



The Planning Inspectorate

Appeal Decision

Site visit made on 15 March 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2022

Appeal Ref: APP/M0933/C/21/3284307

Opposite 2, 3, 4, Park Garth, Little Urswick, Ulverston, Cumbria LA12 0PL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Jonathan Steven Horrocks against an enforcement notice issued by South Lakelands District Council.
 - The enforcement notice, numbered 19201, was issued on 25 August 2021.
 - The breach of planning control as alleged in the notice is: Unauthorised change of use of the land from agriculture (Sui Generis) to a builder's yard including storage and distribution of concrete blocks, bricks, stones and equipment (B8) within the area outlined in red on the attached plan which has occurred within the last 10 years.
 - The requirements of the notice are as follows:
 - (A) Permanently cease all commercial activity on the land within the area outlined in red on the attached plan.
 - (B) Permanently remove from the land all concrete blocks, bricks, stones and equipment used in connection with the commercial enterprise.
 - (C) Comply with (A) and (B) above within 13 weeks.
 - The period for compliance with the requirements is 13 weeks.
 - The appeal is proceeding on grounds (b), (c) and (d) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed. See formal decision below.

Matters of clarification

2. The National Planning Policy Framework (NPPF) was revised in July 2021. Where references have been made to any previous version paragraphs, I have considered them on the basis of the corresponding paragraphs in this up-to-date version which are fundamentally the same.
3. There is no appeal on ground (a); that planning permission ought to be granted for the use being carried out on the appeal land. Thus, the merits of the case do not fall to be considered and the development plan policies are not relevant.

Background information

4. The appeal site is located at the southern end of Little Urswick, outside of the development limits of the village. It lies to the south of the appellant's house known as 'Gynring' which is at the junction of Park Garth and Church Road. The eastern, southern and western boundaries are defined by a natural stone/brick wall and the northern boundary is undefined and forms part of the overall 'Gynring' site.

5. 'Gynring' is adjacent to 'Redmayne Hall' and opposite 'Well Head Cottage', both of which are Grade II listed buildings. The whole of the land forming 'Gynring' was transferred into the ownership of the appellant's family in 2007. The title deed plan shows the long narrow section of land stretching to the south, opposite the houses at Park Garth. The title refers to restrictive covenants being placed on the land but no details have been submitted.

6. At the time of my visit I noted various building materials being stored on the site. These included stone, slates, bricks and wooden pallets. There was also a pick up truck and a double axle trailer. I also noted some building materials on the planted area between the appeal site and the appellant's property and around the entrance to the rear of the property. A new slate and stone extension to the house appeared to be almost completed.

7. The Council indicates that on the 6 November 2019, a complaint was received regarding a new access on to the land which had been formed opposite to Nos 2, 3, and 4 Park Garth, Little Urswick. It is indicated that a plastic membrane has been laid and topped with chippings and that it was considered that the land was going to be used as a builder's yard. Council Officers carried out an inspection of the site on 10 February 2020 and noted that concrete blocks were being stored and stockpiled on the site, along with building bricks, roof slates and steel frames. At that time a fork lift was also parked on the site.

8. The Council issued a warning letter to the appellant on 17 April 2020, referring to the alleged breach of planning control. The letter had set out what was considered to be the breach of planning control and what was required to be done by the appellant. However, a further warning letter had to be issued on 3 June 2021, because the first letter had not included a time for compliance, by which the appellant was required to rectify the situation. On 26 July 2021, a reminder letter was issued noting that no action had been taken. However, the appellant had indicated, in a telephone conversation with the Council, that the materials were required in connection with an extension to 'Gynring'.

9. The appellant was later contacted by e-mail by the Council on 2 March 2021 and Officers still considered that the site resembled a builder's yard. However, the appellant was informed that the site would be inspected '*within the coming months*' and that a significant level of materials on the site would have to be removed in order to ensure that enforcement action was not taken.

10. Four months later, on 8 July 2021, officers carried out another site inspection and noted that bricks have been stockpiled on the site and that two vans and a pick-up lorry were parked on the land. One of the vans had signage in the appellant's name stating '*Horrocks Joiners & Builders*'. The LPA then considered it expedient to issue the enforcement notice on 25 August 2021.

