



Appeal Decision

Site visit made on 20 September 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 January 2023

Appeal Ref: APP/H1515/X/21/3277546

Legh Cottage, Horseman Side, Navestock, RM4 1DN

- 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 Paul Buckley against the decision of Brentwood Borough Council.
 - The application Ref 20/01182/S191 is dated 19 August 2020
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is applied for is described as '*Domestic storage, private workshop, and recreational purposes incidental to the occupation of Legh Cottage*'
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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 existing use which is considered to be lawful.

Background

2. Legh Cottage is a dwellinghouse situated towards the front of large piece of land, all under the owner's control. Evidence suggests that this large L-shaped building, of agricultural form and design, was erected some eleven years ago. Although neither main party has provided details it would appear that it was built without a formal grant of planning permission. Nonetheless, as a building, constituting operational development, it can be considered to enjoy immunity from enforcement action under planning legislation.
3. The outstanding matter in this case is the purpose for which the building is used for. Although the said building is sited on the wider grassland beyond Legh Cottage's defined curtilage, as indicated on the submitted drawing no. 8814-01A, the appellant maintains that it has always been used for means incidental to the residential use of Legh Cottage.
4. The Council, in determining the application, considered that the information submitted is insufficient to substantiate that the building was constructed for the purposes of use as a domestic store and workshop, for a period of time exceeding the four years prior to the date of the application ie. since 19 August 2016.
5. Accordingly, on this basis, the Council decided not to issue the lawful development certificate applied for.

Main Issue

6. The main issue in this appeal is whether, on the balance of probability, the building and its use was lawful within the meaning of section 191(2)(a) of the Town and Country Planning Act 1990.

Reasons

7. In an appeal under s195 of the 1990 Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits and/or impacts of that applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.
8. First and foremost, s171B(3) of the 1990 Act, as amended, indicates that where there has been a breach of planning control consisting of a change of use of any building, other than as a single dwellinghouse, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
9. At my site visit I inspected the building at issue and witnessed the storage within of domestic paraphernalia, tools and mower machinery for tending the grassland. The appellant says that the building has been used to store a tractor and grass cutting equipment, in connection with a recreational football pitch to the rear. Although the building's layout does not necessarily accord with the internal arrangement shown on the illustrative plan no. 8814-09, that is not to say that the building as a whole has been used for purposes different to that claimed.
10. I note, with reference to the location plan (drawing no 8814-01A) that the appellant considers that the building falls outside Legh Cottage's residential curtilage. From my site visit observations, I noted that its curtilage can be defined as a small area of land to the side and rear of the dwelling, and which is bounded by a hedgerow.
11. Given, therefore, that the building falls outside the dwelling's curtilage and, notwithstanding this, the appellant claims that it is used for purposes incidental to the dwelling, I will discuss the concept of residential curtilage in the planning context.
12. The term 'curtilage' is not defined in the 1990 Act nor in any other legislation, including the Town and Country Planning (General Permitted Development) (England) Order (the GPDO). Its meaning and application is derived, instead, from court judgements.
13. The leading authority on this issue is *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P. & C.R. 195, where it was held that:

"The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way."
14. In terms of what can be reasonably considered as residential curtilage it was held in *Dyer v Dorset CC* [1989] that curtilage constitutes a piece of ground attached to a dwellinghouse and forming one enclosure with it; thereby the area attached to and containing a dwellinghouse and its outbuildings. The case of *McAlpine v Secretary of State for the Environment* [1995] did not depart from the above

judgement save for the mention of it being constrained to a small area around a building, whilst the Court of Appeal in *Secretary of State for the Environment, Transport, and the Regions v Skerritts of Nottingham* [2000] decided that the definition of a curtilage in relation to a building must remain a question of fact and degree in each case.

15. The 'planning unit' and curtilage are two separate and entirely different concepts, and one must not be confused with the other. It is important in the planning context not to use the word 'curtilage' loosely to refer to the entirety of the surrounding land forming part of a property.
16. The actual curtilage of a house may cover only part of the land owned or occupied with that building, as is the case here. The terms 'curtilage' and domestic 'garden' are not interchangeable; curtilage defines an area of land in relation to a building, and not a use of land.
17. The leading case in which the planning unit was defined is *Burdle v SSE* [1972] 3 All E.R. 240. Here it was judged that there may be three possible situations which can be identified when considering the planning unit; one being where there is a single main purpose, to which any secondary activities are ancillary or incidental. In such instances the whole unit of occupation is the planning unit. I consider that the planning unit at Legh Cottage is a case in point, and my findings are reinforced by the fact that the site in its entirety has been ringed red on the location plan.
18. The Council makes reference to Class E of Part 1 of Schedule 2 of the GPDO which is concerned with outbuildings erected within the curtilage of dwellinghouses. However, as already mentioned, the building lies on the land outside Legh Cottage's residential curtilage, but within the red-ringed application site. Accordingly, I am unclear what the Council considers to be the relevance Class E holds in this particular case or, for that matter, why the building's size has any bearing on the case.
19. The fact that it is used for purposes incidental to the residential use, including the claimed utilisation as a workshop for personal use reasonably suggests that the building has an essential connection with Legh Cottage's Class C3 use, and the requirements of the appellant in tending the land under his ownership and control.
20. Weighing all the evidence up, the factors which apparently influenced the Council in it reaching its decision, including a site visit carried in 2019 showed very little domestic paraphernalia or agricultural equipment stored within, or any evidence its use as a workshop, are considerations which have taken precedence over the wider picture and the likelihood of the building's function and usage in the circumstances.
21. I find that the building, and the use to which it is put, enjoys immunity from enforcement action due to the period of time which has elapsed since its erection in 2012. The Council accepts that the building has existed throughout this period and, despite its reservations as to how the building is used – although the Council cannot describe anything other than a scepticism, rather than having firm evidence to the contrary – the balance of probabilities, by way of the appellant's evidence adduced, proves the appellant's case.
22. No material change of use of the land has therefore occurred.
23. For the reasons given above I conclude, on the evidence before me that, on the balance of probability, the use was lawful on 19 August 2020 within the meaning of section 191(2) of the Town and Country Planning Act 1990.

24. Accordingly, I will exercise my powers under section 195(2) of the Act as amended.

Timothy C King

INSPECTOR

Lawful Development Certificate

APPEAL REF. APP/H1515/X/21/3277546

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)

ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 19 August 2020 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown edged in red 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 time period for enforcement had expired and the use did not contravene any of the requirements of any enforcement notice or breach of condition notice then in force.

Timothy C King

INSPECTOR

09 January 2023

Date: 09 January 2023

First Schedule

'Domestic storage, private workshop, and recreational purposes incidental to the occupation of Legh Cottage'.

Second Schedule

Legh Cottage, Horseman Side, Navestock RM4 1DN

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 as amended.
2. 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, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. 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 attached to the Lawful Development Certificate dated: 09 January 2023

by Timothy C King BA (Hons) MRTPI

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Scale: Do not scale

