



Appeal Decisions

Hearing held on 17 April 2024

Site visit made on 17 April 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2024

Appeal A Ref: APP/M4320/X/24/3336597

100 Guildford Road, Birkdale PR8 4JZ

- 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 Chris Wright of Melford Construction Ltd against the decision of Sefton Metropolitan Borough Council.
- The application ref DC/2021/01740, dated 4 July 2021, was refused by notice dated 14 October 2021.
- The application was made under section 191(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 described as 'the erection of a garden shed for the benefit of 100 Guildford Road, further details within the submitted cover letter'.

Appeal B Ref: APP/M4320/W/24/3336615

100 Guildford Road, Birkdale, Sefton PR8 4JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Chris Wright of Melford Construction Ltd against the decision of Sefton Metropolitan Borough Council.
- The application Ref is DC/2023/00228.
- The development proposed is the erection of a detached dwellinghouse to the side garden area with a new access to Shaw's Road.

Decisions

1. Appeal A and Appeal B are dismissed.

Appeal A

Background

2. The appeal concerns land and a garden shed located on the corner of Guildford Road and Shaw's Road. There have been two previous planning applications, references DC/2020/02370 and DC/2021/00405, for the erection of a detached dwelling on the land, both refused based on harm to the living conditions of the occupants of 119 Shaw's Road in respect of outlook.

Reasons

3. Section 191(2) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

4. On an application made under section 191 of the Act, the time to consider whether a use is lawful is at the time of the application (section 191(4)). The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
5. The development is the erection of a garden shed. Article 3(1) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes, at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
6. The Council accepts that the proposed building would comply with all the limitations set out in E.1., E.2. and E.3. and I have no reason to conclude otherwise.
7. The main issue in this case is whether the Council's decision to refuse to grant a lawful development certificate was well-founded, with the dispute centred on whether the garden shed is within the curtilage of the dwellinghouse and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

Curtilage

8. The Council do not dispute that the land where the shed is sited, was formerly part of the curtilage to 100 Guildford Road, nor do they consider that there has been a material change of use or new planning unit created. Their case is that in fencing off the land, the functional link with the house was lost, such that it no longer formed part of the curtilage. In support they referred to a comment in a design and access statement that the site was 'formerly part of the side garden to 100 Guildford Road'.
9. There is no statutory definition of 'curtilage', which does not describe a use of land but defines an area of land in relation to a building. The courts have considered the issue of curtilage many times. The term generally refers to land which serves the purpose of a building in some reasonably necessary or useful manner.
10. As established, there are three factors to be taken into account when determining whether land constitutes curtilage, these include the physical layout of the building and attached land, the ownership, past and present; and their use or function; past and present.
11. Whether or not land falls within the curtilage of a building is a matter of fact and degree to be considered on a case-by-case basis and thus primarily a matter for the decision maker. What is also apparent is that the relevant date on which to determine the extent of the curtilage is the date of the LDC, but this involves considering both the past history of the land and how it is laid out and used at the time of the application.
12. Shortly after purchasing the house the appellant erected an internal fence between those areas of the curtilage around the house and that to the side. The appellant explained that they purchased No.100 with the intention of developing the land to the side of the house for an additional dwelling and that

they erected the fence to demonstrate how the land could be divided. The land was divided in this way for around two months.

13. The appellant explained that during consideration of the first planning application for a dwelling (DC/2020/02370), they became aware the process may not be as straightforward as anticipated and therefore decided to rent out the house which was unoccupied. They removed internal fence panels toward the rear of the land, so that the land could be accessed and used by the tenants.
14. It is possible for the extent of curtilage to change, and evidently the appellant aspires to build a dwelling on the land, erecting the fence and clearing vegetation being part of that process.
15. However, since the house was not occupied when the fence was erected, none of the land surrounding the house was in use as garden or for domestic purposes at that time. Whilst the land where the shed is sited, was physically and functionally separated from the remaining curtilage, and notwithstanding the appellant's intentions, in my view its status as curtilage could not have been 'lost' in such a short period, particularly in the absence of an intervening or material change of use.
16. I saw that the land has a typical garden appearance with areas laid to grass and paving, with gravel areas close to the shed and importantly, at the time of the application the land was accessible from and used as garden to No.100.
17. Therefore, I am satisfied that, as a matter of fact and degree, the land where the shed is sited is within the curtilage of the dwellinghouse for Part 1 purposes.

