



Appeal Decision

Site visit made on 9 November 2021

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2022

Appeal Ref: APP/P1615/X/21/3280059

2 Harts Farm Stud, Chapel Lane, Redmarley, Gloucestershire GL19 3JF

- 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 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 Robert Arrowsmith against Forest of Dean District Council.
 - The application Ref P0700/21/LD2 is dated 7 April 2021.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought is the erection of a single storey side extension, single storey rear extension, dormers and a detached garage.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operations which are considered to be lawful.

Preliminary matters

2. The Council has not given notice to the appellant of its decision on the LDC application within the prescribed period. The appeal is therefore made under section 195(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
3. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the Local Planning Authority is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
4. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities.
5. Planning Practice Guidance is clear that the applicant (or in this case the appellant) is responsible for providing sufficient information to support an LDC application¹.

¹ Lawful development certificates, paragraph: 006 Reference ID: 17c-006-20140306

Main Issue

6. It is clear from the evidence provided within the Council's appeal statement that had they made a decision on the application it would have been a split decision. The Council took the view that the single storey side extension, single storey rear extension and dormers on the east and west roof slopes as described would be lawful whilst the remaining proposal for the garage would require express planning permission. Since the Council has not determined the application, the appeal is against its deemed refusal. Therefore, the main issue is whether that deemed refusal would have been well-founded, and the decision turns on whether the proposal is permitted development under Schedule 2, Part 1, Class A, Class B and Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

Single storey side extension, single storey rear extension and dormers

7. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes at Part 1, Class A, the enlargement, improvement or other alteration of a dwellinghouse and Class B, additions etc to the roof of a dwellinghouse. These are subject to limitations and conditions. The Council, in its appeal statement, takes the view that the single storey side extension, single storey rear extension and dormers on the east and west roof slopes would be permitted development. From the evidence before me, I have no reason to doubt that these elements of the proposal would be permitted development when considered under the provision of Part 1, Class A and B of the GPDO.

Detached garage

8. The appellant's case is that the proposed development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E of the 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.
9. The Council's view is that the use of the land now being sought for the garage has been extended beyond that which could be reasonably considered residential curtilage and includes land considered to be agricultural or equestrian or a mix of both. The Council refer to aerial photographs to demonstrate a notional boundary defined by a hedge which it says created an enclosure that denotes the limit to the residential curtilage. Consequently, the Council argues that the site of the proposed garage would not fall within the domestic curtilage of No 2 Harts Farm Stud, and so it would not be permitted development.
10. Curtilage defines an area of land in relation to a building and not a use of land. There is no all-encompassing, authoritative definition of the term curtilage. The Technical Guidance² includes "curtilage", for Part 1 purposes, as land which

² Department for Communities and Local Government "Permitted development for householders, Technical guidance" September 2019

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. Generally, to fall within the curtilage of a building, it is enough that land serves the purpose of a building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way.

