



Appeal Decision

Site visit made on 29 January 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/D2320/X/23/3321231

Rose Hips Barn, Tithe Barn Lane, Heapey, Lancashire, PR6 8TE

- 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 Myles Newhouse against the decision of Chorley Borough Council.
 - The application ref 22/00959/CLPUD, dated 6 September 2022, was refused by notice dated 1 November 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 pool annex ancillary to the existing dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

3. Under Schedule 2, Part 1, Class E of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO), within the curtilage of a dwellinghouse, buildings etc incidental to the enjoyment of a dwellinghouse are permitted development. The crux of the appeal is whether the proposed building would be within the curtilage of the dwellinghouse, Rose Hips Barn.
4. I have been referred to various case law on the matter of curtilage¹. In the most recent case of *Hiley*, Mr Justice Knowles reaffirmed Lord Justice Andrews' confirmation in the case of *Blackbushe Airport*² that the test set out in *Methuen*³ was the correct one. The test is for 'one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter.' It need not form a single enclosure.
5. The appeal site comprises a landscaped, grassed area with a pond centrally located within it. The appellant states it is used as a garden area for Rose Hips Barn, which forms part of the wider Wogdens Farm building complex.

¹ *Burford v Secretary of State for Communities and Local Government & Anor* [2017] EWHC 1493, *Dyer v Dorset County Council* [1988] and *Hiley v Secretary of State for Levelling Up, Housing and Communities* [2022] EWHC 1289 (Admin)

² *R (Hampshire County Council) v Secretary of State for Environment, Food and Rural Affairs* [2022] QB 103.

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

6. The site is accessed via a track that leads from the building complex to a dismantled railway to the south. The track also provides access to the rear garden of Wogdens Farm and the field directly to the north before it leads to the appeal site. The Council state the site is approximately 60m from the dwelling.
7. There is no direct access to the appeal site from the existing rear garden area surrounding Rose Hip Barn. The dwelling has a garden immediately to the rear. One must exit through a gate to the side of the dwelling to gain access onto the track to access the site. Given the significant distance of the site from the dwelling and its immediate surrounding garden and its separation from the dwelling by the track, I do not consider that the site is so intimately associated with the dwelling that it forms part and parcel of it.
8. There is no dispute that the appeal site has been used as a residential garden by the occupants of Rose Hips Barn for a number of years. However, residential garden and curtilage are distinctly separate things. Residential garden is a land use whereas curtilage is not. Therefore, whilst land may be used as a residential garden associated with a dwelling, that does not necessarily mean it must therefore be part of the curtilage of the dwelling.
9. The appellant states that a previous LDC application was granted relating to the extension of the curtilage at Wogdens Farm. However, the only LDC referred to granted a certificate for 'land being used as part of the residential garden'⁴. There is no reference to curtilage in the certificate. As I have set out above, residential garden and curtilage are two separate things. Notwithstanding this, the fact the appeal site was not included in the LDC application for Wogdens Farm, does not mean it must therefore form part of the curtilage of Rose Hips Barn, or any other dwelling for that matter.
10. As I have found the appeal site does not form part of the curtilage of a dwellinghouse, I therefore find the proposal fails to meet the requirements of Class E of the GPDO and therefore would not be permitted development.

Conclusion

11. 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 pool annex ancillary to the existing dwelling 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.

A Walker

INSPECTOR

⁴ Council ref: 18/01005/CLEUD