



Appeal Decision

Site visit made on 28 September 2021

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

an Inspector appointed by the Secretary of State

Decision date: 01 October 2021

Appeal Ref: APP/M0655/X/21/3274755

16 Langcliffe Close, Culcheth and Glazebury, Warrington WA3 4LR

- 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 refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Gary Weilding against the decision of Warrington Borough Council.
 - The application Ref 2021/38682, dated 7 February 2021, was refused by notice dated 7 April 2021.
 - 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 described as *"Proposed new wooden shed with plastic tiled roof on concrete hardstanding. Dimensions 2.4 metres wide x 3.6 metres long and 2.5 metres high above natural ground level. Timber to be stained in red cedar colour."*
-

Preliminary Matters

1. The Council considered the application on the basis of the following description – *"Lawful Development Certificate 192 – Proposed wooden shed with plastic tiled roof and erection of a timber fence"*. The fence was included because it was shown on the accompanying plans as being in situ, although it has since been removed. However, the Council's description is not what was sought. It is for the appellant to propose the use or operation that they wish to ascertain the lawfulness of. There is no power under section 192 of the 1990 Act for a local planning authority, or an Inspector, to modify the terms of an LDC application. The application did not include the fence, it was for the shed only. Therefore, I have considered the appeal on the basis of the description provided by the applicant in their application form, which is set out in the banner heading above.
2. 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. 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 application sought an LDC for a shed on land to the side of the house. The main dispute between the parties concerns whether or not the shed would be within the curtilage of the dwellinghouse. I must consider whether the Council's decision to refuse the application was well-founded.

Reasons

4. The appeal property is a detached house, located on a corner plot towards the head of a cul-de-sac. Boundary treatment in the immediate vicinity is low-key, consistent with the open plan design of the estate.
5. 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.
6. 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.
7. 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.
8. 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".
9. 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'.

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).

10. 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."
11. 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.
12. 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".
13. 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.
14. 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, is primarily a matter for the decision maker.
15. The land on which the shed would be sited (the land) is within the ownership of the appellant and is directly adjacent to the gable of the house, where there is a previous extension. It is physically related to the dwellinghouse and it provides separation between the house and the highway. The land is not fenced but there is demarcation provided by a low hedge, which extends along the appellant's property where it meets the pavement. The land is laid to turf, which is mown and maintained. Its appearance is that of private garden associated with No 16, as opposed to being part of a highway verge.
16. The Council maintains that the land to the side of the house was originally laid out as part of the estate landscaping verge. A Google image, dated 2009, has been supplied, which the Council says shows the land was excluded from the private garden area of the dwelling.

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

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.

17. The primary difference between the land as it appeared in 2009, compared to how it appeared at the time of my site visit, is the absence of the low boundary hedge. Landscaping has been removed and the driveway has been widened. However, even without the hedge, I consider that the land was more closely associated with the dwelling than the highway. It lay behind the pavement and the turfed area extended to the front of the house. In 2009, the land also had the appearance of a garden. If it were part of a highway verge, in the way the Council describes, the pavement may not have been necessary and the turf would not have formed a continuous feature around the front and side of the house. The lack of a physical boundary does not imply the land is outside the enclosure of the house. In this case, it is within the same ownership, is physically related to the house and provides separation from the highway. Moreover, it has the physical appearance of a garden and functions as such, thereby serving the house in a reasonably useful way.
18. I appreciate that permitted development rights have been removed to control a proliferation of boundary fences. This is part of the design ethos of the estate. It does not signify that areas such as the appeal land are beyond the curtilage of the dwellinghouses. If the land was to be excluded from private amenity space, as suggested, it is likely that it would also have been excluded from ownership.
19. I consider that the appeal land forms part and parcel with the house and is intimately associated with it. It serves the residential purpose of the house as garden area. Thus, I am satisfied that the appellant has shown on the balance of probability that the land is within the curtilage of the dwellinghouse.

Conclusion

20. I find, as a matter of fact and degree, that the land on which the shed would be sited would be within the curtilage of the dwellinghouse. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.

Formal Decision

21. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Debbie Moore

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 7 February 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The land on which the shed would be sited would be within the curtilage of the dwellinghouse. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Debbie Moore

Inspector

Date: 01 October 2021

Reference: APP/M0655/X/21/3274755

First Schedule

"Proposed new wooden shed with plastic tiled roof on concrete hardstanding. Dimensions 2.4 metres wide x 3.6 metres long and 2.5 metres high above natural ground level. Timber to be stained in red cedar colour."

Second Schedule

Land at 16 Langcliffe Close, Culcheth and Glazebury, Warrington WA3 4LR

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 01 October 2021

By: Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

Land at: 16 Langcliffe Close, Culcheth and Glazebury, Warrington WA3 4LR

Reference: APP/M0655/X/21/3274755

Scale: NTS

