



Appeal Decision

Site visit made on 26 September 2023

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2023

Appeal Ref: APP/P1133/X/23/3316074

24 Broadridge Close, NEWTON ABBOT, TQ12 1YE

- 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 Darren Sale against the decision of Teignbridge District Council.
 - The application ref 23/00030/CLDP, dated 7 January 2023, was refused by notice dated 26 January 2023.
 - 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 a proposed change of use of detached outbuilding (garage) to living/office use; change of garage door to uPVC door and window.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt I should explain that the planning merits of any use or operations are not relevant and not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.
4. Although explicitly stated in the LDC application that the change to the garage door to a uPVC door and window forms part of the proposed works, the Council has not included this in the wording of the decision although reference is made to Drawing Number 24-01 V1 Proposed – Garage Conversion. For the avoidance of doubt I have determined this appeal on the basis of the description of the works stated by the appellant.

Main Issue

5. I consider the main issue to be whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

6. In determining whether the proposed conversion of the garage to living/office space would be lawful; the starting point is the consideration of the extent of the domestic curtilage of 24 Broadridge Close. This is to establish whether the

development would come within the scope of permitted development rights set out in Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. This covers the provision of buildings and other development within the curtilage of a dwelling.

7. The Technical Guidance 'Permitted Development Rights for Householders' (MHCLG September 2019) indicates that curtilage "is land which forms part and parcel with the house. Usually it is an 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. The appellant acknowledges that curtilage is not a use of land and that there is no definitive legal definition of curtilage. Whether land falls within the curtilage of a dwelling is a matter of fact and degree and a judgement on the part of the decision maker.
9. In determining the extent of a domestic curtilage, regard should be had to the three tests of firstly, the physical layout of the building and the land or building said to be within the curtilage; secondly, ownership past and present; and thirdly, the use or function (past and present) applied.
10. The appellant's dwelling is semi-detached two storey house. Adjacent to it is a block of six single garages, with the appellant's garage adjacent to the boundary of his house at No 24. The garage is at a higher level relative to the garden and is separated by a retaining wall and fence. There is no direct access from the appellant's house/garden to the garage as pedestrian access is via the footpath on the public highway. I note that the appellant states that access from the garden to the garage driveway could be achieved by removing the wall, but that is not a situation that exists at the present time.
11. Physical enclosure is not necessary but the degree to which the building and claimed curtilage fall within one enclosure is relevant as a test of physical layout. Although adjacent, the house and the garage are not within the same enclosure.
12. The garage is in a separate planning unit to that of the appellant's house and forms part of a larger planning unit with the other five garages. It is physically distinguishable from the house by way of its relationship in terms of levels and boundary walls and as a matter of fact and degree, this excludes the garage from the curtilage of the dwelling. The garage is not part and parcel with the house.
13. The appellant's title deeds show that the dwelling and garage form part of the same ownership and it is clear that there is an intimate association between the dwelling and the garage in terms of its use for the storage of household items, etc, but these factors do not outweigh the conclusion I have reached on the physical layout.
14. Accordingly, the benefits of Class E permitted development rights cannot apply to the appellant's proposals for the garage.

Conclusion

15. 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 proposed change of use

of detached outbuilding (garage) to living/office use; change of garage door to uPVC door and window, 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.

P N Jarratt

INSPECTOR