



Appeal Decision

Site visit made on 22 February 2022

by Felicity Thompson BA(Hons) MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2022

Appeal Ref: APP/D2320/X/21/3287938

Silcock Farm, Windmill Lane, Brindle PR6 8NX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Dean against the decision of Chorley Borough Council.
 - The application ref 21/00476/CLPUD, dated 17 April 2021, was refused by notice dated 16 June 2021.
 - 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 'Proposed scheme for a single storey outbuilding to house a pool/gym with maximum dimensions of 20.3 x 8.75m. The proposed building will drain via soaraway and a septic tank located on the property below ground'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under s.192 of the Act is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application, it is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Curtilage

4. Article 3(1) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes, at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
5. There is no statutory definition of 'curtilage', which does not describe a use of land but defines an area of land in relation to a building. What emerges from

the authorities¹ is that the term generally refers to land which serves the purpose of a building in some reasonably necessary or useful manner. In the domestic context it has been held that curtilage means a piece of land attached to a dwelling and forming one enclosure with it, not restricted in size but it must fairly be described as being part of the enclosure of the dwelling to which it refers. Whether or not land falls within the curtilage of a building is a matter of fact and degree to be considered on a case-by-case basis and thus primarily a matter for the decision maker.

6. As established, there are three factors to be taken into account when determining whether land constitutes curtilage, these include the physical layout of the building and attached land, the ownership, past and present; and their use or function; past and present.
7. The relevant date on which to determine the extent of the curtilage is the date of the application, but this involves considering both the history of the land and how it is laid out and used at the time of the application.
8. Silcock Farm is a mid-terrace dwellinghouse with a garden to the front and grassed and paved areas to the rear. There is a gravel access drive which runs to the rear of the appellant's and a neighbouring dwelling and leads to a gravel parking and turning area.
9. The proposed outbuilding would be sited on an area of land beyond the parking area. That area of land is divided from the drive and parking area with a drystone wall which has two large, previously gated, openings.
10. At my visit I could see that the land has a well-maintained appearance, which includes a close mown grass area, the appearance of which is much more like a domestic regularly maintained lawn, that has taken time to establish rather than grazed rough pasture. There is also a greenhouse and raised bed features separated by hard surfacing and planting. Decked areas have also been erected around the pond.
11. Whilst the drystone wall forms a boundary between the land and the original plot, the land is clearly used as one extended garden, the character of which is not dissimilar to those areas closer to and surrounding the dwelling and is not perceived as being separate.
12. Although not necessarily small relative to the size of the dwelling, the land is not disproportionately large given the relatively large size of the original grounds surrounding the dwelling. Furthermore, it is not so large that the furthest extent of it could be said to be unable to have an intimate association with the dwelling. Its use as a cultivated garden, indicated to me that the land clearly has an intimate association with the dwelling, and as a domestic garden it serves the purpose of the dwelling in a reasonably useful manner.
13. The appellant's submission gives a firm indication that the land has been owned by and used for incidental purposes in association with the dwelling for some years prior to the date of the application.

¹ Sinclair-Lockhart's Trustees v Central Land Board [1950] 1 P&CR 195; Dyer v Dorset CC [1988] 3 WLR 213; Skerritts of Nottingham Ltd v SSETR (No. 1) [2000] EWCA Civ 60, [2001] JPL 102; Lowe v FSS & Tendring DC [2003] EWHC 537; Burford v SSCLG & Test Valley BC [2017] EWHC 1493 (Admin)

14. It is not clear how the land was laid out prior to the appellant's occupation, and I note the Council's reference to the land showing no signs of being a cultivated garden in an aerial photograph from 2009. However, a manicured or landscaped appearance is not necessarily needed to show an intimate association with the residential occupation of the dwelling. The fact it is there and serves that purpose is enough.
15. Moreover, that the red line on previous application plans was not drawn around the land does not mean that it was not within the curtilage of the dwelling at the date of this application.
16. Taking all the evidence in the round, I conclude as a matter of fact and degree, that when the application was made the land in question fell within the curtilage of the dwellinghouse.

Whether the proposed outbuilding is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse

17. The onus of proof is on the appellant to show, on the balance of probabilities, that what is proposed is reasonably required for a purpose incidental to the use of the dwelling as a dwelling. This is because there must be a prospect that the nature and scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwelling as such.
18. The proposed building would have a footprint of approximately 175sqm, which the Council states would exceed that of the ground floor of the dwelling. The submitted plans indicate that the internal layout would include a swimming pool, changing room, plant room, store, and seating area. Although the description refers to a gym there is no detail about what this would consist of.
19. Having regard to caselaw², such a generous amount of floorspace does not in itself preclude the lawfulness of an outbuilding. Regard should be had to the use to which it is proposed to put a building and to consider the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse.
20. The physical size of the building in comparison to the dwellinghouse might be an important consideration but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse and answer the question as to whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
21. When evaluating whether the outbuilding is reasonably required for the enjoyment of the dwellinghouse as such, matters such as personal preference are not conclusive factors. An unusually large building will not necessarily be reasonably required just because a householder says it is, and it is for the appellant to show that the building of the proposed size is reasonably required, having regard to all the circumstances.
22. Whilst I acknowledge the appellant's explanation regarding the size of the proposed swimming pool, no explanation has been provided for the design and

² Emin v SSE [1989] JPL 909; Wallington v SSW [1991] JPL 942; Thurrock BC v SSE & Holding [2002] EWCA Civ 226

large size of the proposed building which includes extensive space around the pool, including a seating area.

23. On the particular facts of this case, although the activities proposed fall into categories that, individually, may be incidental to the enjoyment of the dwellinghouse, the space intended to contain the uses seems much larger than necessary for those purposes and I am unable to conclude that the building is genuinely and reasonably required to accommodate the proposed activities. The appellant has not demonstrated that space for a swimming pool and gym, whilst no doubt welcome by them, is reasonably required on such a scale in relation to the host dwelling.
24. The submitted evidence does not show, on the balance of probabilities, that the proposed building would reasonably be required for a purpose incidental to the enjoyment of the host dwelling. The proposed development would not therefore constitute permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.

Conclusion

25. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed single storey outbuilding to house a pool/gym with maximum dimensions of 20.3 x 8.75m 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.

Felicity Thompson

INSPECTOR