
Appeal Decision

Site visit made on 30 January 2024

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/W4705/X/23/3325899

11 Moss Brook Court, Burley in Wharfedale, Ilkley, Bradford LS29 7RZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Adam Lewis against the decision of City of Bradford Metropolitan District Council (the LPA).
 - The application Ref 22/04868/CLP dated 14 November 2022, was refused by notice dated 20 January 2023.
 - 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 new ancillary building to be used as home office, swimming pool, gym, and games room.
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Decision

1. The appeal is dismissed. See formal decision below.

The Appeal Property and the surrounding area

2. The Appeal property is one of a series of dwellings formed from a farm buildings conversion carried out in 1994, under planning application 94/00827/COU (the 1994 permission). It is located at the end of a shared access off Bradford Road, the A65. It lies between Menston and Burley within the Green Belt and is surrounded to the north, east and south by open fields.

3. Immediately to the east and south of the house there is a garden enclosed by a stone wall (south) and timber fences (east and west). Beyond this garden a former paddock now forms a residential 'extended garden' area which stretches the full width of the original site. It is separated from the open fields by a hedgerows and timber fences.

Background information

4. When the 1994 permission was granted the properties and their curtilage(s) were subject to a condition which removed permitted development (PD) rights for development falling within Classes A to E, G and H of Part 1 of Schedule 2 of The Town and Country Planning General Development Order 1988 (GPDO). The garden area immediately around the house formed a typical and recognisable domestic 'curtilage' for No 11. This is still particularly noticeable today from both near and distant viewpoints.

5. In November 2021 a Lawful Development Certificate (LDC) was granted on appeal (APP/W4705/X/21/32782672), confirming that the former paddock, the 'extended garden', had been continuously used for residential purposes for a period

exceeding 10 years. This means that the use of this land for residential purposes as garden area incidental and ancillary to the residential occupation of No 11 Moss Court is lawful. However, the LDC did not, and could not, confirm that the 'extended garden' lay '*within the curtilage of the dwellinghouse*'. I deal with whether or not this is the case below, as well as referring to the concept of '*curtilage*' and the use of land for residential purposes.

The main issue

6. The main issue is whether or not the proposed development was lawful, at the time of the LDC application, by virtue of the proposed building being within the curtilage of the dwellinghouse at No 11 Moss Court.

Reasons

Introduction

7. An appeal relating to a Certificate of Lawful Use or development (LDC) is confined to the narrow remit of reviewing the LPA's decision and Section 195(2) of the Act requires an assessment to be made as to whether the refusal of the application was, or was not, well-founded. The assessment is based on whether or not the proposed development, for which the certificate is sought, would have been lawful at the time of the application (14 November 2022). Irrespective of the fact that the site lies within the Green Belt, the planning merits of the proposed development are not relevant and there is no planning application before me.

8. Outbuildings fall under Schedule 2, Part 1, Class E of the General Permitted Development Order (Amendment) (No2) (England) Order 2008 (the GPDO). This permits, within the '*curtilage of a dwelling house*', any building which is incidental to the enjoyment of the dwelling house. It is common ground between the parties that all of the other constraints and conditions in relation to Class E are satisfied. The only disagreement relates to whether or not the proposed single storey building lies within the '*curtilage of the dwellinghouse*' at No 11.

Whether or not the 1994 removal of PD rights apply to the extended garden

9. The 1994 permission is clear in indicating that the then domestic curtilage of No 11 was '*tightly restricted*' and did not include the 'extended garden' area. The two paddocks on the site plan are shown as being outside of the tight residential garden areas of the new dwellings. For the reasons set out I agree, therefore, with Counsel's Opinion that the 'extended garden' or former paddock, cannot be subject to Condition 3 of the 1994 permission.

10. Based upon the case law set out, I also accept that the '*curtilage*' of a dwellinghouse can be capable of changing over time. The fact that the two current areas of 'residential garden' result in an area which is larger than that of the smaller original garden is irrelevant. I also accept that any '*curtilage*' of a dwellinghouse can be separated by wooden gates, fencing and stone walls. As referred to these are all features commonly found in gardens, a point also made by the previous Inspector. However, these matters cannot, in themselves, lead to a determination that the 'extended garden' lies within the curtilage of No 11.

Whether the extended garden lies within the curtilage of the dwellinghouse

11. In relation to the Act, the word '*curtilage*' has not been defined and decision-makers have to rely on dictionary definitions and to the case law authorities set out over the years. Most of these have been referred to in the parties' submissions.

12. The concept of '*curtilage*' is different to '*land use*' and '*residential curtilage*' is not a defined use of land as set out in the Use Classes Order (UCO). A residential or garden use of land does not necessarily equate to it falling within the '*curtilage of a dwelling house*'.

13. The courts have held that whether or not land falls within the '*curtilage of a dwelling house*' is a matter of fact and degree, based upon the particular material planning circumstances of the case. This is how I have dealt with the facts in this appeal. In doing so I have taken into account all of the case law references referred to on behalf of the appellant, by the Council and within the submitted legal opinion.

