



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2023

Appeal Ref: APP/J0405/X/22/3306777
33 Willow Drive, Buckingham MK18 7JH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Richard Morey against the decision of Buckinghamshire Council (LPA).
 - The application Ref 22/02389/CPL, dated 4 July 2022, was refused by notice dated 1 September 2022.
 - 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 extend vehicle access by approx. 0.5m².
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal form indicates that the application was made under S191 of the Act. However, the application form and the LPA's decision were based on an application under S192. I proceed on the same basis.

Main Issue

3. The planning merits of what is proposed are not open to me for consideration. The main issue is whether the LPA's decision to refuse to grant an LDC was well-founded.

Reasons

4. The appeal site comprises a detached dwellinghouse located on a corner plot. It is proposed to extend the driveway to the front of the property by excavating and resurfacing part of the footpath.
5. Article 3(1) of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for the classes of development described as permitted development in Schedule 2. Class B of Part 2 of Schedule 2 describes the formation, laying out and construction of a means of access to a highway which is not a trunk road or classified road is permitted development, where that access is required in connection with development permitted by any Class in Schedule 2.
6. The development would involve the construction of a means of access to the highway by making provision for vehicles to cross from the highway onto the

driveway. Willow Drive is not a classified road or trunk road. The proposed access is required to serve an extension to the existing hard surface driveway for the parking of vehicles. Development consisting of the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such is permitted development under Class F of Part 1 of Schedule 2. The development would therefore be permitted development under Class B of Part 2 if the extended hard surface would be permitted development under Class F of Part 1.

7. The LPA argues the hard surface would not be within the curtilage of the dwellinghouse and thus the development would not be permitted under Class B. The GPDO does not define the term 'curtilage'. The Permitted Development for Householders: Technical Guidance 2019 says that the term 'curtilage' for the purposes of Part 1 of the GPDO means, "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."
8. Case law has established that to fall within the curtilage of a building, it is enough that land serves the purpose of a building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way. Other considerations, such as past and present relationships of ownership, size and function must also be taken into account.
9. The driveway extension would take place on land which presently forms part of the public footpath. The land sits outside of the red line boundary of the appeal property as depicted on the submitted plans. Whilst there is no demarcation or enclosure between the front driveway and the footpath, the land functionally and physically is separable from the dwellinghouse. Moreover, the appellants submitted plans point towards the land being outside their ownership. As a result, I consider the land upon which it is proposed to construct an extended driveway does not fall within the curtilage of the dwellinghouse.
10. Consequently, the proposed hard surface would not be permitted development under Class B of Part 1. Subsequent to that, the access would not be required in connection with development permitted by any Class in Schedule 2. The means of access would not, therefore, be permitted development under Class B of Part 2 of Schedule 2.
11. In conclusion, the development would not have been granted planning permission by Article 3(1) of the GPDO. In the absence of any evidence that any other planning permission was granted for the development, the development would not have been lawful at the date of the LDC application.

Conclusion

12. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposal to extend the vehicle access by approximately 0.5m² was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in S195(3) of the 1990 Act as amended.

J Whitfield

INSPECTOR