



Appeal Decision

Site visit made on 30 May 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 24th July 2023

Appeal Ref: APP/X0360/X/22/3302140

Scarletts Farm Cottage, Scarletts Lane, Wokingham, Hare Hatch RG10 9XF

- 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 & Mrs T Ward against the decision of Wokingham Borough Council.
 - The application ref 221218, dated 15 April 2022, was refused by notice dated 7 June 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 erection of a garage, garden store and domestic workshop, formation of hardstanding.
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Decision

1. The appeal is dismissed.

Summary of Decision

2. The appeal site does not form part of the curtilage to the dwelling known as Scarletts Farm Cottage, principally on account of its degree of physical and functional separation from the dwelling. Consequently, the appeal site cannot benefit from the permitted development rights conferred by Article 3(1) and Classes E and F of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO). Even if I had concluded otherwise, the relevant Class E permitted development rights would have been removed by earlier planning permissions granted in connection with the property. In turn, the Council's refusal to grant a certificate of lawful use or development in respect of the development was well-founded, and the appeal should fail.

Applications for Costs

3. The Council and the appellants have each submitted an application for costs against the respective opposing party. These applications are the subject of separate decisions.

Background and Preliminary Matters

4. As this appeal relates to an application for a Lawful Development Certificate, the planning merits of the proposed development are not relevant. It is also important to highlight that the burden is on the appellant to demonstrate, on the balance of probability, that the relevant criteria of the permitted development rights conferred by Article 3(1) and Classes E and F of Part 1, Schedule 2 of the GPDO have been met with regard to the proposal.

5. The Council issued a Lawful Development Certificate (LDC) in March 2022¹ in respect of the appeal site, for the continued use of land as residential garden. The LDC was issued on the basis that the appellants had demonstrated the appeal site had been used as residential garden in connection with Scarletts Farm Cottage (Cottage) for a consecutive period of over ten years. In turn, the appellants contend that the appeal site now forms part of the curtilage to the Cottage and can therefore benefit from the permitted development rights conferred by Article 3(1) and Classes E and F of Part 1, Schedule 2 of the GPDO. Subject to a number of parameters, Class E permits the provision of buildings incidental to the enjoyment of a dwelling house, within the curtilage of that dwelling house. Class F permits the provision of hard surfaces incidental to the enjoyment of a dwelling house, again within the curtilage of that dwelling house.
6. Notwithstanding the above, if the appeal site does fall within the curtilage of the Cottage, the Council contends that the Class E permitted development rights have been removed by earlier permissions granted in connection with other development at the Cottage. Indeed, Article 3(4) of the GPDO says that planning permission cannot be conferred under the GPDO where the relevant permitted development rights have been withdrawn by a planning condition.
7. In particular, the following permissions are referenced, all of which are understood to have been implemented:
 - Planning permission reference F/2003/8927 dated 16 May 2003 (2003 Permission) granted permission for a side extension and detached double garage to the Cottage. Condition 7 of this permission states "Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no garages, sheds, swimming pools or other outbuildings permitted by Class E of Part 1 of the second Schedule of the 1995 Order shall be erected within the curtilage of the dwelling house hereby permitted without the written permission of the Local Planning Authority".
 - Planning permission reference F/2005/3793 dated 11 April 2005 (2005 Permission) granted permission for the erection of a car port to the side of the garage at the Cottage. Condition 5 of this permission states "Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no garages, sheds, swimming pools or other outbuildings permitted by Class E of Part 1 of the second Schedule of the 1995 Order shall be erected within the curtilage of the dwelling house hereby permitted". It is worth highlighting that Informative 3 to the 2005 Permission states "the applicant is reminded that the paddock area to the rear of the dwelling does not constitute part of the residential curtilage to the site". This paddock area is the same area of land that now constitutes the appeal site.
 - Planning permission reference F/2014/2078 dated 5 December 2014 (2014 Permission) granted permission for a single storey rear extension to form a garden room at the Cottage. Condition 4 of this permission states: "Notwithstanding the provisions of Classes A, B, C, D, E, F and G of Part 1 of

¹ Ref 220338 dated 17 March 2022

the Second Schedule [of] the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any Order revoking or re-enacting that Order with or without modification), no buildings, enlargement or alterations permitted shall be carried out without the express permission in writing of the local planning authority”.

8. Conversely, the appellants argue that the restrictions on permitted development rights set out in each of these conditions would not extend to the appeal site, as these permissions were granted before the appeal site became part of the curtilage to the Cottage, pursuant to the approval of the LDC in March 2022.

Main Issues

9. In this context, the main issues are:

- whether the appeal site forms part of the curtilage of the residential dwelling known as Scarletts Farm Cottage;
- whether permitted development rights conferred by Article 3(1) and Classes E and F, Part 1 of Schedule 2 of the GPDO have been removed in respect of the appeal site by earlier planning permissions; and
- if applicable, whether the development would be required for a purpose incidental to the enjoyment of the Cottage as a residential dwellinghouse.

