



Appeal Decision

Hearing held and site visit made on 21 February 2023

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 March 2023

Appeal Ref: APP/D2510/X/20/3253383

Station Business Park, Main Road, Stickney, Lincolnshire PE22 8EE

- 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 Station Business Park against the decision of East Lindsey District Council.
 - The application ref S/169/01797/19, dated 30 September 2019, was refused by notice dated 10 December 2019.
 - 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 a workshop/storage building, associated hard standing and vehicular access.
 - This decision supersedes that issued on 10 May 2021. That decision on the appeal was quashed by order of the High Court.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

Preliminary Matters

2. In a lawful use or development (LDC) appeal, the planning merits of the proposed development are not relevant. My decision rests on the application of relevant planning law and judicial authority to the facts of the case.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a Certificate of LDC is well-founded.
4. There is no dispute between the appeal parties that the proposed development satisfies all the conditions set out in Classes H and J, Part 7 of Schedule 2 of the GPDO¹, with the exceptions of H.2.(a) and J.(a). These require that the development is within the curtilage of an existing industrial building or warehouse. Therefore, the crux of the matter is whether the proposed development falls within the curtilage of an existing industrial building or warehouse.

Reasons

5. In an LDC appeal, the onus of proof is on the appellant to show that the development would be lawful if begun on the date of the application. The relevant test is the balance of probability.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

6. The land within the red line identified on the site location plan encompasses several buildings, ponds, areas of associated hard standing and a landscaped area. All the land within the red line is owned by the appellant and has been for some considerable time. The land located within the red line is not required to identify the curtilage of any building located within it.
7. The term 'curtilage' should not be confused with the planning unit. While they may cover the same area on the ground, this will not always be the case, and it does not, in any event, mean they are the same thing. Nonetheless, while the planning unit was considered at length in the earlier decision, it is not a determining factor in identifying the extent of a building's curtilage.
8. The extent of the curtilage of a building is a question of fact and degree, and it is therefore a matter for the decision maker, subject to normal principles of public law. There are several authorities on the matter of curtilage, which are set out below for clarity's sake.
9. *Sinclair-Lockhart's Trustees*², established that land may be regarded as being within the curtilage of a building if "...it serves the purpose of the house or building in some necessary or reasonably useful way". *Methuan-Campbell*³ established that, to be curtilage, land must be "...so intimately associated with [the building] as to lead to the conclusion that the former in truth forms part and parcel of the latter". This is the relevant test.
10. While concerning a listed building, but equally applicable to any building, *Calderdale*⁴ set out three important factors that must be considered:
 - (i) *The physical layout of the building and land;*
 - (ii) *Their ownership, past and present; and*
 - (iii) *Their function, past and present.*
11. Other factors include, the relative size of the building and its curtilage, whether the building or land would be ancillary to the main building (*Skerritts*⁵), or the degree to which the building and claimed curtilage fall within one enclosure (*Sumpton*⁶). These factors are relevant considerations, but they are not determinative.
12. *Blackbushe Airport Ltd*⁷ reinforced that the approach to be taken was to ask not whether the land and building comprise part and parcel of the same unit, but whether the land is part and parcel of the building as a matter of fact and degree. Andrews LJ found that "*on a proper reading of [Methuen-Campbell], the conclusion that the land and building together constitute an integral whole is the consequence of applying the intimate association...test*". It goes on to confirm that there is also no requirement for the land to be "ancillary" to a building to fall within its curtilage.
13. There is no dispute that the existing industrial building or warehouse ('the existing building') upon which the proposal relies is the building labelled

² *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195

³ *Methuan-Campbell v Walters* [1979] 1 QB 525

⁴ *Attorney General, ex r Sutcliffe v Calderdale Borough Council* (1983) 46 P&CR 399

⁵ *Skerritts of Nottingham Ltd v SSETR* [2001] QB 59

⁶ *Sumpton v London Borough of Greenwich* [2007] EWHC 2776 (Admin)

⁷ *Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd* [2020] EWHC 959 (Admin), [2021] EWCA 398, [2020] JPL 1359

'Industrial and Warehousing' on the plan entitled 'LAYOUT PLAN 1:500'. The existing building provides storage and workshops used in relation to the appellant's buying, adapting, and selling of American touring caravans business. It is located opposite the site entrance, beyond an area of hard standing used for vehicular parking and display of the American touring caravans. The hard standing continues past the northern elevation of the existing building to provide access to the rear yard, workshops, and other parts of the site.

