



Appeal Decision

Site visit made on 12 December 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 17 January 2024

Appeal Ref: APP/R1845/X/23/3321790

Hill Farm, Organs Hill, Rock, Kidderminster DY14 9ST

- 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.
 - The appeal is made by Mr Jonathan Stackhouse (Prime Oak) against the decision of Wyre Forest District Council.
 - The application ref 23/0092/CLP, dated 8 February 2023, was refused by notice dated 11 April 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is described as a proposed single storey detached annexe outbuilding comprising home office, home gym and home cinema/games room.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
3. A certificate of lawful use or development (LDC) is not an application for planning permission and the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case. The onus is on the appellant to show that on the balance of probabilities that, had the development commenced on the date of the application, it would have been lawful.

Main Issue

4. This is whether the Council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the proposed outbuilding would benefit from planning permission granted by Article 3(1) and Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

5. Class E of Part 1, Schedule 2 of the GPDO permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to

the enjoyment of the dwellinghouse as such. This is subject to certain exceptions and limitations. While it was not a point of issue raised by the Council in its reason for refusing the LDC, it is necessary to consider whether or not the land where it is proposed to site the annexe outbuilding is within the curtilage of the dwellinghouse for the purposes of Class E. This matter is addressed by both the Council and the appellant in their appeal submissions.

6. There is no all-encompassing definition of the term curtilage. The Technical Guidance¹ defines curtilage for Schedule 2, Part 1 purposes as 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. 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.
7. A curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration. The extent of the curtilage of a building is a question of fact and degree, and it is therefore a matter for the decision maker, subject to normal principles of public law. There are several authorities on the matter of curtilage, which are set out below for clarity.
8. *Sinclair-Lockhart's Trustees*² established that land may be regarded as being within the curtilage of a building if "...it serves the purpose of the house or building in some necessary or reasonably useful way". *Methuan-Campbell*³ established that, to be curtilage, land must be "...so intimately associated with [the building] as to lead to the conclusion that the former in truth forms part and parcel of the latter". In the case of *Burford*⁴ the three tests laid down by Stephenson LJ⁵ were reaffirmed and applied. The judge identified relevant factors to be '(i) the physical layout of the building and structure; (ii) the ownership past and present and (iii) the use or function of the land or buildings, past and present'.
9. *Blackbushe Airport Ltd*⁶ reinforced that the approach to be taken was to ask not whether the land and building comprise part and parcel of the same unit, but whether the land is part and parcel of the building as a matter of fact and degree. Andrews LJ found in the Court of Appeal that "on a proper reading of [Methuen-Campbell], the conclusion that the land and building together constitute an integral whole is the consequence of applying the intimate association...test".
10. The detached dwellinghouse is set amid farm buildings and agricultural land. Access to the house winds its way from the public highway, along a track which leads through agricultural buildings within the farmyard. Once through the gateway at the entrance to the property, the drive sweeps past the front of the house and extends around the west side to the rear. Formal garden presents to

¹ Permitted Development Rights for Householders: Technical Guidance, September 2019.

² *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195

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

⁴ *Burford V SSCLG and Test Valley BC* (2017) EWHC 1493 (Admin)

⁵ *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310

⁶ *Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd* [2020] EWHC 959 (Admin), [2021] EWCA 398, [2020] JPL 1359

the front and there is a patio and lawned area to the eastern side. Immediately to the rear of the house is a large timber clad building with a garage door to one side. Leading up from the driveway to the west of the house is a short path and steps. This leads to a paddock. A mature hedge defines the boundary with the paddock and a small wooden gate provides pedestrian access. Vehicular access appears to be provided from the farmyard to the northern boundary. The proposed annexe outbuilding would be erected within the paddock.

11. Given the substantial size of the overall plot, understanding how the paddock has been used is vital in helping to determine the extent of the curtilage. The appellant states that the land has been within the curtilage of the dwellinghouse since it was constructed, although I am not informed as to when that was. They say it has always been maintained and used as domestic garden land associated with the house at Hill Farm and that this use has included the planting of orchard trees. Historical images produced by Google Earth dated 1999 and 2018 are said to show the land as mown grass and laid out as garden with tree planting to create an orchard. Garden outbuildings are also said to be evident, but a description of these buildings or their actual purpose has not been provided.
12. Although it is apparent that the land contrasts starkly from the surrounding agricultural fields, the aerial images provide a snapshot in time and it is not possible to see sufficient detail within the images to truly show how the land has been utilised. One undated photograph has been provided and is said to have been taken 'some time ago'. It shows a small area in one corner of the paddock where alongside the chicken coop there is a moveable picnic bench, two chairs and a moveable firepit. While this shows pieces of garden furniture placed on the land, it does not demonstrate to me how the land has been used over time.
13. The paddock is largely open with an area of tree planting in the style of an orchard with several traditional varieties of fruit trees. There were structures on the land to provide shelter, food and water for chickens and the goats that were grazing the land at the time of my visit. Although it was winter, the appearance of the grass was much more like grazed rough pasture than a domestic regularly maintained lawn that has taken time to establish. In contrast, the land immediately surrounding the house was neatly tarmaced and the grassed areas were clearly maintained. A patio adjoined the property and provided space for leisure and relaxation.
14. While the whole site is within the same ownership, this does not mean that it is automatically considered to fall within the curtilage of the dwellinghouse. The paddock lies beyond the lawns and drive which have an intimate association with the dwellinghouse. The paddock is delineated from the dwellinghouse by vegetation, fencing and a gate and although physical enclosure is not an essential element of determining the extent of the curtilage, it is part of the consideration of physical layout. Overall, I find the paddock to have an agricultural appearance and function rather than domestic and there is no evidence that the paddock serves a purpose associated with the dwellinghouse in some reasonably necessary or useful manner.
15. Several appeal decisions have been provided by the appellant to support their case. Most of these relate to the decision concerning whether or not the proposal is or would be 'incidental'. In decision APP/E2530/X/18/3201396 the

Inspector considered that the land which was the subject of that appeal served a useful purpose and had a sufficiently intimate relationship with the dwellinghouse. It was therefore their opinion that the proposed outbuilding would be provided within the curtilage of the dwellinghouse. In the absence of the full details, I am not able to make a direct comparison with the appeal before me. Nevertheless, appeals relate to individual cases and circumstances will vary thus decisions must be made on the merits of each case in their own rights.

16. For the reasons given above, in my view it has not been demonstrated that, on the balance of probabilities, the annexe outbuilding would be located on land with an intimate association with the dwellinghouse and thus defined as curtilage to the dwellinghouse. As a matter of fact and degree, the proposed outbuilding would not be within the curtilage of the dwellinghouse and therefore cannot benefit from Class E.
17. Given the above, it is not necessary for me to consider whether or not the proposed annexe outbuilding would be incidental to the enjoyment of the dwellinghouse or meet the other requirements of Class E.

Conclusion

18. Therefore, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an annexe outbuilding 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.

S A Hanson

INSPECTOR