



Appeal Decision

Site visit made on 26 March 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27TH MARCH 2024

Appeal Ref: APP/P1940/X/22/3302179

Ramillies, The Green, Sarratt, Hertfordshire WD3 6AY

- 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 David Boda against the decision of Three Rivers District Council.
 - The application Ref 22/0359/CLPD, dated 1 March 2022, was refused by notice dated 26 April 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 construction of a separate ancillary building.
-

Decision

1. The appeal is dismissed.

Main Issue

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed development are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard to whether it has been demonstrated that the proposed building would meet the limitations of Class E of Part 1 of Schedule 2 of the Town and County Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).

Reasons

Curtilage

4. Class E of Part 1 of Schedule 2 of the Order states that the '*provision within the curtilage of the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas*' is permitted development. This is subject to the limitations outlined in paragraph E.1 of the Order which I deal with below.

5. However, the first matter in dispute between the main parties relates to whether the building would be erected on land within the 'curtilage' of the dwellinghouse.
6. The Order does not define what is meant by curtilage. However, the matter has been considered by the Courts. It has been held that curtilage should be intimately associated with the building on the land to form a conclusion that it is part and parcel of it. Regard should be had to three tests namely physical layout, ownership (past and present) and use or function (past and present).
7. In this case, there is no dispute that the building would be positioned on land that has been owned by the occupiers of Ramillies from 1863 until the date of the LDC application. Furthermore, I have no reason to doubt the claim made by the appellant that both his family, and the one before that, maintained and used the land for residential purposes in association with the dwellinghouse known as Ramillies.
8. I acknowledge that there was previously a garage on the land which separated the garden area immediately adjacent to Ramillies with the larger area of land where the proposed building would be located. Nonetheless, the appellant's photograph showing the garage on the land demonstrates that at this time the wider area of other land in the ownership of the appellant was visible and accessible from the garden immediately adjacent to Ramillies. I do not find that the position of the garage was such that there was a significant physical separation between one part of the appeal site and the other. Furthermore, it is noteworthy that the evidence demonstrates that in about 2021/2022 the garage was removed. That means that the whole of the red edged site is appreciated as being even more open when seen from the rear of Ramillies.
9. The appellant states that the land has been used for residential purposes, including the provision of play equipment and growing vegetables. The local planning authority (LPA) do not dispute this claim and, in fact, play equipment and football nets can be seen in the photos taken by an LPA officer when the LDC application was considered.
10. While it may be the case that some vegetation has been cleared in recent years, there is no evidence to indicate that the land has not always been predominantly open. In my judgement, the evidence does not demonstrate that the land was ever say a separate woodland, or that it has not historically served the purpose of the dwellinghouse on the land in a reasonably useful way. Indeed, the evidence indicates that for a considerable period the land has been used as a garden alongside the narrower garden land immediately adjacent to the dwellinghouse.
11. I have no reason to doubt the appellant's comment that when the LPA officer visited the appeal site, the garden immediately adjacent to Ramillies had been turfed which meant that this land had a different character to the other land within the red edged site. I do not find that this is a determinative matter, and, in any event, it is noteworthy that the appellant's historic photographs show the whole of land to the rear of Ramillies as being similar in character and maintained.
12. The LPA states that the appeal building would be positioned on land that is a considerable distance from the Ramillies and that if the whole of the red edged land to the rear of the dwellinghouse was considered as a garden, it would be

large in comparison to others. Curtilage is not a use of land. In other words, my finding that the whole of the red edged land to the rear of Ramillies is garden land has not in itself led me to conclude that it is curtilage. I have reached my decision having regard to relevant case law including the three tests outlined above.

13. I acknowledge that Ramillies does have a large garden area compared to those associated with other dwellinghouses in the area. Nonetheless, and, for the reasons outlined above, I find, as a matter of fact and degree, that such land has an intimate association with Ramillies to such an extent that it is part and parcel of use of the property as a dwellinghouse.
14. I therefore conclude that the building would be erected on land within the curtilage of a dwellinghouse and, to this extent, would be permitted development under Class E of Part 1 of Schedule 2 of the Order.

The height of the proposed building

15. The building would measure about 3.8 metres in height at its highest point. Paragraph E.1(e) of Class E of Part 1 of Schedule 2 of the Order states that development is not permitted if '*the height of the building, enclosure or container would exceed (i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or (iii) 3 metres in any other case*'.
16. The Government's Permitted Development Rights for Householders: Technical Guidance 2019 states that '*the height limit on a 'dual-pitched roof' of 4 metres should also be applied to buildings that have 'hipped' roofs (slopes on all four sides)*'. The proposed building would include a combination of roof forms (pitched, gabled, and hipped) at varying heights and so it would not simply have a '*dual-pitched roof*'. Therefore, to qualify as permitted development, the building would need to be no more than 3.0 metres in height. As the building would measure about 3.8 metres in height, I conclude that it would not be permitted development considering the limitations outlined in paragraph E.1(e) of Class E of Part 1 of Schedule 2 of the Order.

Conclusion

17. 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 construction of a separate ancillary building 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.

D Hartley

INSPECTOR