



Appeal Decision

Site visit made on 29 June 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3RD JULY 2023

Appeal Ref: APP/J0405/X/21/3287004

34 Wellcroft, Ivinghoe, Buckinghamshire LU7 9EF

- 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 Miss Jane Hampson against the decision of Aylesbury Vale District Council.
 - The application Ref 08/00760/ACL, dated 17 March 2008, was refused by notice dated 3 July 2008.
 - 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 the erection of a detached garage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Section 192(2) of the Act makes it clear that decision makers must be satisfied that development described in the application would be lawful if instituted or begun at the time of the application. In this case, the LDC application was made on 17 March 2008, and, in that regard, it is necessary that I consider the circumstances and legal position that existed at that time. Indeed, in cases being considered under section 192 of the Act, the question is whether the proposed use or operation would be lawful if 'instituted or begun' on that date. So, where an LDC is being sought for development on the basis that it would be permitted development, regard should be had to the legal position on the date of the application. At this time, the Town and Country Planning (General Permitted Development) Order 1995 was in force.
3. The Planning Practise Guidance (PPG) states that LDC applications must be accompanied by sufficient factual information and evidence for decision makers to decide the application. Without sufficient or precise information, decision makers may be justified in refusing a certificate. This does not preclude another application being submitted later if more information can be produced. The PPG states that '*the applicant is responsible for providing sufficient information to support an application*'.

4. For the avoidance of doubt, I make clear that the planning merits of the proposed garage are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether it has been demonstrated that on 17 March 2008 the proposed garage fell within the curtilage of the dwellinghouse known as 34 Wellcroft, Ivinghoe, Buckinghamshire, LU7 9EF taking into account Class E of Part 1 of Schedule 2 of the Town and County Planning (General Permitted Development) Order 1995 (the 1995 Order) and, if so, that it would meet the permitted development requirements of E.1. (a) to (f).

Reasons

6. Class E of Part 1 of Schedule 2 of the 1995 Order relates to '*the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure*'. In order for the proposed garage to be permitted development on 17 March 2008, under Class E of the aforementioned 1995 Order, I must have sufficiently precise and unambiguous evidence from the appellant to demonstrate that at this time it would have been sited within the '*curtilage of the dwellinghouse*' known as 34 Wellcroft, Ivinghoe, Buckinghamshire, LU7 9EF.
7. Comments are made by the appellant in the form of a letter to the local planning authority, dated 15 May 2008, stating that '*the land is used as garden and for parking of my car and those of visitors of my house*', that there is no physical or functional distinction between the land and other land belonging to the dwelling, that the land is not fenced from the rest of the alleged garden and forms one enclosure with the dwellinghouse, and '*the land was sold to me as a residential garden and is registered as one land parcel together with the rest of my garden*'. The appellant also says that '*as part of my deeds I have a sworn statement from the previous owners stating that they used the land for parking for 12 years or more*'. I have not been provided with a copy of the aforementioned sworn statement.
8. The application was made on 17 March 2008 and hence more than fifteen years has passed since this time. There is no time limit in terms of the right of appeal for the refusal of an LDC application. Nonetheless, given the significant passage of time, I am unable to rely on what I was able to see on my site visit. I cannot be certain if what I was able to see on the site visit equates to what existed on 17 March 2008. This makes my assessment of what was the curtilage of 34 Wellcroft on 17 March 2008 particularly difficult in terms of determining this appeal.
9. There is no statutory definition of curtilage. The courts have determined that curtilage can be judged to be land that serves the purpose of the house or building in some necessary or reasonable useful way and has an intimate association with the building so that it forms part and parcel of such a building. Whether land falls within a curtilage of a building is a matter of fact and degree and in the case of *Adrian Burford V SSCLG and Test Valley BC* (2017) EWHC

1493 (admin) the judge identified curtilage as being '(i) *the physical layout of the listed building and structure; (ii) their ownership past and present and (iii) their use or function past or present*'.

10. The appellant alleges that the land has been used as a residential garden and specifically for the parking of her car and those of visitors to the house. This is not supported by any photographs on or before 17 March 2008 or any statutory declarations or sworn statements. Furthermore, this claim is not corroborated by any other interested parties. In fact, the occupiers of some neighbouring properties indicate that the land has not been used by the appellant as a garden for parking her cars and that there is no evidence that the land serves a purpose associated with 34 Wellcroft in some reasonably necessary or useful manner.
11. However, the representations appear to mainly relate to timescales that post-date 17 March 2008. The occupier of No. 2 The Baulk says '*I have lived on The Baulk for 9 years and during that time I have never seen the appellant park her vehicle on the land. Previous to the current owner of No. 5, the occupier parked his vehicle on this land too. This, to me, proves that the appellant does not need this as parking for herself and her family as they park on the road outside their house and on their driveway*'. I am not certain what the occupier of No. 2 The Baulk means when she says '*previous to the current owner of No. 5*' or what timescale this relates to. Consequently, the third-party appeal representations do not enable me to reach a precise conclusion in respect of this appeal.
12. The onus is, however, on the appellant to satisfy me that on the balance of probabilities and, as a matter of fact and degree, on 17 March 2008 the proposed garage would have been positioned on land that forms part of the curtilage of 34 Wellcroft. In this case, I have very little information from the appellant or indeed any other interested parties to reach an unambiguous view about this matter. For example, I have not been provided with historic photographs of the site, have no sworn statements or statutory declarations relating to use of the land up to 17 March 2008 (e.g., from those that allegedly used the land for parking, a children's play area or as a compost heap) and have no documents which show past and present ownership of the land up to 17 March 2008. In respect of the latter issue, it is of note that the occupier of No. 2 The Baulk says, '*it looks like a completely separate piece of land, which I understand was in fact bought separately in the past*'.
13. As a matter of fact and degree, and on the balance of probabilities, for the above reasons I conclude that the evidence before me is not sufficiently precise and unambiguous to enable me to conclude that on 17 March 2008 the proposed garage would have been positioned on land which was within the curtilage of the dwellinghouse known as 34 Wellcroft. Therefore, I cannot find that the proposed garage was permitted development having regard to Class E of Part 1 of Schedule 2 of the 1995 Order. Given this finding, it has not been necessary for me to consider whether the proposed garage would meet the permitted development requirements laid out in E.1. (a) to (f) of the 1995 Order.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a garage

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.

D Hartley

INSPECTOR