



Appeal Decision

Site visit made on 18 April 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Appeal Ref: APP/V2635/X/22/3294156

The Stockyard, Creake Road, Syderstone PE31 8SG

- 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 Dr William Mason against the decision of Kings Lynn & West Norfolk Borough Council.
 - The application Ref 21/01930/LDP, dated 4 October 2021, was refused by notice dated 22 December 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 described as '*Construction of a cart shed as per the attached drawings*'
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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 development which is considered would be lawful.

Preliminary Matters

2. 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 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.

Main Issue

3. The main issue in this appeal is whether, on the balance of probability, the operations described on the application form would have been lawful if instituted at the date the application was made, and whether the Council's decision to refuse the LDC was therefore well founded.

Reasons

4. The Council, in considering the application, concluded that the land upon which the proposed cart shed would be built did not constitute residential curtilage relating to the dwelling to the eastern end of the Stockyard site. This was created from permitted barn conversion schemes.
5. The access to the site is situated towards its western end, off Creake Road. The access track bends round into a straight, hard-surfaced driveway which leads directly to a large, open parking area adjacent to the dwelling. Lines of trees

bound the driveway on both its sides. The drawings show that the proposed cart shed would be positioned to the north of the access point, ahead of the bend in the driveway. I did note at my site visit that a large shed had been recently erected parallel to the driveway, close to the site's boundary with Creake Road.

6. In 2021 an application was made for a LDC to confirm that the whole area of the site west of the open parking area mentioned, up to the western boundary with the farm track, had been used as garden land associated with the site's dwelling for a period in excess of the past ten years. The appellant's case is that, on this basis, the said land transfers itself to residential curtilage and, with this, comes householder permitted development rights. If so, the cart shed could then be potentially built as an outbuilding under Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended, and no planning permission would be required.
7. In the circumstances, and due to the appellant's approach, I will examine, in the planning context, the concept of residential curtilage and also the matter of associated garden land.
8. The term 'curtilage' is not defined in the 1990 Act nor in any other legislation, including the GPDO. Its meaning and application is derived, instead, from court judgements.
9. Historical 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."
10. 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 SSE* [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 *SSETR 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.
11. The essential point, in the relationship to the dwelling to its curtilage, is that this must be functional, and not merely spatial. This was addressed in the judgement of *Methuen-Campbell v Walters* [1979] 1 QB 525 where it was held that for land to fall within the curtilage of a building there should be an intimate association.
12. Curtilage defines an area of land in relation to a building, and not a use of land. It is not fixed for all time; its physical extent is readily capable of changing at any time. From the Court of Appeal's judgement regarding the case of *Sumption v LB Greenwich & Rokos* [2007] EWHC 2776 (Admin) it has become clear that land can very easily be incorporated into curtilage.
13. However, land can only be treated as part of the curtilage of a building if its use, as part of the planning unit comprising the dwelling and the land occupied with it, is lawful. Indeed, until such time as its use becomes lawful this land cannot be regarded as coming within the curtilage of the house, even if it would otherwise meet both the functional test set out in *Sinclair-Lockhart's Trustees* and the 'single enclosure' test derived from *Dyer v Dorset CC*. In this particular instance,

as mentioned, lawfulness was confirmed by way of the LDC issued in 2021 for the use of a corresponding area of land at the site as garden land.

14. Turning now to the appeal site itself the expansive area of the site immediately north of the driveway, leading to its hedgerowed western boundary, is grassed. The appellant has provided a series of photographs, some aerial, which show that in 2001/2002 this area of the land was levelled, earthed and subsequently laid to lawn. The aerial photograph from 2006 is the first to show this transformed as tended garden area.
15. The 'planning unit' and curtilage are two separate and entirely different concepts, and one must not be confused with the other. As regards the actual planning unit the whole unit of occupation is the planning unit. In the recent judgement of *Hampshire CC v SSEFRA* [2020] it was held that the correct test to apply was whether the land was so intimately associated with a building that the land formed part and parcel of the building.
16. In this case, the area to the west of the house is something of a lengthy grassed expanse but there is only one definable planning unit. Further, whilst 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, it is apparent here that, whilst the terms 'curtilage' and domestic 'garden' are not interchangeable, the land at issue in this appeal can be reasonably considered as the property's curtilage. The aerial photograph dated September 2018 and also the photograph dated April 2021, both provided by the appellant, perfectly illustrate this and reinforce my findings. Further, I consider the evidence to be both precise and unambiguous.
17. In applying the provisions of the GPDO to this land, beyond the hedged boundary close to where the proposed cart shed building would be sited is a farm track rather than the curtilage to another dwelling. In noting that the proposed building's ridge height would be to a maximum of 4m, its eaves height would not exceed a height of 2.5m, and that the other provisos under Class E would appear to be satisfied, when bringing all the factors together, I conclude that the proposal would represent permitted development.
18. I conclude that the Council's decision to refuse to issue the LDC was not well founded. The appeal thereby succeeds.
19. Accordingly, I shall therefore exercise my powers under section 195(2) of the 1990 Act, as amended.

Timothy C King

INSPECTOR

Lawful Development Certificate

APPEAL REF. APP/V2635/X/22/3294156

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(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 4 October 2021 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 192(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed operations described in the first schedule would be permitted development within the terms of Article 3 and Class E within Part 1 and Schedule 2 of the Town and Country Planning (General Permitted Development (England) (Order) 2015 as amended.

Timothy C King

INSPECTOR

Date: 26 June 2023

20. First Schedule

Construction of a cart shed

21. Second Schedule

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CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.
4. 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

This is the plan attached to the Lawful Development Certificate dated: 26 June 2023

by Timothy C King BA (Hons) MRTPI

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Scale: Do not scale

