



Appeal Decision

Site visit made on 6 March 2023

by Katie Peerless Dip Arch RIBA

an Inspector appointed by the Secretary of State

Decision date: 21 March 2023

Appeal Ref: APP/M2270/X/21/3288739

Milford House, Penshurst Road, Speldhurst, TUNBRIDGE WELLS, TN3 0PH

- 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 William Michael Marshall against the decision of Tunbridge Wells Borough Council.
 - The application ref 21/02615/LAWPRO, dated 29 July 2021, was refused by notice dated 6 October 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 garden shed.
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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 proposed operation which is found to be lawful.

Appeal Site

2. The appeal site is on land attached to the residential property of Milford House in the rural village of Speldhurst. The house stands in generous grounds that consist of formal garden areas delineated by planting beds and pathways, a more informal and utilitarian strip of land to the western boundary and a tennis court which is separated by a grassed bank of earth from an area of lawn apparently used as a golf practice area.
3. The proposed shed would be located to the south of the tennis court close to the earth bank towards the rear boundary of the property which has agricultural land beyond.

Planning History

4. Planning permission¹ was granted in 1997 for a change of use of the land on which the tennis court is sited to '*residential curtilage to construct a hard surface tennis court with 2.75m chain link fence*'. This permission included condition 3 which removes permitted development rights for garden buildings '*within that part of the residential curtilage created as a result of this permission*'. The Council and the Appellant now dispute whether the 'red line' area for this application included the land on which the proposed shed would be sited.

¹ Ref: 97/00861/FUL

5. In 2017 an application for a lawful development certificate² (LDC) was granted for the '*retrospective change of use of agricultural land to extended garden land*'. The site plan for this application mainly covers the land to the east of the property and includes the 'golf course' area. To the southwest it abuts the red line area of the tennis court planning permission, and includes the grass bank and the area where the shed is proposed to be located.

Main Issue

6. I consider the main issue in this case is whether the decision of the Council to refuse the application was well founded in respect of whether or not the location of the proposed shed falls within the residential curtilage of Milford House and would be development permitted by Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Reasons

7. The Appellant believes that although the proposed site for shed is outside the 'red line' area of planning permission area 97/00861/FUL it is nevertheless still within the curtilage of Milford House as it is claimed that the 2017 LDC has established that the land included in that application is now within its residential curtilage.
8. The Local Planning Authority (LPA) correctly states that Condition 3 of the tennis court permission would restrict any buildings on the land covered by this application, which it believes includes the appeal site. It also submits that use as a residential garden does not confirm that the land is also within the curtilage of the house.
9. From the site plan attached to the 1997 application, it appears clear that the 'red line' does not include the site of the proposed shed, and condition 3 would not apply to the current LDC application. The appellant has produced an overlay of the site plans of the planning permission and the current LDC application which demonstrates this. Even though the 1997 plan is roughly drawn at a small scale, the position of the shed is clearly sited in the triangular section of land below the area shown for the tennis court.
10. However, at that time, the application form shows that the development applied for was a hard surface tennis court and fencing and no change of use was mentioned. It was the LPA that changed the wording and subsequent description of the development to include the reference to curtilage. This demonstrates that the LPA considered that the land bounded by the red line was within the curtilage of the dwelling.
11. I agree that the fact that the land included in the LDC application is now confirmed as being residential garden does not necessarily mean that it is within the 'curtilage' of the house. Curtilage is not a use of land, despite the wording of the 1997 permission; rather it is a defined area that has a connection to a building in a particular way. There has been much discussion in the courts and through previous appeal decisions on how curtilage should be defined but, in essence, it is a matter of fact and degree dependent on the circumstances of an individual case. Relevant matters include ownership, past and present, the physical layout of the land in relation to the building and its use or function, past and present.

² Ref: 17/00728/LDCEX

12. In this case it seems to me that, while the 'golf course' area may or may not be considered curtilage, the area of land where the appellant wants to site the shed can be considered to be so. This land is a strip that lies immediately adjacent to the tennis court, which is established curtilage, and it is rendered physically distinct from the land to the east by the raised bank of grass running north/south. There is no physical barrier running east/west between the tennis court and the rear boundary fence and, consequently, the area of land that includes the grass bank and the site of the shed is seen as part and parcel of the tennis court area.
13. Therefore, it seems to me that the area on which the shed would be sited is residential curtilage to Milford House and would be development permitted by Class E of Part 1 of Schedule 2 of the GPDO.

Conclusion

14. 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 erection of a garden shed 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 29 July 2021 the operation 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 on which the proposed shed would be located fall within the curtilage of Milford House and is therefore development permitted by Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Katie Peerless

Inspector

Date: 21 March 2023

Reference: APP/M2270/X/21/3288739

First Schedule

Second Schedule

Land at Milford House, Penshurst Road, Speldhurst, TUNBRIDGE WELLS, TN3 0PH

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.

