



Appeal Decision

Hearing and site visit held on 6 February 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2024

Appeal Ref: APP/M2372/X/23/3320474

White Lodge Farm, Blackburn Road, Edgworth, Bolton, Blackburn with Darwen BL7 0PU

- 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 Ken Warner on behalf of LTW Developments Ltd against the decision of Blackburn with Darwen Borough Council.
 - The application ref 10/23/0145, dated 21 February 2023, was refused by notice dated 27 March 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 conversion of garage to garden room, construction of garage to side and driveway to serve new garage using existing access onto Blackburn Road.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matter

2. During the Hearing, the Council stated they determined the LDC application on the basis that the appellant was claiming the red edged area on the plan attached to the LDC application was the extent of the curtilage of the dwelling. However, the appellant confirmed that is not the case. The red edged line simply demarcates the application site. The description of the proposed development makes no reference to an LDC being sought for the use of land edged red for residential purposes or curtilage. Consequently, I have assessed the appeal on the basis of whether the proposed development would be permitted development, taking into account whether it would fall within the curtilage of the dwellinghouse as part of that assessment.
3. For the avoidance of doubt, in the event I allow the appeal, the red edged area on the plan that would subsequently be attached to this decision would not define the curtilage of the dwelling.

Main Issue

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

Reasons

5. Under Class A, Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO), the enlargement,

improvement or other alteration of a dwellinghouse is permitted development. There is no dispute that the proposal meets the listed conditions and limitations of Class A. The Council confirmed at the Hearing that the proposed conversion of the garage into a garden room would be permitted development. Their objection to the proposed development is the new garage would be outside the curtilage of the dwelling and therefore would not be permitted development.

6. 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.
7. The appeal site comprises a substantial, detached dwelling set within extensive grounds with no physical boundary treatment between the dwelling and its immediate surroundings and the surrounding land. Located within the red edged area submitted with the LDC application is a static caravan to the north of the dwelling, which the appellant confirms is occupied separately to the dwelling. The appellant acknowledges the red edged area submitted with the LDC application is not the curtilage of the dwelling, least because the static caravan falls within it.
8. Adjacent to the dwelling is an outbuilding known as The Pigeon House. This is on the same ground level as the dwelling. Immediately to the north of The Pigeon House, the land drops in height and continues at this height up to the caravan and its surrounding hardstanding. The proposed garage would replace The Pigeon House and would extend slightly beyond where its northern elevation currently is but remain on the same ground level as the dwelling.
9. There is an extensive planning history to the site for the dwelling and the access and driveway, including various amendments and the removal of conditions. The red/blue edged plans attached to these applications varies. Some, such as the application for the replacement dwelling⁴, encompass the area immediately around the dwelling, whereas some such as the application for the access and driveway⁵ include the same red edged area as the appeal before me. During the Hearing, the Council accepted that the correct plan attached to planning permission 10/21/0410 is CCS03A. As curtilage is not a land use, none of these plans definitively identify the extent of the residential curtilage.
10. I have also had regard to Condition 6 attached to planning permission 10/21/0410, which states 'Notwithstanding the provisions of Class E of Part 1 of the Town and Country Planning (General Permitted Development) Order 2015, or any Order revoking and re-enacting that Order, no buildings or structures shall be erected within the red edge shown on Dwg. No. CCS03A unless planning permission has first been granted by the Local Planning

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

⁴ Council reference: 10/19/0149

⁵ Council reference: 10/21/0410

Authority.’ The red edged area referred to in this condition matches that of the plan submitted with the LDC application the subject of this appeal. The appellant argues the fact the Council imposed this condition implies they considered this red edged area to be curtilage, otherwise such a condition would not be necessary. However, as the static caravan falls within the red edged area I do not accept all of this area is curtilage associated with White Lodge Farm. Nevertheless, some of it could be.

11. Given the above, the planning history does not help in defining what the full extent of the curtilage is. However, for the purposes of this appeal, it is not a necessary requirement to define the full extent of the curtilage; I only need to determine whether the proposed development falls within it.
12. Based on the evidence before me and the observations I made on site, the land on which the proposed garage and driveway leading to it would be located is contiguous with the land immediately to the side, front and rear of the dwelling. Its proximity to the dwelling, contiguous relationship with the other land immediately adjacent to the dwelling and lack of any physical boundary with it results in it clearly being intimately associated with the dwelling to such an extent that it forms part and parcel of the dwelling. As the proposed development would be within the curtilage of the dwellinghouse and would satisfy the requirements of Class A of the GPDO, it would therefore be permitted development.

