



Appeal Decision

Site visit made on 29 March 2022

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 April 2022

Appeal Ref: APP/J2210/X/20/3259064

64 Dargate Road, Yorkletts, Whitstable, CT5 3AE

- 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 refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr & Mrs Michael Irwin against the decision of Canterbury City Council.
 - The application Ref 20/01109, dated 25 May 2020, was refused by notice dated 29 July 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is for existing use of land and buildings within residential curtilage.
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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 extent of the existing use which is considered to be lawful.

Application for costs

2. An application for costs has been made by the appellants against Canterbury City Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this case is whether the Council's decision to refuse the application on the grounds that the buildings do not lie within the residential curtilage of the property was well founded.

Appeal site and surroundings

4. The appeal site is accessed from a residential road and adjoins open agricultural land, also in the ownership of the appellants, between Dargate Road and the A299 Thanet way trunk road. There is a further area of agricultural land in the same ownership that adjoins the bungalow 'Barn End' in Barn Close, a cul-de-sac leading from Dargate Road.
5. The land for which the LDC is sought contains the detached dwelling at No. 64 and various other outbuildings including an open fronted 3 bay garage close to the house, a workshop building constructed of profiled metal sheeting, a portacabin, a large timber shed, an open-fronted barn and another 3 bay storage barn on 2 storeys with external stairs.

6. The appeal site is separated from the agricultural areas to the north-west and south-west by post and wire fencing and metal gates and is divided by a track installed, I am told, by the appellants after they bought the property and which consists of what appears to be type 2 MOT. This track continues across the agricultural land to an existing access adjacent to the A299 although this is marked as 'disused' on site plan 2779/3F.

Procedural matters

7. The appellants are seeking to establish the residential curtilage of their house with a view to confirming that they would have permitted development rights for any qualifying buildings erected on the land designated as such. If the buildings lie within the curtilage and meet the limitations of Class E of Part 1 of Schedule 2 of the General Permitted Development Order 2015 (as amended) (GPDO), they would have deemed planning permission for the erection of the buildings and their use for purposes incidental to the residential use of the dwelling as such.
8. However, it is not within the remit of this appeal to determine whether or not all the buildings presently on the site have such rights under the GPDO. Some appear to have been erected since the appeal was lodged and the drawing no. 2773/3, dated May 2020, (referred to by the appellant as the 'existing building survey plan') was prepared. It is this drawing that the appellant says shows the buildings for which he is seeking a LDC but it has already been agreed that one of the buildings (described as the 3 bay storage barn on drawing 2778/4) exceeds the permitted size set by the GPDO and would not therefore be permitted development. I will therefore firstly consider which land falls within the residential curtilage of the dwelling at no. 64 and then consider whether or not the existing buildings shown on the application plan are located within this curtilage.
9. Curtilage is not a use of land; in relation to planning matters the term serves only to describe a particular area that is associated with a building for the purpose of determining whether the provisions of legislation such as the GPDO and the Planning (Listed Buildings and Conservation Areas) Act 1990 apply to development within it.
10. There is no fixed definition of what can be considered to be curtilage and the courts have found it will be a matter of fact and degree. The case of *Sinclair-Lockhart's Trustees v Central Land Board [1950]* established 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 an integral part of the same even though it has not been marked off in any way*' and '*It is enough that it serves the purpose of the house or building in some necessary or reasonably useful way.*' However, it is also the case that an area of land can be in a residential use without necessarily being part of the curtilage of a dwelling.
11. Of course, if land has been in a non-residential use, bringing it within the curtilage of a dwelling and changing its use to residential would require a grant of planning permission or confirmation of exemption from enforcement action to authorise it. Only once planning permission or exemption had been granted, either through a specific application or the exercise of permitted development rights would the buildings become lawful.