14. There are certain criteria/tests which should be applied in assessing what constitutes curtilage and these apply '*whatever may be the strict conveyancing interpretation*' (*Sutcliffe Rouse & Hughes v Calderdale BC (1983) JPL 310*). These are physical layout past and present: ownership past and present and use and function, past and present.

15. With regard to the tests relating to ownership and function, the evidence is clear that the appellant has owned the appeal land for some considerable time and that this is still the case. Although the land was initially described as a paddock, it is in the ownership of the appellant and it has been demonstrated that it has been functioning as residential land for well over 10 years. It is now in lawful residential use following the issuing of the previous LDC.

16. I now turn to the physical layout and appearance of the land. When looking at the original garden area to No 11, which had been part of the 1994 permission subject to Condition 3, it was clearly shown on the submitted drawings. At that time, the garden was obviously within and closely related to, and an integral part of the curtilage to the dwellinghouse at No 11. There is no doubt that this garden area to the front, side and rear, formed the '*curtilage*' to the property at that time.

17. Today, the original garden area appears to be physically the same, with the stone wall to the front part of the garden, the timber fence and gate to the east, and the fencing and hedgerow to the north. It is still perceived as a typical reasonably-sized enclosed garden with lawn, planting beds and garden furniture. As such, it is seen as still being closely related to, and an integral part of, the curtilage to No 11.

18. On the other hand I consider that the '*extended garden*', despite its residential use and obvious residential paraphernalia (including play equipment), is still perceived as a large, separate, and more open space. In character and appearance, in my view, it is still more akin to an open paddock, which is more closely related, visually and physically, to the open fields to the east, north and south. Furthermore, it is still physically distinguishable from the tightly formed original garden curtilage to No 11.

19. My conclusion in this respect is reinforced by both near and distant views of the residential grouping and its surroundings. From within the garden to No 11 and from the common access areas, the '*extended garden*' is perceived as being more remote from the stone wall frontage (south) and fenced garden (east) to No 11. This is also the case when seen from behind the garage block. In addition, from the A65 when looking across the field, there is a clear and noticeable physical gap between the houses, their immediate garden areas and the '*extended garden*' to the east.

20. In particular the boundary treatments are noticeable, as is the large gap between the built form of No 11 and the hedge which forms the eastern boundary

of the 'extended garden'. The trees beyond the open fields to the east can also be seen from the A65. This again emphasises both the extent of the physical gap between the buildings and open countryside and the difference in character and appearance of the built form of the houses and the 'extended garden'.

21. I acknowledge that the gravelled area, extending from the white gateposts to the shed behind the garages, in some way helps to visually link the two different areas of residential land in the appellant's ownership. It could well be argued that this gravelled area, together with the garage, could be seen as part of the curtilage No 11. However, this does not alter my conclusion that the whole of the appeal site, the 'extended garden', is not perceived as being within the curtilage of the dwellinghouse at No 11.

22. In relation to the dictionary definition of 'curtilage' I consider that, as a matter of fact and degree, the area of '*extended garden*' forms a separate piece of ground which is outside of the original and main enclosure more closely associated with the dwellinghouse at No 11.

23. I acknowledge that the '*extended garden*' is now '*ground used for the comfortable enjoyment of the house*' and that, it now serves the purpose of the house '*in some necessary purpose or reasonably useful way*'. It must also be '*required for the comfortable enjoyment of the dwelling house*' (all typical characteristics of what constitutes 'curtilage').

24. However, although it is used in all of these residential ways for the enjoyment of the appellant, I do not consider that it forms '*an integral part of the same*' in terms of the '*curtilage of the dwelling house*'. From my perception of the overall site, I consider that the 'extended garden' is separate, as opposed to being integral with the rest of the original garden and the house.

25. I can understand the appellant and others being confused or perplexed by a situation where land can be considered lawful for residential purposes and yet found not to be within the '*curtilage of a dwelling house*'. But, as indicated above, the word '*curtilage*' has not been defined and a residential/garden use of land does not necessarily equate to it falling within the '*curtilage of a dwelling house*'. In this case I have considered the appeal on the established case law basis that, whether or not the land falls within the '*curtilage of a dwelling house*' is a matter of fact and degree in each particular case.

Overall conclusion

26. For the above reasons, I conclude that the appeal land, the '*extended garden*', as a matter of fact and degree, lies outside of the '*curtilage of the dwelling house*' at No 11 Moss Brook Court. I do not consider that, on 14 November 2022, the proposal for the erection of a new ancillary building to be used as home office, swimming pool, gym and games room was lawful. It follows that the proposed building cannot benefit from permitted development rights and that, in my view, the LPA's decision to refuse a LDC was sound. Full planning permission would, therefore, be required for the proposed building.

Formal Decision

27. The Appeal is dismissed and a Lawful Development Certificate is not issued.

Anthony J Wharton

Inspector