



Appeal Decision

Site visit made on 18 July 2023

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/N4720/X/23/3314251

Croft Cottages, Aberford Road, Bramham, Wetherby LS23 6QW

- 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 and Mrs Heaton against the decision of Leeds City Council.
 - The application ref 22/06546/CLP, dated 26 September 2022, was refused by notice dated 12 December 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 the erection of a detached garage.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. While the Council's decision notice and the appeal form refer to the proposed erection of a detached outbuilding, the application form and plans refer to and show the proposed erection of a garage. The plans provided show the proposed building being used for the parking of vehicles i.e., a garage. I therefore find the description on the application form to be accurate and I shall proceed on that basis.
3. To clarify, the red line on a site location plan accompanying an application for planning permission does not have to encompass the whole of a planning unit nor does it denote the curtilage of any building shown within its confines. Furthermore, any conditions subsequently imposed on an application for planning permission relate to the land within the red line, unless they are Grampian conditions.

Reasons

4. The **main issue** is whether the Council's refusal to issue an LDC is well founded. This turns on whether the appellant can show, on the balance of probability that the proposed erection of a garage would benefit from express planning permission. The burden of proof rests with the appellant and the material date is the date of the application, 26 September 2022.
5. Class E, Part 1 of Schedule 2 of the GPDO¹ permits the erection of buildings within the curtilage of the dwellinghouse incidental to the enjoyment of that dwellinghouse, subject to limitations and conditions. The dwellinghouse to which permitted development rights are to be afforded needs to be identified.

¹ Town and Country Planning (General Permitted Development) Order 2015 as amended

6. The appellant claims that "*Croft Cottages is a single residential dwelling*", "*Application 21/07121/FU was approved for the extension and alteration of 1 and 2 Croft Cottages to form a single dwelling which in its own right did not require planning permission*" and application 21/07121/FU "*has been lawfully implemented and the permission formed a single cottage, with one planning unit and one curtilage being created*". There is no evidence to show that the two former dwellings were converted into a single dwellinghouse before the lawful implementation of application 21/07121/FU. Furthermore, I saw during my accompanied site visit that significant building works were ongoing to what had been the former two dwellinghouses. The agent verbally confirmed that these works were those approved by application 21/07121/FU. I saw the building had no roof and various openings within the walls where windows and doors could presumably be installed. Furthermore, the two-storey extension was incomplete, again having no roof, doors or windows.
7. In the absence of evidence to the contrary, the construction works to convert the building to a single dwellinghouse had not been completed at the material date. The courts have held that to benefit from permitted development rights, there must be a dwellinghouse in existence at the material date. The building need not be inhabited but it should be sufficiently intact to reasonably support the description of a dwellinghouse. Having regard to the evidence provided, what I saw on site and the agent's confirmation that the ongoing construction works are those granted by application 21/07121/FU, a single dwellinghouse has not been shown to exist at the material date. An 'under construction' dwellinghouse is not sufficient for the purposes of the GPDO to grant permitted development rights. For this reason, I find that a single dwellinghouse did not exist on the material date to which permitted development rights for the proposed garage could be afforded.
8. Conversely, if I had found that the lawful implementation of application 21/07121/FU meant that the land formed curtilage to a single dwellinghouse, the proposed garage would have to be considered against the limitations set out in Classes E.1 and E.3. The proposed garage meets all the limitations set out in Class E.1. However, class E.3 states "*In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building...would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse*". Conservation areas are identified as article 2(3) land in the GPDO.
9. The building containing the two former dwellings is located within the designated Bramham Conservation Area, although their associated land is not. If I had found that there was a single dwellinghouse, as granted by application 21/07121/FU, it would be the extended dwellinghouse. The plans provided show that part of the proposed garage would be parallel to the side wall of the two-storey rear extension of the dwellinghouse. Part of the garage would therefore be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse. In this circumstance, the proposed garage would not constitute permitted development.
10. Alternatively, the land was formerly occupied by two dwellinghouses, 1 and 2 Croft Cottages. Those dwellings would have benefitted from permitted development rights until such time as their lawful use was superseded by the

lawful implementation of application 21/07121/FU. Even if this occurred after the material date, there is nothing before me to show the extent of each of those dwellinghouses' gardens or their associated curtilages.

11. I have been told that the land where it is proposed to erect the garage is the subject of an LDC for the use of land "*attached to a house and forming one enclosure with it*". From the limited information provided, it is unclear whether the description in that LDC was intended to establish the use of the land as garden to 1 and/or 2 Croft Cottages, some other house or for some other use, bearing in mind that 'curtilage' is not a land use. Evidence relating to the former two dwellinghouses and their respective gardens or curtilages is therefore imprecise, and it is not possible to determine, on the balance of probability, whether the proposed garage could have been erected within the curtilage of one or other of those two dwellings at the material date.
12. Having regard to the available evidence, the appellant has failed to show what dwellinghouse existed at the material date and whether it had the benefit of permitted development rights. In the absence of such information and on the balance of probability, the proposed erection of a garage, as shown on the submitted plans, has not been shown to benefit from express planning permission at the material date.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development in respect of the proposed 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.

M Madge

INSPECTOR