



Appeal Decision

Site visit made on 7 March 2024

by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25.04.2024

Appeal Ref: APP/U2370/D/23/3330957

Ashfield, Dockinsall Lane, Out Rawcliffe, Lancashire PR3 6TE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr John Lawrenson against the decision of Wyre Borough Council.
 - The application Ref 23/00478/FUL dated 15 May 2023, was refused by notice dated 17 July 2023.
 - The development proposed is described as erection of first-floor residential annexe with domestic garage and home office below (part retrospective)
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At the time of my site visit, I saw that the development had commenced. The application made clear that the scheme was submitted as part retrospectively and I have dealt with the appeal on that basis.

Main Issues

3. The main issues in this appeal are (i) whether the proposed development is within the residential curtilage and would be ancillary to the main dwelling; and (ii) the effect of the proposed development on the character and appearance of the area.

Reasons

Curtilage and Ancillary

4. There is no all-encompassing, authoritative definition of the term 'curtilage'. The decision on how to determine whether land falls within the curtilage of a building has been the subject of much debate in the Courts. However, the judgement must be one of fact and degree on the part of the decision maker and various judgements give guidance on the tests that should be applied when reaching a conclusion.
5. In *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195 it was established that: *'The ground used for the comfortable enjoyment of a house or other building may be regarded as being within the curtilage of the house or building and...an integral part of the same even though it has not been marked off in any way...It is enough that it serves the purpose of the house or building in some necessary or reasonably useful way.'*

6. A relevant judgement concerns *R (Hampshire CC) v Blackbushe Airport Ltd* [2021] EWCA Civ 398 (*Blackbushe*) held that “curtilage” is to be given its ordinary and natural meaning and that “the curtilage of a building” requires the land in question to be part and parcel of the building to which it relates.
7. An earlier case of *Challenge Fencing Ltd v SSHCLG* [2019] EWHC 553 (*Challenge Fencing*) endorsed by *Blackbushe*, found that the extent of a curtilage would be a matter of fact and degree and confirmed that factors such as physical layout, the ownership past and present and the use or function of the land or buildings, past and present are relevant to making the decision. In *Blackbushe* it was noted that, whilst not exhaustive, the guidance in *Challenge Fencing* was helpful in identifying a curtilage.
8. The proposed development would be located on an area of land which formally contained a detached outbuilding which has subsequently been demolished. The appellant has provided plans, aerial and other photography in an attempt to demonstrate that the location of the proposed development would be within the residential curtilage and that the use was for domestic purposes.
9. The appellant contends that the rear garden area of the main property has been separated into different spaces and that it is not uncommon for garages to be accessed from the rear of a domestic curtilage. Nevertheless, from my observations on site and from the evidence before me the previous building appears to be associated with the agricultural unit to the rear detached from the domestic residential curtilage. I have not been provided with substantive evidence to persuade me that the proposed development would be located within the residential curtilage.
10. Both parties have drawn my attention to a previous planning permission (88/00098) relating to the erection of a farm workers bungalow. Whilst the appellant contends that the application site is within the area approved under the previous permission, I cannot be certain that this is the case.
11. The proposed access is segregated from the main property by a mature hedgerow, and visibly appears to be located in the open countryside. Access would not appear to be reliant on the main property, whilst the appellant contends that the annexe would have shared outside amenity space with the main property.
12. I understand that the use of the annexe would be for a family member to assist with the care of the occupants of the existing property, Ashfield. The proposed annexe would be spread over two floors and accessed from the ground level. It would include a garage, office, hallway and stairwell providing access to an open living, kitchen, dining area with two bedrooms on the first floor as well as a bathroom. This configuration would establish the annexe as a fully self-contained residential unit with independent facilities for day-to-day living.
13. While annexes can offer all amenities for habitation, they must functionally be part of the same residential planning unit as the main property. However, as discussed earlier, I have not been provided with evidence to convince me that this development is within the existing property curtilage and would be ancillary to the main property. As such, the proposed development requires evaluation according to the applicable planning policies for new dwellings in the countryside.

14. The proposed development is situated within a rural area. Policy SP4 of the Wyre Local Plan 2011-2031 (2019) (the Local Plan) does not generally permit new housing outside of identified settlements. No evidence has been provided to demonstrate that the proposed dwelling would fall under one of the exceptions allowed for new construction as stipulated in Policy SP4.
15. There is conflict with Policies SP4 and CDMP3 of the Local Plan seeks amongst other things to ensure development protects the countryside areas understanding the wider context and makes a positive contribution to the local area.

Character and Appearance

16. The site is within a rural area with a small group of residential properties to the west, and agricultural buildings adjacent. The proposed development seeks to erect a two storey building comprising a garage, office at ground floor and a two bedroom annexe at first floor.
17. The external materials proposed to be used would be similar to those used in agricultural buildings to the rear of the application site. Despite this unlike most other buildings in the immediate area, which are designed with pitched roofs, the planned construction comprises a shallow mono pitched roof that stands in stark visual contrast.
18. Given the open countryside setting with undeveloped land to the east, the structure would be visually prominent within the rural landscape. Its atypical attributes would be incongruous to the surrounding area. Whilst the proposed development would be of a similar design to the previous outbuilding, the scale would be distinctly different.
19. The appellant has drawn my attention to other outbuildings within the immediate area, these appear to be a different design, notwithstanding this each development must be considered on its individual merits, and I have reached my conclusion based on the individual merit of the appeal proposal.
20. I conclude that the proposed development would harm the character and appearance of the area.
21. There is conflict with Policies SP4 and CDMP3 of the Local Plan which seeks amongst other things to ensure development is of high standard of design responding positively to the character and context of an area, respecting the open and rural character of the countryside.

Conclusion

22. For the above reasons I conclude that this appeal should be dismissed.

C Pipe

INSPECTOR