



Appeal Decision

Site visit made on 6 December 2021

by **D Moore BSc (HONS), MCD, MRTPI, PGDip**

Decision date: 22 December 2021

Appeal Ref: APP/P2365/X/21/3280590

Almond Villa (Wood Farm), 408 Southport Road, Scarisbrick L40 9RE

- 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 in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mike Wood against the decision of West Lancashire Borough Council.
 - The application Ref 2021/0559/LDP, dated 24 April 2021, was refused in part by notice dated 29 June 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 "single storey side extensions on the west and east elevations".
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Decision

1. 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.

Background and Main Issue

2. The application sought an LDC for "various alterations including single storey side and rear extensions, new porch and new dormer extensions to roof". The Council issued a split decision and granted an LDC for the proposed roof dormer extensions and the front porch while refusing an LDC for the single storey side extensions on the west and east elevations. Consequently, this appeal concerns the side extensions only.
3. The appellant's case is that the proposed development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class A to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns the enlargement, improvement or other alteration of a dwellinghouse. The dispute between the parties concerns whether or not the side extensions would be within the curtilage of the dwellinghouse. I must consider whether the Council's decision to refuse the application, in part, was well-founded.
4. 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.

Reasons

5. The appeal property is a modest bungalow located at the end of a private drive, within what appears to be a former farmyard. The Location Plan, submitted with the application, show the appeal site defined by a red line. This encompasses a more extensive area than that occupied by the extensions. It includes the access drive and all the land surrounding the bungalow, including a static caravan and several outbuildings. It is argued that this is a single planning unit by virtue of an earlier LDC for a single storey rear extension, which was approved by the Council on 2 March 2021¹. Further, it is explained that the purpose of that application was to clarify the extent of the curtilage.
6. It is clear that the previous LDC relates to a single storey rear extension only. That is what the certificate specifies and there is no ambiguity. In reaching a decision, the Council concluded that the proposed single storey rear extension would be within the curtilage of the dwellinghouse, since if it thought otherwise the LDC would not have been issued. However, it does not follow that the curtilage of the dwellinghouse equates to the land included in the red line of the previous application, or indeed the appeal before me. An LDC cannot define curtilage since this is not a use of land. The term 'curtilage' must not be confused with the planning unit. The two will sometimes cover the same area on the ground, but that will not always be the case and does not in any event mean that they are the same thing. If the appellant was seeking to establish whether or not the land within the red line was used for residential purposes, as indicated, that is what the application should have sought.
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. One of the earliest was the Court of Appeal decision in *Methuen-Campbell*². 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*³ 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*⁴ 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)*⁵ 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

¹ Ref 2021/0015/LDP.

² *Methuen-Campbell v Walters* [1979] 1 QB 525.

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

⁴ *McAlpine v SSE* [1995] 159 L.G. Rev. 429.

⁵ *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin).

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'.

10. In *Sinclair-Lockhart's Trustees*⁶ 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*⁷ 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*⁸ 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*⁹ 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*¹⁰ 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 extensions would extend the bungalow at the side and rear. The eastern extension would project up to the line of the adjoining field boundary, which is

⁶ *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195.

⁷ *Skerritts of Nottingham Ltd v SSETR (No. 1)* [2000] EWCA Civ 60.

⁸ *Lowe v First Secretary of State* [2003] EWHC 537 (Admin).

⁹ *Burford v SSCLG* [2017] J.P.L. 1300.

¹⁰ *Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council* [1983] 46 P&CR 399.

- defined by a post and rail fence. This land currently forms a driveway providing access to the outbuildings to the north. The western extension would occupy an area of land currently laid to grass, which extends around the front of the bungalow. An existing block built shed would be removed. At the rear, the extensions would be sited on an area of hardcore.
16. The appellant has submitted copies of historic maps of various dates. The house was not present in the 1925 map but is shown in 1933. This map indicates the same means of access as currently exists and there appears to be a small area of delineated land to the front and western side of the house. There is a field boundary or drain to the east, which also corresponds with the existing boundary. Later maps dated 1951 and 1975 are of limited assistance since they show the house and associated buildings but no domestic boundaries.
17. The extent of the curtilage need not be small, but it must have a clear relationship with the house and serve a useful purpose. Although the evidence is limited, the historic maps provide some indication that there was a relatively small area of land surrounding the bungalow that was intimately associated with it such that it formed part and parcel of the building. Moreover, it is apparent that there would have been an area of land immediately surrounding the dwellinghouse, which would have served for access and maintenance purposes and for providing space for domestic uses. I consider that this equates to the land on which the extensions would be sited. Although the extensions are comparatively large, I do not consider that they would extend beyond the area which is intimately associated with the dwelling. I appreciate that this land is not enclosed, but it is not necessary to have defined physical boundaries provided the land serves the house in a reasonable useful way.
18. In terms of the appellant's red line, this encloses a large area of land and outbuildings. There is no evidence before me that this land was part of the enclosure of the house nor that it served the house in a necessary or reasonably useful way. The outbuildings had a different function and purpose and these buildings, plus the yard and other land within the red line, could not be considered intimately associated with the dwellinghouse. In any event, this is irrelevant because I am required to consider whether the development sought would be lawful not whether the land within the red line forms the curtilage to the dwelling. As explained, curtilage is not a use of land.

Conclusion

19. I consider that the land on which the extensions would be sited forms part and parcel with the bungalow and is intimately associated with it. It serves the residential purpose of the bungalow in a reasonably useful way. Thus, I am satisfied that the appellant has shown on the balance of probability that the extensions would have been lawful if instituted on the date of the application.
20. I find, as a matter of fact and degree, that the land on which the extensions would be sited would be within the curtilage of the dwellinghouse. Accordingly, the extensions would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class A to the GPDO.

D 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 24 April 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, as identified in 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 extensions would be sited would be within the curtilage of the dwellinghouse. Accordingly, the extensions would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class A to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

D Moore

Inspector

Date: 22 December 2021

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First Schedule

"Single storey side extensions on the west and east elevations"

Second Schedule

Land at Almond Villa (Wood Farm), 408 Southport Road, Scarisbrick L40 9RE

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. Any use /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 my decision dated: 22 December 2021

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

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Scale:NTS

