



Appeal Decision

Site visit made on 2 April 2024

by James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 9th May 2024

Appeal Ref: APP/F2605/X/23/3327845

Ski Moor, Norwich Road, Guist, Dereham, Norfolk, NR20 5LU

- 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.
- The appeal is made by Mr Carl Lake against the decision of Breckland Council.
- The application ref 3PL/2023/0342/LU, dated 28 March 2023, was refused by notice dated 16 June 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 building for domestic storage and domestic workshop use.

Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appeal concerns an application for a Lawful Development Certificate (LDC), which sought to confirm that the proposed development would have been lawful as at the date of application.
2. The original application form did not include a description of development. The Council describes the proposal as "*the siting of two containers with a roof over to use as storage within garden area*". Whilst two containers would be used in the construction of the proposed structure, it is not entirely clear whether this description refers to operational development or a use of land. The Council's decision notice refers to both use and operations, although the Officer Report says it is common ground that the proposal constitutes provision of a building.
3. From the plans before me, the proposed structure certainly appears to be a building, and therefore operational development, which is the basis on which the Council assessed the application. This approach is consistent with the content of the appeal application, which is predicated on the development being a "*building or enclosure*" which would be permitted under Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).
4. I have therefore described the proposal to refer to the "*erection of a building for domestic storage and domestic workshop use*", which ensures sufficient clarity and accuracy with regard to the proposal. It also ensures the workshop element of the proposal is captured. The Council has agreed to the amended description, and given I am approving the certificate, the description should not cause any prejudice to the appellant.

5. Whilst the original application form was unsigned and undated, the Council validated the application on 28 March 2023. I have referred to this validation date for the purposes of the application in the banner heading above.
6. As mentioned, the appellant says the development would be permitted development, pursuant to the rights conferred by Article 3(1) and Class E of Part 1, Schedule 2 of the GPDO. Subject to certain parameters, Class E permits buildings or enclosures within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of that dwellinghouse.
7. The Council contends that the proposed building would not be within the curtilage of the appellant's house, and therefore says the development would not be permitted under Class E. This forms the main issue in dispute between the parties.
8. As an application for an LDC, the burden is on the appellant to demonstrate their case, with the relevant evidential test being the balance of probability. Planning merits of the development are not relevant.

Main Issue

9. The sole main issue is whether the proposed development would be located within the curtilage of the residential dwelling known as Ski Moor, Norwich Road, Guist.

Reasons

10. The appeal site comprises a dwelling which fronts on to Norwich Road, together with an attached garage and rear garden. The site is flanked by open fields to its rear.
11. The garden includes a large patio immediately to the rear of the garage. Whilst there is no suggestion that the main dwelling is used for anything other than C3 (residential) use, on my site visit, this area was occupied by extensive piles of timber, as well as several trailers and other disused car parts. Beyond the patio, there is a grassed area of lawn which is bordered by brick piers and fencing. At the rear of the lawn, there is a gate into the final section of the garden, in which the development is proposed ("Proposed Development Site").
12. The Proposed Development Site accommodates a number of containers, lorries and other old vehicles, as well as piles of timber and other miscellaneous items. Along its western side, this part of the appeal site is bordered by a timber fence, which separates it from the garden to the neighbouring residential property. Whilst it is also partly enclosed by a post and rail fence along its southern and eastern sides, the fence is in a state of disrepair, which means there are large gaps into the field beyond.
13. When considering the extent of a building's curtilage, regard must be had to three principal factors in respect of the relevant land. These factors concern the ownership position (past and present), its use or function (past and present) and the building/land's physical layout¹.
14. In this instance, the whole of the appeal site is registered under a single title and is owned by the appellant. The evidence demonstrates it has formed part of the same title since at least 1986. In ownership terms, the Proposed

¹ As established in *HM Attorney-General ex rel Sutcliffe & Rouse Hughes v Calderdale BC* [1983] JPL 310

Development Site is therefore tied with the main dwelling, and has been for a long time.