Reasons

12. The area of land that the appellants claim forms the curtilage of the dwelling is marked in red on the plan described as IR00171 SLP red blue. They have also submitted witness statements from several long term residents of the area who recall how this land was used by the previous owner prior to its sale to the appellants in 2019. In my view these statements confirm that the land was all in the same ownership and used as part of the garden directly associated with the property at no. 64 since at least 1993.
13. The Council does not appear to question the validity of these documents, nor does it offer any alternative use for the land to the south-west of the new track other than the claimed residential occupation. It has produced no substantive evidence of its own to contradict that of the appellants. The apparent reasons for considering that all the appeal site is not within the curtilage relate to its size and because it considers that the new track running through the middle of it has formed a new boundary to the curtilage area. It is also claimed that the character of the south-west section is more akin to the surrounding countryside than the lawned garden to the north-east.
14. The site is large but this does not mean that it cannot all be part of the curtilage. As noted above, *Sinclair-Lockhart* found that the extent of curtilage can depend on a number of factors and that physical enclosure is not always necessary. However, in this case, the appeal site is fenced off from the remainder of the land holding and this appears to have been the case for many years.
15. The Council considers that because the new track divides the north-east section from the less manicured section to the south-west, this is an indication that the latter is not now within the curtilage, but I disagree. The track was not evident on aerial photographs prior to 2019 and the series of photographs from 2003 show the whole of the appeal site having a similar character which is clearly distinct from the adjacent sections of agricultural land. The north-west area has always been laid to lawn with the south-western part containing more trees and vegetation but this does not indicate to me that this part of the site was not within the garden or was not part of the curtilage.
16. From all I have seen and read, I consider that all the appeal site was used by the previous owner for purposes directly related to his residential occupation of the dwelling. It was a garden that contained ponds, vegetable plots and fruit trees along with various sheds and outbuildings for storing garden machinery and tools. It is clear that the previous owner was committed to keeping the site in good condition and viewed it as his hobby.
17. Therefore, in my opinion, there is no reason to consider that, despite its size, the appeal site was used as anything other than a domestic garden to no. 64 during the tenure of the previous owner, which continued for over 10 years. The appellants have not changed that use or reduced the curtilage through the installation of the track, albeit clearing and tidying parts of the land in order to make better use of it for their own residential purposes.
18. The submitted evidence consequently leads me to conclude that the appellants are justified in their claim that all the appeal site falls within the curtilage of the dwelling at 64 Dargate Road and that this has been the case for at least 10 years prior to the date of the application.

19. Turning now to the buildings that lie within this curtilage **and** are shown on the plan (27783/F) that the appellants want to be considered in this appeal, it seems to me that, apart from the larger 3 bay barn, they would be permitted development, either through compliance with the size limits of the GPDO or through having been in place for more than 4 years. I make no findings on buildings **not** included on this plan or which have been erected or demolished since the appeal was lodged.

Conclusions

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of residential use of land and buildings at 64 Dargate Road, Yorklets, Whitstable, CT5 3AE 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.

Katie Peerless

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 date of application the use and 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 edged in red on the attached plan has formed the residential curtilage of the dwelling and has done for at least 10 years prior to the date of the application. It is therefore in a residential use as are the garage to the south-west of the house and the workshop shown on drawings 2778/3 rev F and 2778/4, which are developments permitted under Class E of Part 1 of Schedule 2 of the General Permitted Development Order 2015 (as amended).

Signed

Katie Peerless

Inspector

Date: 7 April 2022

Reference: APP/J2210/X/20/3259064

First Schedule

Residential use of the land edged in red in association with the dwelling at 64 Dargate Road. Incidental residential use of the 3 bay garage and the workshop shown on drawing 2778/3F.

Second Schedule

Land at 64 Dargate Road, Yorkletts, Whitstable, CT5 3AE

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 use /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, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. 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.

This is the plan referred to in the Lawful Development Certificate dated: 7 April 2022

Land at: 64 Dargate Road, Yorkletts, Whitstable, CT5 3AE

Reference: APP/J2210/X/20/3259064

Scale: NTS