Incidental

18. In the case of *Emin V SSE [1989] JPL 909*, referred to in the counsel advice, it was held that, to attract the planning permission granted by the Order, the erection or construction of a building must be required for a purpose incidental to the enjoyment of a dwellinghouse as a dwellinghouse and not for extraneous purposes. Moreover, it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse and answer the question as to whether the building is genuinely and reasonably required or necessary to accommodate the use and thus achieve that purpose. The test of incidental must retain an element of objective reasonableness and it should not be based on the unrestrained whim of the occupier.
19. The appellant stated that the shed is used by the occupants of No.100, and images submitted with the application show the shed in use for the storage of foldable chairs, bikes, footballs, and other domestic paraphernalia. I consider and the Council does not dispute that such a use would be incidental to the enjoyment of the dwellinghouse.
20. The Council's case is that the shed was erected to obscure views from the kitchen window in the neighbouring No.119 and therefore, its erection was not solely for a purpose/s incidental to the enjoyment of the dwellinghouse.
21. The appellant acknowledged that the shed was erected to demonstrate what could be erected on the land but argued the motivation for its erection is not relevant in considering whether it constitutes permitted development.

22. It is apparent from the Council's officer report in respect of the first planning application that the applicant was made aware of concerns about the impact of the proposal on the living conditions of the occupants of No.119. Drawings were subsequently submitted showing what, in their view, could be built as permitted development. Furthermore, it is stated that during the determination period a steeply pitched building was erected 'in order to demonstrate that the harm arising from this application will be less than as 'exists''.
23. Indeed, the appellant's submissions in respect of Appeal B, refer to the shed screening the proposal from the kitchen window at No.119, precluding any impact on the existing neighbouring dwelling.
24. The shed has an unusually steep pitched roof, which combined with its siting, significantly obscures views from the kitchen window in No.119. In my view, the design and siting illustrate the purpose for which the shed was provided, which was to essentially block views from the kitchen window at No.119, in an attempt to overcome the Council's only reason for refusing permission for a dwelling on the land.
25. The appellant couldn't recall whether the house was occupied when the shed was provided. Whilst not determinative, comments from the neighbour that they have not seen anyone use the shed, but have seen the garage used, reinforce my view regarding the purpose and requirement for the shed.
26. On the particular facts of this case, although it appears that the shed at the time of the application was in use for a purpose which would be considered incidental to the enjoyment of the dwellinghouse, the shed was not provided for that purpose. Its purpose was to obstruct views from the kitchen window in No.119. It was not genuinely and reasonably required for purposes incidental to the dwellinghouse as such.
27. The evidence does not show, on the balance of probabilities, that the shed was reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. The development does not, therefore, constitute permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO. It follows that I consider the Council's decision to refuse to grant a lawful development certificate was well-founded.

Appeal B

Main issue

28. The main issue is the effect of the proposed development on the living conditions of the occupants of 119 Shaw's Road with particular regard to outlook.

Reasons

29. The proposed dwelling would front Shaw's Road and broadly follow the front building line of No.119 but would have a slightly lower eaves and ridge height. It would be sited to the other side of the shed, subject of Appeal A, which is near the shared boundary with No.119.
30. The kitchen at No.119 is a galley style kitchen with a window above the sink and at the end of the kitchen through an archway (which is about the size of a single internal door, but without a door fitted) is a modest extension with

windows and French doors overlooking the rear garden. The window above the sink, is the only and therefore primary window to the kitchen and provides the main outlook for the room when standing at the sink and adjoining worktops.