The appeal on ground (b)

11. An appeal made on this ground is made on the basis that what has been alleged in the notice has not taken place as a matter of fact. As indicated above the LPA contends that an unauthorised change of use from agricultural land to a builder's yard for the storage of various building materials has occurred.

The gist of the case for the Appellant

12. On behalf of the appellant it is stated that the land is not agricultural and that it is domestic garden which forms part of the residential curtilage of the property 'Gynring'. It is contended that this has been the case since its initial transfer to the appellant's grandfather in 2007, as indicated on the Title Plan & Register. It is stated

that the materials and equipment have been stored on the land in connection with the domestic renovation and extension of 'Gynring' and not in connection with any commercial enterprise and/or activity. It is further stressed that the materials on site match the materials that have been used in the refurbishment and extension of 'Gynring'.

The gist of the case for the Council

13. The Council acknowledges that the land registry document confirms ownership of the land. However, it is stressed that the title does not confirm the established use. It is further indicated that no further evidence has been provided by the appellant to demonstrate that the land in question has been established as being used as part of the residential curtilage to 'Gynring'.

14. The Council refers to the planning application reference SL/2014/0760, whereby permission was granted at 'Gynring', for a 'Two storey rear extension' on 8 October 2014. The Council stresses that the submitted plan does not show the appeal land as being within the approved red line area, which defines the curtilage of the property.

15. The Council contends that the laying of hardstanding, parking of vehicles and the stockpiling of materials are not considered to be necessary for the completion of the works. It notes that the approved extension is approximately 40m to the north-west of the appeal site, and that there is sufficient scope within the residential curtilage (established under application SL/2014/0760) to accommodate the materials.

16. The Council also refers to the evidence showing that the appellant is parking vehicles on the land and specifically two vans and a mini lorry. At a site inspection carried out on the 8 July 2021, it was noted that one of the vehicles was labelled 'Horrocks Joiners & Builders'. It is argued, therefore, that an unauthorised change of use of the land has occurred, which does not benefit from planning permission.

My assessment

17. I agree with the Council that the land registry document confirms ownership of the land. However, it does not establish that it forms part of the curtilage of the dwellinghouse at 'Gynring'. In relation to the Act, the word 'curtilage' has not been defined and decision-makers have to rely on dictionary definitions and to the case law authorities set out over the years. The concept of 'curtilage' is different to 'land use' and 'residential curtilage' is not a use of land as set out in the Use Classes Order (UCO). A residential/garden use of land does not necessarily equate to it falling within the 'curtilage of a dwelling house'. The courts have held that whether or not land falls within the 'curtilage of a dwelling house' is a matter of fact and degree in each particular case.

18. In this case, as well as there being no evidence to demonstrate that the land has been established as being used within the residential curtilage of 'Gynring', the previous application contradicts this assertion. In addition, having seen the site and the physical relationship of the house to the appeal site, it is clearly perceived as a separate parcel of land which is more closely related to the open adjacent agricultural land. As a matter of fact and degree, therefore, I do not consider that the appeal site does form part of the residential curtilage to the house.

19. If the last use was agricultural then its use for the storage of building materials would constitute a material change of use. Alternatively, even if the land had been established as being in residential use as an extended garden to 'Gynring', the use now being carried out would also constitute a material change of use. It follows that even if the change of use was not from an agricultural use, a change of use has occurred. When the notice was served the land was being used for the storage of

building materials. As a matter of fact what is alleged in the notice has occurred and the appeal must, therefore, fail on ground (b).

The appeal on ground (c)

The gist of the case for the Appellant

20. It is confirmed that building materials and equipment have been stored on the land. However it is stressed that these have been for the sole purpose of renovating and extending 'Gynring'. It is contended that the use of the appeal site is not connected to a commercial enterprise and/or activity but is for personal domestic use. Therefore, it is argued that there has not been an unauthorised change of use of the land and that it was under domestic use and remains under domestic use.