Reasons

Curtilage

10. When considering the extent of a building’s curtilage, regard must be had to three principal factors in respect of the relevant land. These factors concern the building/land’s physical layout, the ownership position (past and present) and its use or function (past and present)².
11. In this instance, the appeal site comprises a broadly triangular piece of land which sits to the east of the Cottage. The Cottage, which is a large detached dwelling, benefits from a separate detached car port and separate garage, both of which sit to the north-east of the principal dwelling. The immediate garden to the Cottage wraps around its eastern and southern sides.
12. In terms of ownership, both the Cottage and the appeal site are understood to be owned by the appellants, so the appeal site is linked to the Cottage in this regard. The LDC granted in March 2022 confirms that the appeal site is used as residential garden to the Cottage, which demonstrates some degree of functional link to the residential use of the dwelling.
13. Nonetheless, the area of garden to the west of the fence which separates the appeal site from the Cottage is extensive in its own right, and includes an outdoor swimming pool, large areas of lawn and a separate patio with seating area. Functionally, these areas are closely linked to the domestic use of the Cottage, and clearly form part of the property. Conversely, the appeal site comprises a large area of mown grassland, with the only evident domestic paraphernalia being a set of football goalposts. This suggests that the appeal

² As established in *HM Attorney-General ex rel Sutcliffe & Rouse Hughes v Calderdale BC* [1983] JPL 310

site is not properly integral to the domestic use of the Cottage nor its garden, which significantly weakens the functional link between the two.

14. Whilst the appeal site can be accessed via a gate from the Cottage's immediate garden area, there is also a separate gated access from the appeal site to the lane which runs along the southern side of the property. The proposed area of hardstanding surrounding the garage and workshop is shown on the application plans (MLP/02) to extend out to this separate gated access. Irrespective of its current usage, the proposed garage and workshop are depicted as taking access via this separate gated access, without any reliance on the internal access from the immediate garden surrounding the Cottage. This means the proposed garage and workshop could function independently from the Cottage, which further weakens the functional link between the two.
15. In physical terms, the appeal site is clearly demarcated as a distinct and separate piece of land. Indeed, it is bordered on all sides by a mixture of timber fencing and hedgerow, including along the boundary it shares with the immediate garden area which wraps around the Cottage. It therefore appears physically and spatially separate to the Cottage and its immediate garden. Moreover, whilst the appeal site can be accessed via a gate from the Cottage's immediate garden, there is no direct access between the dwelling itself and the appeal site. This amplifies the degree of physical separation between the two.
16. In turn, I consider that the appeal site lacks a sufficient physical and functional relationship with the Cottage to be considered part of its curtilage. This finding is consistent with the principle established in the *Methuen-Campbell* case³, which said for land to fall within the curtilage of a building, it must be so intimately associated with the building to support the conclusion that it forms part and parcel of the building.
17. In terms of the LDC granted by the Council in March 2022, this merely confirmed that the use of the appeal site as residential garden, as at the date of application, was lawful. However, this cannot be conflated with the appeal site being subsumed into the residential curtilage of Scarletts Farm Cottage at the date of approval of the LDC, which is an entirely separate consideration. As set out in the *Burford*⁴ case, "all that the CLEUD determined was that the Site may lawfully be used for purposes incidental to the enjoyment of the dwelling-house. The CLEUD did not consider whether the land was within the curtilage of the dwelling-house". The same is true in this case. In turn, the existence of the LDC has no definitive bearing on the extent of curtilage to the Cottage and does not alter my conclusion in this regard.

Earlier Permissions

18. Notwithstanding my conclusion above, the 2003 Permission and the 2005 Permission have removed permitted developments set out in Class E of Part 1, Schedule 2 of the GPDO in connection with the Cottage in some way or another. The 2014 Permission has removed permitted development set out in Classes E and F of Part 1, Schedule 2 of the GPDO. Having each been implemented, these permissions are understood to remain extant. The conditions therefore run with the land and remain enforceable.

³ *Methuen-Campbell v Walters* [1979] 1 QB 525

⁴ *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin)

19. The condition attached to the 2003 Permission restricts the permitted development rights available under Class E by reference to the "curtilage of the dwelling house". Curtilage is not defined, whether in the condition itself or within any informative attached to the permission. As highlighted, curtilage must be determined with regard to the various factors outlined above, and is not limited or constrained by the extent of land shown within the associated red line plan to the relevant planning application at the time.
20. In turn, the reference to curtilage should be construed in accordance with its ordinary meaning, as opposed to the curtilage at some particular point in time. This means that if the appeal site were now to form part of the curtilage to the Cottage, irrespective of the position at the time of the relevant permission, it follows that the permitted development rights under Class E have been removed in respect of this land. Irrespective of my conclusion with regard to the first main issue, the appeal would therefore fail in any event.
21. In terms of the Class F rights, condition 4 of the 2014 Permission does not expressly refer to the curtilage of the appeal property, and does not expressly refer to the laying of any hardstanding. Given that I do not have the application plans relating to the 2014 permission before me, I draw no conclusions as to whether the Class F rights have been removed in respect of the appeal site. However, the relevant question under section 192 of the 1990 Act is whether the operations as described in the application would be lawful. Taken as a whole, they would not be because of my conclusions on Class E.

Incidental to Enjoyment of Dwelling House

22. The third main issue would only be applicable if I had concluded in favour of the appellant with regard to the first two main issues. However, given I have concluded that the appeal site does not fall within the curtilage to the Cottage, the appeal site cannot benefit from the permitted development rights conferred by Article 3(1) and Classes E and F of Part 1, Schedule 2 of the GPDO. Moreover, even if the appeal site was within the curtilage of the Cottage, the relevant Class E permitted development rights would have been removed by the earlier planning permissions.
23. In turn, having concluded as I have, it is immaterial whether or not the proposed development would be required for a purpose incidental to the enjoyment of the Cottage, noting that planning merits are not relevant to the determination of a LDC application. I have therefore not considered this matter further.

Conclusion

24. 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, garden store and domestic workshop, together with the formation of hardstanding, 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.

James Blackwell

INSPECTOR