



Appeal Decision

Site visit made on 4 May 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 10 May 2022

Appeal Ref: APP/J0405/X/21/3278300

2 Shelduck Close, Watermead, Aylesbury, Bucks, HP19 0WS

- 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 Steve Pitcher against the decision of Buckinghamshire Council - North Area (Aylesbury).
 - The application ref 21/00556/ACL, dated 10 March 2021, was refused by notice dated 4 June 2021.
 - 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 the existing use of the land for parking and garden space.
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Decision

1. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is found to be lawful.

Reasons

2. The application is worded as *"the area to the front of the property adjacent the original drive is used for additional parking and the landscaped area has been maintained as a front garden space all within the curtilage of the original house"*. In essence I take this to be an application for the use of the land as garden area and parking space. In the officer's report it is described slightly differently as *"an existing use of land for parking and garden land to be included in the residential curtilage since at least 2000"*. Whereas the refusal describes it only as *"existing use of additional parking to front on adjacent land"*.
3. It is clear to me the application was for both the parking area and the garden land and that is the description I have used in the heading. Neither party has clearly stated whether they consider the land in question is within the curtilage of the property at No2, but I assume the Council do not think so, otherwise they would have had no reason to withhold the certificate. The eventual goal is to build as garage on the land, but that is not matter before me.
4. The first issue is therefore whether the land is within the curtilage of the dwelling at No2. If it is, then its use for residential purposes, such as parking or as a garden, does not require planning permission. If it is not, then the appellant needs to demonstrate it has been used for 10 years for both parking and as a garden in order for it to be immune from enforcement action.

5. Shelduck Close comes off Brambling and No2 is the second house on the right. There is a house on the corner, adjacent to No2 that faces onto Turnstone Way, another road that comes off Brambling and runs parallel to Shelduck Close so that the corner house and Nos 2 and 4 are sandwiched between the two roads. The front of No2 is given over mainly to parking and is next to the rear garden of the corner house. This leaves a piece of land that lies behind the rear garden of the corner house and adjacent to the parking in front of No2. Shelduck Close has several other, smaller, unclaimed bits of land around the edges of the turning heads that do not seem to be maintained by anybody, and these odd cut-offs are a not unusual result of poor design initially when laying out a large housing estate.
6. The appellant says the land has always been within his curtilage but provides no evidence of ownership. It seems unlikely to me that it was part of the transfer of the property originally as it would create an awkward 'L' shaped front garden wrapping around the back garden of the corner house. It is more likely it was originally intended to be a landscaped corner entrance to the Close, but no-one was ever charged with looking after it. There is no evidence therefore that it has ever been within the curtilage of No2.
7. There is also very little evidence about the use of the land overall. The appellant says he laid the parking area in 2000 and has used it ever since. It is clearly visible in aerial photographs from 2003 and 2006 and is still there today. I have no difficulty in believing that if he laid a hardstanding, he would then use it, and this small portion of the site would seem to have been used for parking for more than 10 years. The rest of the site is dominated in the aerial photographs by a large tree which no longer seems to be there. It is thus impossible to tell if the land has been maintained or not. When I carried out my site visit it was overgrown with shrubs, brambles and weeds up to waist height and so has clearly not been maintained recently.
8. However, there is a difference between maintaining a plot of land and actively using it for another purpose, such as a garden. There would need to be something more than the occasional cutting back of any growth once a year to amount to a material change of use. There is no evidence of such a use being undertaken and no evidence of any use of the land as a garden.

Conclusion

9. There is clear evidence of the use of part of the land for parking, but not of the rest for garden space. I shall therefore issue an LDC restricted to the parking area only. In that respect the appeal succeeds.

Simon Hand

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 10 March 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black and labelled 'A' on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: the land has been used for the parking of vehicles for 10 years or more.

Signed

Simon Hand

Inspector

Date: 10 May 2022

Reference: APP/J0405/X/21/3278300

First Schedule

The parking of vehicles.

Second Schedule

Front parking area at 2 Shelduck Close, Watermead, Aylesbury, Bucks, HP19 0WS

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 10 May 2022

by Simon Hand MA

Land at: 2 Shelduck Close, Watermead, Aylesbury, Bucks, HP19 0WS

Reference: APP/J0405/X/21/3278300

Scale: Not to Scale