11. The land must be intimately associated with the building in order to support a conclusion that it forms part and parcel of that building. However, other considerations, such as past and present relationships of ownership and function, should be taken into account. In the absence of any statutory or authoritative definition, the term 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.
12. An LDC³ issued in June 2018 (the 2018 LDC) established that the appeal property had been occupied as an independent self-contained dwelling known as Flat 2 (the appeal property) for at least 4 years. The site plan⁴ which accompanied the application for the 2018 LDC shows a red line drawn around the appeal site and the adjoining property, incorporating the fenced front garden area to the west and the rear garden area to the east where a landscaped boundary defines the extent of the domestic limit. To the north, the red line is drawn relatively close to the side elevation of the appeal property.
13. Within the red line, the plan is coloured blue and yellow and this appears to indicate two individual planning units, with the area coloured blue being the land belonging to the appeal property. The appellant provides that this plan formed part of the 2006 building regulation drawings showing "the division of the domestic curtilage agreed in 2006". Furthermore, the appellant confirms that "from 2006 until the present day the domestic curtilage as defined by the 2018 LDC clearly reinforces the extent of the curtilage".
14. From the evidence before me, and in my opinion, the 2018 LDC, which established the use of the building as an independent self-contained dwelling, shows the extent of the residential planning unit associated with the appeal property on the site plan⁵ that accompanied that application. I note that the Council considered that "the site location plan (Brian Griffin Planning and CC Ltd) for P0707/18/LD1 is relevant and this defined the curtilage for No 2 Harts Farm.....measuring from the farthest point south of the side façade of No 2 towards the north boundary there is approximately 23 metres distance⁶".
15. I have seen on the ground where the hedge and fence once stood and from the images⁷ produced from Google Earth Pro and provided by the Council. The appellant argues that the hedge screened a "make-shift" fence that was erected on a temporary basis in 2012 or 2013 merely to provide a safety barrier for the children because of the nearby pond, drive and car parking/turning area, and was not an indication of the extent to the curtilage. Since the removal of the hedge and the fence, no physical boundary remains on the land in this location. Moreover, and referencing the Council's comments in the above paragraph concerning the distance to the boundary, I see that the

³ P0707/18/LD1

⁴ KA10 dated April 2018 and originally dated September 2017

⁵ KA10 dated April 2018

⁶ Officer report for application P1835/20/LD2 refused by notice dated 4 November 2020

⁷ June 2018 and September 2020

application plan notates this distance being 22.4m with the garage set back by 2m.

16. Notwithstanding the above, it is necessary to establish whether the land upon which the garage would be sited would have been considered to be within the curtilage of the dwellinghouse on the date of the application, that is 7 April 2021. It is not necessary to establish a date on which the curtilage of the dwelling was first established.
17. The function of the land is relevant to the question of curtilage, but it is not determinative. Whether the land forms part of the curtilage is a matter of fact and degree. During my visit I saw that the area surrounding the dwellinghouse that would have, at one point, been either side of the former fence and hedge was of a similar nature. The grass had been maintained by mowing, there was some ornamental planting and there was evidence of domestic use in the form of a whirlygig washing line, a children's football goal and play equipment and an area of loose stone providing hardstanding for parking of domestic vehicles.
18. The land is not physically separated from the house and immediate garden. There is an intimate association with the dwellinghouse and adjoining garden and it forms one enclosure with it, indicating that it is part and parcel with the dwellinghouse. Visually, there is nothing to dis-associate it with the dwellinghouse; it is a physically and visually conjoined area with a similar character. The garage would be sited within proximity with the house and would adjoin the existing hardstanding area used for the parking of domestic vehicles. The use or function of the land has been associated with the dwellinghouse for several years and it has been within the same ownership for a significant period.
19. Overall, I am satisfied that the evidence presented in support of the appellant's claim shows that, on the balance of probability, the land was serving occupation of the dwellinghouse in a reasonable useful manner and the proposed garage would fall 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.

Conclusion

20. For the reasons given above and having regard to all other matters raised, I conclude that the Council's deemed refusal to grant an LDC in respect of the proposed garage, single storey side extension, single storey rear extension and dormers was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

S A Hanson

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 April 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed single storey side extension, single storey rear extension, dormers and garage as shown on plans ref: HFSE 8-15/B dated 19.10.20 and HFSE 8-14/C dated 19.10.20 would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class A, Class B and Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

S A Hanson
INSPECTOR

Date: 7 January 2022

Reference: APP/P1615/X/21/3280059

First Schedule

Single storey side extension, single storey rear extension, dormers and garage.

Second Schedule

Land at 2 Harts Farm Stud, Chapel Lane, Redmarley, Gloucestershire GL19 3JF

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: 7 January 2022

by **S A Hanson BA(Hons) BTP MRTPI**

Land at: 2 Harts Farm Stud, Chapel Lane, Redmarley, Gloucestershire GL19 3JF

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Scale: Not to scale

