
Appeal Decision

Site visit made on 28 March 2023

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2023

Appeal Ref: APP/P0240/X/22/3294937
90 Peddars Lane, Standbridge LU7 9JD

- 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 & Mrs Andrew Medicott against the decision of Central Bedfordshire Council.
 - The application Ref CB/21/01010/LDCP, dated 7 March 2021, was refused by a notice dated 20 September 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is construction of new domestic outbuilding for a gym and home office.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have dealt with another appeal on this site, Ref: APP/P0240/W/22/3303745. That appeal is the subject of a separate decision.

Main Issue

3. Section 192(2) of the Town and Country Planning Act 1990, as amended (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or began at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.

Reasons

4. The proposed development is a single storey detached building for use as a gym/home office and on land at 90 Peddars Lane. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for purposes incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure is permitted by Class E, Part 1, Schedule 2, Article 3 of the Town

and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO), subject to the restrictions set out in E.1, E.2 and E.3. However, the Council does not consider that the proposed building benefits from the aforementioned rights, as the proposed building would not be within the curtilage of 90 Peddars Lane.

5. Curtilage defines an area of land in relation to a building and not a use of land. There is no all-encompassing, authoritative definition of the term curtilage. The Technical Guidance¹ defines “curtilage” for Part 1 purposes as land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.
6. Generally, to fall within the curtilage of a building, it is enough that the land serves the purpose of the building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way. However, other considerations, such as past and present relationships of ownership and function, must be taken into account. In the absence of any statutory or authoritative definition, it was held in *Dyer*² that the term bears its restricted and established meaning, a small area forming part and parcel with the house or building which it contained or to which it was attached.
7. The relevant authorities were reviewed in *McAlpine*³ and the following characteristics of curtilage defined: a) it is confined to a small area about a building; b) intimate associated with land which is undoubtedly within the curtilage is necessary to make the land under consideration part and parcel of that undoubted curtilage; and, c) physical enclosure is not necessary. I have also had regard to the Council’s reference to *Burford v Secretary of State for Communities and Local Government & Anor* [2017] EWHC 1493 (Admin) where it was reaffirmed that there are three factors that should be taken into account concerning the determination of the curtilage of a building: 1. The physical layout of the building and attached land; 2. The ownership, past and present; and 3. their use or function, past and present.
8. Having regard to all the authorities it is apparent that whether something falls within a ‘curtilage’ is a question of fact and degree and, thus, primarily a matter for the decision maker. What is apparent is that the relevant date on which to determine the extent of the curtilage is the date of the application for the LDC, but this involves considering both the past history of the land and how it is laid out and used at the time of the application. It is possible for the extent of curtilage to change over time.
9. The dwelling known as 90 Peddars Lane is the end property in a short terrace of three dwellings constructed within roughly rectangular plots, set back from the road with frontage drives and enclosed rear gardens. It was noted on my site visit that there is a gate at the end of No 90’s original rear garden providing access to the adjoining property’s rear garden, this would appear to be a right of way via a pathway around No 90. No 90’s original garden is predominantly laid as lawn with a pathway running through it. There are bedding plants and shrub planting close to a rear patio area and a detached

¹ Permitted Development Rights for Householders: Technical Guidance, September 2019.

² *Dyer v Dorset CC* [1988] 3 WLR 321.

³ *Mc Alpine v SSE* [1995] JPL B43A

garage adjacent to the property. This original garden has a close association with the dwelling in terms of its function as well as being physically and visually related to it. A small portable swimming pool has been erected at the end of this part of the garden and beyond that, with access from the garden path and through an arched trellis, is the former meadow land acquired by the appellants in 2006/7 and now lawfully used as garden land. It is on this land that the garden building would be sited.

10. The former meadow land is extensive in size. It is approximately double the size of No 90's original plot and wraps around the rear gardens of the adjoining properties. It is now laid as lawn, enclosed by mature hedgerows, and at the time of my site visit there was some garden furniture on it, together with a dog run, trampoline, badminton net, washing line and a shed. There is no dispute between the parties that the land is used as an extended garden for No 90 and a lawful development certificate was granted by the Council in 2018 for its use as residential garden.
11. However, although the former meadow land is now in residential use and contiguous with No 90's original rear garden, by reason of its scale and location I do not consider it to have an intimate association with the dwellinghouse. Indeed, until 2006/7 it was in a different ownership and utilised for different purposes. Even though there is no longer a physical boundary separating the former meadow land from No 90, and the land now functions as a garden, it is remote from the dwellinghouse. It is not an area which I consider to contain the house, or on which the house sits, but more of an adjunct.
12. I recognise that many properties in the area have large plot sizes. However, the extent of a dwelling's curtilage differs depending on the individual circumstances of each case. As set out above, whether something falls within the curtilage of a dwellinghouse depends on a number of different factors. Thus, the plot size of another property in the locality has little weight in my consideration of this appeal.
13. I conclude, from the evidence before me and observations on my site visit that, as a matter of fact and degree, the land where the building would be sited is not within the curtilage of the dwellinghouse for Part 1 purposes.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use of development for the construction of new domestic outbuilding for a gym and home office 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.

Elizabeth Pleasant

INSPECTOR