



Appeal Decision

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 April 2024

Appeal Ref: APP/N5090/X/23/3318623

22 Baxendale, LONDON, N20 0EG

- 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 Ramesh N Dass against the decision of London Borough of Barnet.
 - The application ref 22/4926/192, dated 5 October 2022, was refused by notice dated 2 November 2022.
 - The application was made under section 192(1) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is for the conversion of the existing garage into a habitable room, insertion of a new door and side lights to replace the existing garage door; insertion of rooflights.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt I should explain that the planning merits of any use or operations are not relevant and not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.
4. I note that an interested party states that the proposal is in direct contravention of the head lease that leaseholders must abide by. However this is a private matter and is not relevant to this appeal.

Reasons

5. I consider the main issue to be whether the Council's decision to refuse to grant an LDC was well founded.
6. The appeal site contains a garage forming part of a block of some four garages and is used in connection with the three-storey terraced single family dwellinghouse at 22 Baxendale. It is separated from the house plot by some 35m. The appellant wishes to convert the garage to accommodate a part time office with new skylight windows and a door and window. The intention is that the office would remain as an incidental use to the main enjoyment of the dwellinghouse by the appellant and family.

7. In determining whether the proposed conversion of the garage to habitable accommodation space would be lawful, the starting point is the consideration of the extent of the domestic curtilage of 22 Baxendale. This is to establish whether the development would come within the scope of permitted development rights set out in Article (a), Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. This covers the provision of buildings and other development within the curtilage of a dwelling.
8. The Technical Guidance 'Permitted Development Rights for Householders' (MHCLG September 2019) indicates that curtilage "is land which forms part and parcel with the house. Usually it is an area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area."
9. However, interpretation of the term curtilage is not a matter of law but a judgement of the decision maker given the ordinary meaning of words, and it is a matter of fact and degree. In determining the extent of a domestic curtilage, regard should be had to the three tests established in relevant caselaw¹ of firstly, the physical layout of the building and the land or building said to be within the curtilage; secondly, ownership past and present; and thirdly, the use or function (past and present) applied.
10. The appellant's dwelling is physically separated from the appeal site as it is not contiguous or adjacent to it.
11. Physical enclosure is not necessary but the degree to which the building and claimed curtilage fall within one enclosure is relevant as a test of physical layout. Although nearby, the house and the garage are not within the same enclosure, nor adjacent to each other, and are separated by other intervening development in different ownerships.
12. The term 'curtilage' should not be confused with the planning unit, nor with the use of land. The appellant considers that the house and garage are in the same planning unit but not so in my view. The garage is in a separate planning unit to that of the appellant's house and forms either part of a larger planning unit with the other garages or is an independent planning unit.
13. The garage is physically distinguishable from the house by way of its relationship in terms of distance and, as a matter of fact and degree, this precludes the garage from being within the curtilage of the dwelling. The garage is not part and parcel with the house due to its physical separation.
14. The appellant's title deeds show that the dwelling and garage form part of the same ownership and it is clear that there is an intimate association between the dwelling and the garage in terms of its use but these factors do not outweigh the conclusion I have reached on the physical layout.
15. The fact that the original planning permission for the residential and garage development authorises the use for which the development was designed and that no permitted development rights have been removed, is beside the point. The appellant correctly states that the interpretation of the GPDO is a question

¹ Including *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195; *Methuen-Campbell v Walters* [1979] 1 QB 525; *Dyer v Dorset CC* [1988] 3 WLR 213; *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin); and others.

of law but the analysis of the question of whether a material change of use would occur and if so, whether it would be for a purpose incidental to the use of the dwellinghouse as such, is peripheral to the judgement about the extent of the residential curtilage of the dwelling. I note that in many of the appellant's citations and in the Oxford English Dictionary, reference is made to the attachment of land to a dwelling, which is clearly not the case in this appeal.

16. The appellant has not shown on the balance of probabilities that the garage is within the curtilage of a dwellinghouse.
17. The proposal is for a building operation/use which, by virtue of Sections 55 and 57 of the Town and Country Planning Act 1990, is development requiring planning permission. Such development is not permitted under Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, as the building the subject of the appeal is not within the curtilage of a dwellinghouse.
18. Accordingly, the benefits of Class E permitted development rights cannot apply to the appellant's proposals for the garage.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the conversion of the existing garage into a habitable room, insertion of a new door and side lights to replace the existing garage door, and insertion of rooflights 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).

P N Jarratt

INSPECTOR