15. The Council believes that planning permission was granted for the dwelling and garage in 1986, which encompassed the whole of the appeal site. Historically, the Proposed Development Site therefore appears to have been functionally linked to the main dwelling, most likely as part of its garden.
16. During his ownership, the appellant says that the Proposed Development Site has been used much like any other part of his garden. He says it previously accommodated a shed for the storage of a BBQ and garden furniture, and is now used to store wood for a fire, which was evident on my visit. The appellant also says he regularly cuts the grass and sits in this area. These activities are typical of a domestic garden, and demonstrate an ongoing functional link to the rest of the garden and to the main dwelling.
17. Whilst several vehicles and vehicle parts are stored within the Proposed Development Site, the same is also true of the patio immediately to the rear of the dwelling. Even in this regard, its function and use therefore remain consistent with other parts of the garden, which are clearly within the dwelling's curtilage.
18. Whilst the Proposed Development Site can be accessed from the surrounding field via the gaps in its boundary fence, this field is said to be owned by Sennowe Park. Without anything to indicate otherwise, the field therefore appears to be outside of the appellant's control, with no evidence of any public rights of way before me. This means the principal means of formal access to the Proposed Development Site appears to be through the rest of the garden to the appeal site. In turn, it is reliant on the rest of the appeal site for access, which further strengthens its functional link with the main dwelling and garden.
19. As mentioned, the Proposed Development Site is separated from the rest of the garden by brick piers and fencing. The appellant says this physical separation is needed to prevent his dogs from getting out via the open field behind. This sectioning off, which is not uncommon within a residential garden, therefore seems to meet a legitimate need of the appellant. It should not follow from this that the Proposed Development Site is not capable of forming part and parcel of the garden. Indeed, it aligns with the same width and orientation as the rest of the site, and is therefore seen as a natural progression of the garden. Notwithstanding the brick piers and fencing, it still manages to integrate with the site as a whole, and physically and spatially, therefore shares a close relationship with the rest of the appeal site.
20. Bringing these factors together, the Proposed Development Site shares a close physical relationship with the rest of the appeal site. Functionally, it is reliant on the appeal site for access, and is used in a manner commensurate with the rest of the garden. It also forms part and parcel of the same title as the rest of the appeal site, which is owned by the appellant. Given its close relationship with the rest of the appeal site in these ways, I am therefore satisfied that the Proposed Development Site does form part of the curtilage to the main dwelling. This finding is consistent with the principle established in the *Methuen-Campbell* case², which said an area of land must be intimately

² *Methuen-Campbell v Walters* [1979] 1 QB 525

associated with a building to form part and parcel of that building's curtilage, as is the case here.

21. Given that the Proposed Development Site is within the curtilage to the main dwelling, it follows that it would benefit from the permitted development rights conferred by Article 3(1) and Class E of Part 1, Schedule 2 of the GPDO, which permit buildings or enclosures within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of that dwellinghouse.

Other Matters

22. The proposed building would be used by the appellant as a domestic workshop with associated storage, in conjunction with his hobby of restoring vehicles. Whilst the Council has not sought to suggest otherwise, I am satisfied that this use would be incidental to the enjoyment of the main dwelling.
23. Even if the proposed structure were not a building, any similar use of land within the curtilage of the main dwelling would also be incidental to the enjoyment of the main dwelling. It would therefore not constitute development, and would be lawful. This means my conclusion would be the same, even if a comparable land use was proposed, and not the erection of a building.
24. The Council says that the proposed building would meet all other conditions and size parameters necessary to benefit from the rights conferred by Class E. For completeness, I am also satisfied that the drawing (Proposal Drawing Rev B, November 2022) demonstrates this.
25. I note the objection to the proposal from a nearby neighbour. However, as this appeal concerns an LDC, the planning merits of the development are not relevant.

Conclusion

26. For the reasons given above, and on the evidence now available, I conclude that the proposal would constitute permitted development by virtue of the rights conferred by Article 3(1) and Class E of Part 1, Schedule 2 of the GPDO. The Council's refusal to grant an LDC in respect of the erection of a building for domestic storage and domestic workshop use was therefore not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

Formal Decision

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

James Blackwell

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 28 March 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in 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 operations would be permitted development by virtue of Article 3(1) and Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Mr James Blackwell

Inspector

Date: 9th May 2024

Reference: APP/F2605/X/23/3327845

First Schedule

Erection of a building for domestic storage and domestic workshop use.

Second Schedule

Land at Ski Moor, Norwich Road, Guist, Dereham, Norfolk, NR20 5LU

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 9th May 2024

by **James Blackwell LLB (Hons) PGDip, Solicitor**

Land at: Ski Moor, Norwich Road, Guist, Dereham, Norfolk, NR20 5LU

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Scale: Not to Scale

H.M. LAND REGISTRY		TITLE NUMBER NK185475		
ORDNANCE SURVEY PLAN REFERENCE	TF9925	SECTION C	Scale 1/1250 Enlarged from 1/2500	
COUNTY NORFOLK	DISTRICT BRECKLAND	© Crown Copyright 1995		