14. The proposed development is shown located on land north of the existing building, beyond the area of hard standing, between a pond and landscape area. The land, where the development is proposed, was referred to as 'the appeal site' and 'the field' during the Hearing. For clarity, I shall call it 'the field'.
15. The field is bounded by trees and hedgerows, and it is roughly surfaced with vegetation. Access to the field is via the hard standing that surrounds the existing building. It is separated from the existing building by a public right of way ('PROW'), which crosses the appeal site. PROW often cross land that is in private ownership. Demarking the PROW with fencing and hedging, where commercial operations are taking place on the land being crossed, is not uncommon. The presence of fencing and hedging, to define the route of the PROW, does not form a means of enclosure intended to separate the existing building from the field. Even if it did, this would not be determinative.
16. At the time of the application, the field contained '*a pond and interceptor channel used for surface water drainage from the business park industrial/warehouse buildings.*'⁸ and a landscape area. The pond and associated engineering operations were created in 2010, without the benefit of planning permission. The landscape area was provided to comply with the requirements of the enforcement notice subsequently issued on 17 December 2010 ('the EN').
17. The Council claim the pond was created as a wildlife pond. However, the plan submitted with the discharge of conditions application in June 2010 clearly shows its purpose as a '*new fish pond/sustainable urban drainage scheme*'. Furthermore, the subsequent email correspondence also confirms its use as a sustainable urban drainage scheme ('SUDS'). While the pond provides a habitat for wildlife, its main purpose is to take surface water from the existing building. The pond and associated engineering operations therefore serve a functional purpose to the existing building. While this functional purpose does not serve the use to which the building is being put, it does not have to.
18. Furthermore, the EN did not require the removal of the '*engineering operations to create a pond*', which had been alleged. The pond and its associated engineering operations, including the drainage pipes from the existing building, are therefore treated as having been granted planning permission by virtue of s173(11)⁹. Using the pond for the purpose for which it was created would not represent a material change of use of the field.
19. The access to the building serves as the only means of access to the field. The pond, via the underground pipes and interceptor channel provides a physical

⁸ *Herbert Hiley v SSLUHC & East Lindsey District Council* [2022] EWHC 1289 (Admin) - paragraph 6

⁹ Section 173(11) of the Town and Country Planning Act 1990 as amended

and functional connection between the field and the building. The landscape area, in conjunction with the field's boundary hedgerows, contribute to screening the existing building from the adjacent countryside. The field therefore has a reasonably necessary and functional association with the building. The use of the field may not be ancillary to the building, but it does not have to be.

20. There is no suggestion that the existing building, to which the land is claimed to be curtilage, is not lawful. The building and land are adjacent to one another, and in the same ownership. The building and land have a reasonably necessary and functional association. There is no dispute that the field is relative in size to the existing building, and I see no reason to disagree. There is no legal requirement for the field to be ancillary to the existing building. The matter of enclosure is addressed above in paragraph 15.
21. Taking all these factors together, I find that the field is so intimately associated with the existing building that the former in truth forms part and parcel of the latter. The land and building together therefore constitute an integral whole. For these reasons, the field was curtilage to the building at the time the application was made.

Other matter

22. There was a suggestion that the proposed development could contravene the requirements of the EN. The fourth 'step' of the EN states, '*The pond must only be used for private use only and not for any commercial use whatsoever*'. The content of the EN is not before me. However, this step seeks to control the future use of the pond, which goes beyond what is required, in the case of the EN, to remedy the injury to amenity. Nevertheless, the requirements of the notice do not change my findings that the field was curtilage to the building on the date of the application.

Conclusion

23. 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 the proposed building associated hard standing and vehicular access 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.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Whale Counsel for the appellant

Keith Baker Agent for the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Stephanie Hall Counsel for the Council

Ryan Dodd Senior Planning Enforcement Officer

Jo Parker Enforcement Services Manager

Martha Reece Legal Services

DOCUMENTS

H1 Email from Keith Baker to The Planning Inspectorate, dated 24 August 2022

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 30 September 2019 the operations described in the First Schedule hereto and shown on the submitted 'PROPOSED LAYOUT 1:500', 'Proposed Elevations' and 'Proposed Layout' plans in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the Plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed building associated hard standing and vehicular access benefit from deemed planning permission granted by Classes H and J, Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

M Madge

Inspector

Date: 3 March 2023

Reference: APP/D2510/X/20/3253383

First Schedule

Workshop/storage building, associated hard standing and vehicular access

Second Schedule

Land at Station Business Park, Main Road, Stickney, BOSTON PE22 8EE

IMPORTANT NOTES – SEE OVER

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.

Plan 1

This is the plan referred to in the Lawful Development Certificate dated: 3 March 2023

by M Madge Dip TP MA MRTPI

Land at: Station Business Park, Main Road, Stickney, BOSTON PE22 8EE

Reference: APP/D2510/X/20/3253383

Not to Scale