31. In my view, the importance of the kitchen window to the occupants of No.119 is significant, particularly since views out over the rear garden are not easily appreciable when carrying out tasks in the kitchen.
32. The Council's SPD¹ sets out that the minimum distance between a ground floor habitable room window and a two-storey blank wall should be 12m. It goes on to set out the circumstances where a proposal *might* [my emphasis] be considered acceptable if these standards cannot be met, including where the local area is characterised by lesser distances between properties and it is not possible to meet the interface distances, and where there would be no significant harm to the living conditions of existing or future residents.
33. The distance between the kitchen window and the proposed dwelling would be around 7.4m, a relatively significant shortfall from the 12m set out in the SPD. Whilst the outlook from the window is towards the relatively tall boundary treatment, the proposal would result in close-range views of a blank wall, which together with the mass of development, would have an unacceptable overbearing impact on the outlook from the kitchen window. This would cause significant harm to the living conditions of the occupants of No.119.
34. I acknowledge that there had previously been established vegetation on the boundary with No.119 however, it seems there would have been some views over the fence and to the sky beyond. Moreover, vegetation does not have the same dominant effect as a solid wall. Accordingly, whilst it could be replanted it would not have the same harmful effect as the appeal proposal.
35. The appellant stated that the local area is characterised by lesser distances between properties, in particular referring to 74 and 76 Shaw's Road, where the distance between a side kitchen window and the neighbouring property is as low as two metres, which I saw. However, whilst I saw several properties with lesser separation distances, this does not provide justification for development that would cause significant harm to the living conditions of existing occupants.
36. The appellant provided details of a planning permission, granted by the Council for two dwellings at 90 Roe Lane. That development included single storey elements close to the boundaries, with two storey elements closer to habitable room windows in neighbouring houses, than in the appeal proposal. In response, the Council stated that the side windows in the neighbouring houses were not primary windows. A photograph submitted by the appellant shows the kitchen arrangement inside 88 Roe Lane. The kitchen diner in that case is a single room, served by a side window, French doors and what appears to be a further window overlooking the rear garden, unlike No.119 where the French doors are through an archway, effectively in another room. The circumstances are not therefore directly comparable and do not provide justification for the appeal proposal.
37. The Council stated that if the shed were found to be lawful that their reason for refusal would effectively lapse. However, whilst the shed does significantly

¹ Sefton Council New Build Homes Supplementary Planning Document May 2023

obscure views from the kitchen, it is much smaller than the proposed dwelling, which would have a greater depth and height than the shed. The proposed dwelling would still therefore have an overbearing impact on the outlook from No.119. Accordingly, even if I had found the shed to be lawful, its existence would have been a matter of limited weight and would not have outweighed my findings.

38. The proposal would result in significant harm to the living conditions of the occupants of No.119, with regard to outlook. It is therefore contrary to Policies HC3 and EQ2 of A Local Plan for Sefton Adopted April 2017 (Local Plan) which state that residential development will be permitted where consistent with other Local Plan Policies and require development to protect the amenity of those adjacent to sites. It would also conflict with the aims of the National Planning Policy Framework (Framework) which seeks to ensure a high standard of amenity for existing and future users, and the Council's SPD.

Other matters

39. There would be modest benefits associated with the provision of an additional dwelling, although I have no information to suggest that the Council does not have a deliverable five-year housing land supply. The appellant stated that the plot would be suitable for a self-build opportunity, and there would be modest social and environmental benefits in providing an extra housing unit in a sustainable location by making an effective use of land, as well as economic benefits associated with the construction of a dwelling and from the additional support to the vitality of the local community from the future occupants of the dwelling.
40. However, the harm to the living conditions of neighbouring occupants means that the social objective of sustainable development would not be achieved. Accordingly, the proposed development would not represent sustainable development for which Policy SD1 of the Local Plan and the Framework presumes in favour.

Conclusions

Appeal A APP/M4320/X/24/3336597

41. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the erection of a garden shed for the benefit of 100 Guildford Road 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).

Appeal B APP/M4320/W/24/3336615

42. The proposal conflicts with the development plan and the advanced considerations do not indicate that a decision should be made other than in accordance with the development plan. The appeal is therefore dismissed.

Felicity Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Chris Cockwill	Agent
Chris Wright	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Neil Mackie	Senior Planning Officer
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INTERESTED PARTIES:

Mrs McCaffrey	Occupant 119 Shaw's Road
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