The gist of the case for the Council

21. The Council refers again to the Land Registry document which, although confirming ownership of the appeal site, does not confirm the established or lawful use of the land. Again it is stressed that the appellant has not provided any evidence to any further evidence to demonstrate that the land in question has been established as being within the residential curtilage of 'Gynring'. It is contended, therefore, that an unauthorised change of use has occurred.

My Assessment

22. Under this ground of appeal the onus is upon the appellant to demonstrate that what is alleged in the enforcement notice does not constitute a contravention of planning control. Other than the claim that the land is part of the residential curtilage to the dwellinghouse, there is no other evidence submitted. There is nothing to categorically show that appeal site forms part of the curtilage or how exactly it has been used as residential land since purchased by the appellant. Furthermore, as referred to in the ground (b) appeal, the land is perceived as being physically separate from the immediate curtilage of the dwellinghouse.

23. There is no planning permission in place on the land, either for a change of use from agricultural use, or residential land to a use for the storage of building materials and equipment. Also there are no permitted development rights applicable for such a change of use. It follows, therefore, that a contravention of planning control has occurred and the appeal must also fail on ground (c).

The appeal on ground (d)

The gist of the case for the appellant

24. It is indicated that renovation works commenced on 'Gynring' shortly after its transfer to the appellant in 2009. It is stated that the building materials for these works were stored on the site from that time until the present day. It is therefore, argued that the issuing of the notice exceeds the statutory timeframe limit under S171B(3) of the Act and that the use for the continued storage of materials cannot be enforced against by the Council.

The gist of the case for the Council

25. The Council indicates that it is uncertain as to why the appellant has appealed this ground since, if the appellant is of the view that the breach of planning is immune from enforcement action, it raises the question as to why the appellant has appealed under Ground (b). By appealing under Ground (d), the Council contends that this is an acceptance that an unauthorised change of use has occurred.

26. If the development is to be considered immune from enforcement action, it is stressed that the appellant would need to demonstrate that the appeal site has been used residentially, as part of the curtilage to 'Gynring', for a period of ten from the date of the issuing of the notice. This date was 25 August 2021 and, therefore, the appellant would have to provide evidence that the appeal site has formed part of the domestic/residential curtilage since 25th August 2011.

27. The Council refers to the planning permission (SL/2014/0760) granted at Gynring, for a 'Two storey rear extension' on the 8 October 2014. It is indicated that within the approved red line application site, which defines the curtilage of the property, it did not include the appeal site. It is contended, therefore that the residential curtilage for the site was established on 8 October 2014.

28. It is stressed that the appellant has not provided any further information to demonstrate that the appeal site has been used as a domestic curtilage. Therefore, with the curtilage 'Gynring' having been established by the previous planning permission it is argued that the unauthorised change of use was not immune from enforcement action.

My assessment

29. As indicated by the Council, to be successful on this ground the onus is on the appellant to provide evidence to demonstrate that the appeal site has formed part of the domestic/residential curtilage of 'Gynring' since 25th August 2011. Whilst acknowledging that renovation works commenced in 2009, there is no evidence relating to the use of the appeal site at that time. It may well have been used to store some materials linked to the renovations, but there is nothing to show that the land formed part of the residential curtilage of the house.

30. Furthermore, the application for the extension or renovation works was only granted in October 2014 and at that time the residential curtilage was indicated by a red line which clearly did not include the appeal site. There is no evidence to indicate that, at that time, the appeal site formed part of the residential curtilage.

31. For all of the reasons set out above I can only conclude that the appellant has not demonstrated that the land to the south of the house has been used for a continuous 10 year period as part of the defined residential curtilage of 'Gynring'. It follows that the appeal must also fail on this ground.

Other Matters

32. In reaching my conclusions on each of the grounds of appeal I have taken into account all of the submissions by the parties. These include the initial submissions, subsequent statements, any final submissions and the other related documents and photographs. However, none of these carries sufficient weight to alter my conclusions on each of the grounds of appeal and nor is any other factor of such significance so as to change my decision that the appeal should fail.

Formal Decision

33. The appeal is dismissed and the enforcement notice is upheld.

Anthony J Wharton

Inspector