decision. However, the use of the term "curtilage" in the description does not relate to an act of development and I will go on below to explain why such a term pre-judges the decisive factor in this case. It would be more appropriate to describe the proposal as the erection of a building for purposes incidental to the enjoyment of the dwellinghouse as such and it appears that there is no confusion that this is the essence of what is proposed.

Main Issues

3. I am required to determine whether the Council's decision to refuse the application was well founded. The Council considered that the proposed building 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 (the GPDO). The onus is upon the appellant company to prove, on the balance of probabilities, that the development would be lawful.

Reasons

4. The appeal site is described as a former 'shippon' which I understand to be a

traditional agricultural building. The building is part of a group of buildings that are formed around a traditional farm-yard. In the case of the 'shippon', it is separated from the grade II listed Lower Hill Farmhouse by a hardsurfaced track which leads to the other buildings and land.

5. I am provided with limited information about how the wider farmstead is currently used but the 'shippon' is now a dwelling. The planning permission for that use also conveyed permission for another former agricultural building to change use to a holiday let. There is no dispute by the Council that the 'shippon' is in use as a dwellinghouse and so in principle can enjoy the various permissions granted by reason of Article 3, Schedule 2 of the GPDO, subject of course, to the applicable limitations and conditions set out within the individual classes. There is no dispute that the proposed building would conform with the various size criteria of Class E and it appears to be agreed that its use is reasonably proposed to be for "a purpose incidental to the enjoyment of the dwellinghouse as such".
6. The Council in their decision states however that the proposed building could not be "permitted development" as conveyed by the GPDO because the conditions as set out under class E at paragraph E.1. state that development is not permitted by that class if, amongst other things, (sub paragraph g) "the building, enclosure, pool or container would be situated within the curtilage of a listed building". The listed building in question is Lower Hill Farmhouse. There is little analysis of various authorities that concern the definition of 'curtilage' and the Council rely heavily on a previous application that was submitted by the applicant which they say accepted that the 'shippon' is within the curtilage of the listed building. The appellant relies for their case on the planning permission that was granted for the change of use of land to "residential curtilage" which included the site on which the building is now proposed.
7. Class E is permissive of developments that are within the curtilage of a "dwellinghouse as such". In my view, it is logical in this case to look first at the physical extent of the curtilage of the 'shippon' and then to the applicable limitations and conditions. The term 'curtilage' does not relate to a use of land and is derived from conveyancing law. As such, the planning application for the "change of use of land to residential curtilage" that was approved in January 2020 could not approve a 'curtilage'. It is clear however from what the Council says in their statement that the act of development, in terms of s55 of the Act, was understood to be for an extended residential garden area.
8. These matters are often confused. There is no definitive designation of what constitutes the 'curtilage' of a building. It is a matter of fact and degree coming about due to 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 a matter for the decision maker to consider 3 relevant factors in the round, which are (i) the physical layout of the building and land; (ii) ownership past and present; and (iii) use or function past and present.
9. Any building may have a curtilage regardless of its use, although the term is often applied to dwellinghouses given its significance within the GPDO. Furthermore, the term should not be confused with the concept of the planning unit. It can be the case, for instance in general terms rather than the specifics

of this appeal, that the position of a building can be within the same planning unit as a dwellinghouse but not within its curtilage.

10. The rear elevation of the 'shippon' backs immediately onto the concrete track that provides the access from the road in front of the wall enclosing a distinct garden area around the farmhouse. The rear elevation of the 'shippon' includes windows that face towards the farm-yard giving a sense of intimacy and connection between the building and remainder of the site. A vehicular and a pedestrian gate provide a physical definition of what appears to be the start of the traditional farm-yard. Within that, the track changes from concrete to a loose gravel surface. This leads to the other outbuildings but also, without any gates or other barriers, around the eastern, southern and western sides of the 'shippon' in a 'U' shape which then connects to the concrete track close to the main access from the public road into the farmyard and the appeal site.
11. The 'U' shaped gravel track is defined along the inside partly by hard-landscaping, a robust hedge and also in part by a timber fence. A timber gate on the eastern side of a neat lawn to the front of the 'shippon' allows access from the gravel track. Another gate allows access close to the front of the 'shippon' and onto the large patio between the building and the lawn. The lawn and patio are distinctly separate from the farm-yard and the tracks which in other respects appear to be functionally interconnected. To the eastern side of the 'shippon' there is also a rendered wall which provides a degree of separation of what are clearly domestic appendages such as a domestic fuel-tank and some small sheds or stores. No vehicles were present there at the time of my visit but space exists here to park close to the gate leading onto the patio without obstructing the access track leading into the farm-yard.
12. The area covered by the approved planning application for an extended residential garden area includes the 'U' shaped gravel track. On the other side of the track, there is an extensive slightly raised and fenced-off grassed area, also part of the land subject to the application to extend the residential garden, which can be accessed from the hardstanding in front of the 'goat shed'. The fencing around this grassed area which has a less manicure appearance than the lawn close to the 'shippon', includes timber posts and rail fencing as well as wire along the lower parts which would appear therefore to be stock-proof. The 'goat shed' which looked as if it may still have some agricultural or utilitarian function is also within the area of approved extended garden although access to it is directly from the historic farm-yard, close to farm buildings. The 'goat shed' and concrete hardstanding is raised above the gravel track and separated from it by a substantial landscaped earth-bank.
13. I have limited information about the way in which the various areas within the appeal site and adjoining land function or about ownership and occupation. It seems logical that they were previously all used as part of the wider use of this and surrounding land for farming. There have been changes in the way that the buildings and land area are used with the most obvious being the use of the 'shippon' as a dwellinghouse with the clear establishment on 1 side of it of the neat lawn and patio. These areas are very private and have a very intimate association with that dwelling due to the proximity to it as well as the robust enclosure which provides a well-defined boundary to other activity that may take place in the farm-yard and along the shared track. The garden is very separate from the wider site.

14. I disagree with the appellant's view that the "extended curtilage" planning permission creates a "clear boundary" around the 'shippon'. It is also not clear from the details provided that planning permission in itself has resulted directly in a physically or functionally separate area that is only linked to the occupation of the 'shippon' or that can be considered part and parcel with it. Even if that area is intended to be solely in use for purposes related to the occupation of the 'shippon', the present layout does not prevent use by other occupiers of the broader site. The proposed building would be positioned to the east of the 'shippon' between it and the 'goat shed'. This would be directly across what is presently part of the access track between different parts of the land within the farm-yard.
15. Whether or not the appeal site and the 'shippon' can or cannot be considered to be within the curtilage of the listed building, looking in the round as a matter of fact and degree, the location of the proposed outbuilding would not be within the curtilage of the 'shippon'. Even if the building would be used for purposes incidental to the enjoyment of the dwellinghouse as such, it would not constitute permitted development under the terms of Article 3, Schedule 2 of the GPDO and would not therefore be lawful.

Conclusion

16. 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 proposal, 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