Conclusion

13. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful development is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Walker

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 21 February 2023 the operations]described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would benefit from deemed planning permission pursuant to Article 3 of, and Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 as amended.

Signed

A Walker

Inspector

Date: 4 March 2024

Reference: APP/M2372/X/23/3320474

First Schedule

The conversion of garage to garden room, construction of garage to side and driveway to serve new garage using existing access onto Blackburn Road.

Second Schedule

White Lodge Farm, Blackburn Road, Edgworth, Bolton, Blackburn with Darwen BL7 0PU

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

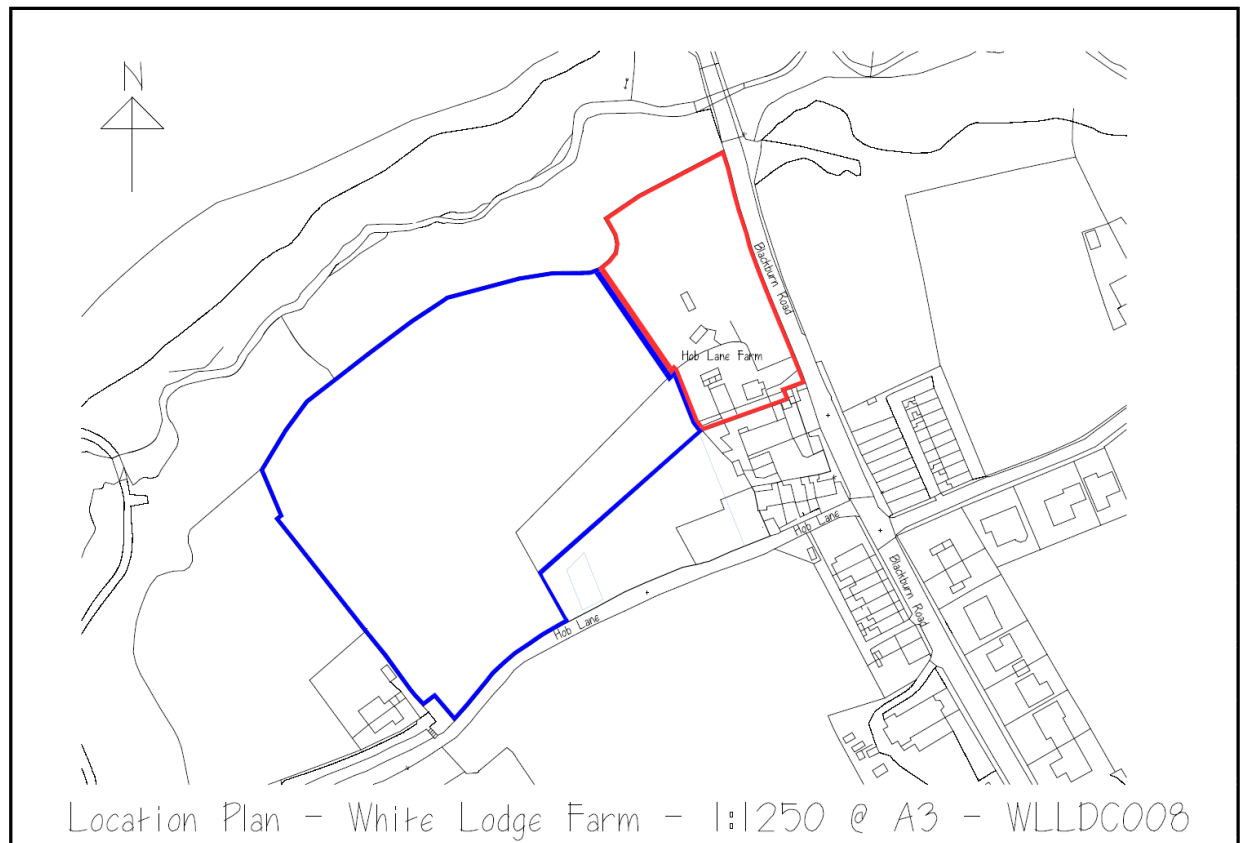
This is the plan referred to in the Lawful Development Certificate dated: 4 March 2024

by A Walker MPlan MRTPI

Land at: White Lodge Farm, Blackburn Road, Edgworth, Bolton, Blackburn with Darwen BL7 0PU

Reference: APP/M2372/X/23/3320474

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANT:

Kenneth Warner	Appellant
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FOR THE LOCAL PLANNING AUTHORITY:

Adam Shaikh	Planner
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Martin Kenny	Principal Planner
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