



Appeal Decision

Site visit made on 5 February 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Appeal Ref: APP/M0655/X/23/3322523

363 Warrington Road, Warrington, WA3 5JQ

- 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 Lyndon Barton against the decision of Warrington Borough Council.
 - The application ref 2022/41801, dated 30 June 2022, was refused by notice dated 24 February 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 erection of a detached garage.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed development which is found to be lawful.

Preliminary Matters

2. Where an LDC is sought, the burden of proving relevant facts rests with the appellant, and the test of the evidence is the balance of probability. The relevant date for determining lawfulness is 30 June 2022, the date of the application.
3. A number of planning appeal decisions have been referred to by the appellant. However, I do not have knowledge of the plans or particulars of those appealed matters or the detailed relevant circumstances upon which those decisions were made. I therefore attach no weight to them in reaching my decision which I make on the facts and circumstances of the particular case before me.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded. The point of dispute between the parties is whether or not the land where the proposed garage building would be sited falls within the curtilage of the dwelling and therefore be permitted development in accordance with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). The Council's reason for refusal relates solely to the issue of curtilage. The size and dimensions of the proposed development were submitted to the Council as part of the application. The Council is not alleging that the proposed development fails to meet any of the other conditions or limitations set out in Class E.

Reasons

5. Curtilage is a legal term describing the relationship of land to a building; it is not a use of land for planning purposes and neither it is necessarily the same as a planning unit. There is no authoritative or precise definition of the term 'curtilage.' However, there are several authorities on the matter of curtilage which I will set out.
6. *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195 established that land may be regarded as being within the curtilage of a building if it serves the purpose of the house or building in some necessary or reasonably useful way.
7. In *Methuen-Campbell v Walters* [1979] 1 QB 525 (CA) established that land must be so intimately associated with the building as to lead to the conclusion that the former in truth forms part and parcel of the latter. In *Dyer v Dorset CC* [1988] 3 WLR 213 it was held that curtilage is a small area forming part and parcel with the house or building which it contained or to which it was attached.
8. These authorities, including *Methuen-Campbell*, were reviewed in the later judgement in *McAlpine v SSE* [1995] JPL B43 which indicated, amongst other things, that curtilage is a small area about a building, that the curtilage land must be intimately associated with the building, and that the size of the area of ground is a matter of fact and degree. *McAlpine* also reiterated the finding in *Sinclair-Lockhart* that curtilage land should serve the purpose of the building within it in some reasonably necessary or useful manner.
9. The test in *Methuen-Campbell* is cited at paragraph 61 in the later case of *Blackbushe*: 'In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter.' Andrews LJ goes on to state at paragraph 62 that 'this is as good an expression of the concept of curtilage as one is likely to find.'
10. As stated at paragraph 116 of *Blackbushe* 'the conclusion to be drawn from the authorities is that they all illustrate different applications of the same test to the facts and circumstances of the specific cases. They demonstrate that the curtilage in a given case is a question of fact and degree.' As such, any determination is primarily a matter for the decision maker, taking into account the relevant considerations. Relevant considerations in any assessment include the physical layout of the building and land; their ownership, past and present and their function, past and present.
11. The appeal dwelling, Holdcroft House, is set back from the road with a large expanse of front lawn. To the rear of the dwelling, there is a smaller lawn with domestic paraphernalia. Access to the appeal dwelling and surrounding gardens within the appeal site is along a central driveway which also provides access to the stables to the rear of the appeal site. The stables and the appeal site are physically separated with a gate and hedges and have separate Land Registry titles despite being in the same ownership. The appellant maintains that the dwelling has had the same curtilage since the dwelling was built and that the adjacent stable land is clearly separate and has been maintained separately. Whilst these two areas are separate planning units, the term 'curtilage' is not

- necessarily the same as the planning unit and the extent of the planning unit is not a determining factor in identifying the extent of a building's curtilage.
12. The existing dwelling is a replacement and the original dwelling was sited closer to the main road. The appellant purchased the appeal site from the daughter of the builder of the dwelling which was granted planning permission around 1958. The proposed location for the garage (the garage land) is within an area of hardstanding which is to the side of the house and on the opposite side of the driveway. The location to the side rather than the front or rear of the house does not prevent the land having an intimate association with the dwelling. The driveway leads to the dwelling itself as well as to the land with no physical barriers in between in the form of hedges or fences.
 13. At the time of the application, the garage land consisted of hardstanding which is in use for parking of vehicles in connection with the dwelling house use. The appellant has provided a series of aerial photographs which include the garage land from 2000 until 2019. The appearance and function of the land in the 2018 and 2019 photographs as an area of hardstanding for parking of cars is the same as its existing layout and function.
 14. The earlier photographs between 2000 and 2017 do show that the garage land was previously part of a continuous grassed area on the western side of the driveway from the front boundary to the rear boundary. The Council suggests that the use of the garage land has changed over the years from open grassed land associated with grazing animals to hardstanding.
 15. However, there is no limited documentary evidence before me to support that previous use of the whole of that grassed area including the garage land. The Council relies solely upon its delegated report and has chosen not to file a statement with supporting evidence or photographs. There is now a short length of hedge to the north of the garage land. However, the location of the hedge does not prevent the land having an intimate association with the house itself due to its proximity and its function in providing parking for the dwelling.
 16. It is not clear whether the Council is alleging that previous use of the whole of the grassed area to the west of the driveway means that it falls outside the definition of curtilage. However, that is not the issue before me. I am only addressing whether the garage land falls within the definition of curtilage as at the date of the application. Whilst previous use is a factor, it is not necessarily determinative. There is also limited evidence before to support the view that the garden land was previously in use for grazing animals or that the extent of the nature of that use means that the land cannot be curtilage. The statement of the previous owner does not identify any agricultural use other than two pet sheep.
 17. In this case, the dwelling and the garage land had no physical barrier or other visible separation between them at the date of the application. The driveway serves both the parking area and the dwelling as well as the stables to the rear. Smallness (*Dyer*) of the land in question is a relative factor; a matter of fact and degree. It is not so large that the furthest extent of it could be said to be unable to have an intimate association (*Methuen-Campbell*) with the house. Its use for parking in association with the dwelling indicates to me that it does have an intimate association with the use of the house, and its use serves the purpose of the dwelling house in a reasonably useful manner (*Sinclair-Lockhart*). The presence of an existing garage does not alter that position.

18. Taking all these factors together, the garage land is so intimately associated with the dwelling that the former is part and parcel of the latter. The dwelling and the garage land together constitute an integral whole. The garage land was curtilage to the dwelling at the time the application was made. Consequently, an LDC can be granted for the proposed garage as it would be permitted development within Schedule 2, Part 1, Class E of the GPDO.

Conclusion

19. For all the above reasons, I conclude that the Council's refusal to issue an LDC was not well founded. The appeal succeeds accordingly and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

E Griffin

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 30 June 2022 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The erection of a detached garage would be permitted development within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015.

Signed

E Griffin

Inspector

Date: 21 May 2024

Reference: APP/M0655/X/23/3322523

First Schedule

Detached garage

Second Schedule

Land at 363 Warrington Road, Warrington, WA3 5JQ

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: 21 May 2024

by E Griffin LLB Hons

Land at: 363 Warrington Road, Warrington

WA3 5JQ

Reference: APP/M0655/X/23/3322523

Scale: Not to Scale

