



Appeal Decision

Site visits made on 4 October 2022 and 6 December 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2022

Appeal Ref: APP/L5810/X/21/3278848

Half Mile Taggs Island, Hampton TW12 2HA

- 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 Ms. Anna Scaife against the decision of the Council of the London Borough of Richmond Upon Thames.
 - The application ref 21/0412/PS192, dated 4 February 2021, was refused by notice dated 1 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 a certificate of lawful use or development is sought is the erection of a mobile shepherd's hut.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990, as amended, which relates to an application for a Lawful Development Certificate (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.
3. I attempted to carry out a site visit on 4 October 2022, but the appellant was unable to attend at short notice. The site visit was rescheduled and completed on 6 December 2022.

Main Issue

4. The main issue is whether the decision by the Council to refuse to grant an LDC is well-founded.

Reasons

5. The application was made under section 192(1)(b) of the Act which relates to proposed development in the form of operations. The appellant submits that the erection of a mobile shepherd's hut would amount to permitted development under Schedule 2, Part 1, Class E (Part 1, Class E) of the Town and Country Planning (General Permitted Development) (England) Order 2015. For that reason, she considers that the development does not require express planning permission.

6. Part 1, Class E permits the provision within the curtilage of a dwellinghouse of a building incidental to the enjoyment of a dwellinghouse. However, Part 1, Class E also sets out at E.1 (c) that development is not permitted by Class E if, amongst other things, any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.
7. The Council describes Half Mile as a houseboat. Consequently, in the Council's view it is not a dwellinghouse and it does not benefit from permitted development rights under Part 1, Class E. Furthermore, the Council argues that the shepherd's hut would be situated on land forward of a wall forming the principal elevation of the houseboat. On this basis the first question for me to answer is whether or not Half Mile is a dwellinghouse for the purposes of Part 1, Class E. In the event that I find that it is a dwelling house, the second question is whether or not the shepherd's hut accords with Class E.1 (c).

Whether Half Mile is a dwellinghouse?

8. The term 'dwellinghouse' is not defined in the Planning Act 1990 but in practice it is used to denote the use of a building as a dwellinghouse and/or the building itself. There is no dispute between the parties that Half Mile is used as a dwelling, the issue is whether or not it is a building. It was established by the Skeritts judgement¹ that the primary factors which are decisive of what is a building are size, permanence and physical attachment. Both parties have referred to these factors.
9. Half Mile is a two storey structure situated off Taggs Island in the River Thames. It is positioned on the river and accessed by a permanent walkway. I noted during my site visit that there are cables which attach the structure to the river bank and that services are provided via pipes and cables. There is no means of propulsion or navigation.
10. In relation to size, Half Mile is a substantial structure. Whether it was constructed on site or elsewhere and then towed into position, its size and scale points to it being a building, however this is not determinative.
11. The appellant says that Half Mile is not easily moveable like a houseboat. The lack of any means of propulsion or navigation visible on the site visit support this argument. There is no evidence to suggest that Half Mile has been moved since it was built/positioned. That, together with the appellant's confirmation that it is her permanent address, point to the structure being a building in terms of its permanence.
12. In respect of physical attachment Half Mile is linked to the land by a permanent walkway and the cables and services did not seem to incorporate any quick release mechanisms to allow them to be easily detached. The appellant says that the structure is permanently fixed to the riverbed.
13. The Council say that houseboats normally float and are moored with ropes which allow them to be moved easily. In this respect it refers to an appeal decision relating to the construction of a car port and summer house adjacent to the houseboat Murre at Conyer Quay, Conyer² (the Conyer's Quay appeal).

¹ Skeritts of Nottingham Ltd v SSETR (No. 2) [2000] 2 PLR 102)

² Appeal Ref: APP/V2255/C/19/3225341

14. In the Conyer's Quay appeal the Inspector also refers to the use of ropes and concludes that such a degree of attachment and permanence was not sufficient for the houseboat in that case to be defined as a building. However, whilst Half Mile may float, it is attached to the land (which includes the river bed) by permanent means. This undermines the Council's reasoning and its reliance on the Conyer's Quay appeal decision.
15. The factors of size, permanence and attachment were also considered by an Inspector in respect of an appeal decision for an extension to Riverine which is also on Taggs Island.³ In that case, which has been brought to my attention by the appellant, the Inspector considered that Riverine was essentially a permanent feature because it 'would only be moved if it had to be rather than in the normal course of events'. He also noted that Riverine 'is physically attached by metal brackets to fixed piles and not simply tethered with a rope or hawser as a boat would be'. This appeal decision weighs in favour of the appellant's case, given the similarities with Half Mile.
16. Drawing all of these points together I find that on the balance of probability Half Mile is a building which is in use as a dwellinghouse. As such Half Mile benefits from permitted development rights including those under Part 1, Class E.

Whether the shepherd's hut would be situated on land forward of a wall forming the principal elevation?

17. Both parties refer to the definition of 'principal elevation' of a dwellinghouse which is set out in full in the Permitted development rights for householders Technical Guidance (the Technical Guidance).
18. In this case Half Mile has two key elevations, one facing the river and the other facing the road. In relation to the river frontage there is access directly to/from the river by boat and there are windows overlooking the river. The road only serves the properties on Taggs Island and it is a private space. Although the appellant refers to the river appearing as the main highway for the properties along this stretch of Taggs Island, there is no evidence to suggest that the residents primarily use boats to access the property or that visitors and providers of services such as postmen/women arrive by those means.
19. By contrast, the side of Half Mile facing the road also contains an entrance door to the property and abuts the garden which provides pedestrian access. It contains windows overlooking the garden such that the dwelling is dual aspect.
20. Whilst the appellant's arguments are cogent in respect of the importance of the river frontage, there can only be one principal elevation to a house for the purposes of the application of the Technical Guidance and I must take a view as to which forms the principal elevation.
21. In this case, on the basis of the evidence before me and my observations during the site visit, I find that the road facing elevation is, particularly, in terms of its appearance and function, the principal elevation. The shepherd's hut is proposed to be between the dwellinghouse and the road, thus it would be situated on land forward of a wall forming the principal elevation.

Conclusion

³ Appeal Ref: APP/L5810/X/11/2151249

22. The proposed shepherd's hut would be on land within the curtilage of a dwellinghouse. However, it would not accord with condition E.1 (c) of Part 1 Class E because it would be situated on land forward of a wall forming the principal elevation. For that reason, the proposed development would not be permitted development and express planning permission is needed for it.
23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a mobile shepherd's hut at Half Mile Taggs Island, Hampton TW12 2HA 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.

Sarah Dyer

Inspector