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# Appeal Decision

Site visit made on 20 May 2024

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date 5 June 2024**

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**Appeal Ref: APP/Z4718/C/23/3320922**

**Land at Pule Hill Farm, White Lea, Manchester Road, Marsden, Huddersfield HD7 6NJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Alastair Hanson against an enforcement notice issued by Kirklees Metropolitan Borough Council.
  - The enforcement notice was issued on 14 March 2023.
  - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the erection of a building.
  - The requirements of the notice are:
    - a) Dismantle and remove the building from the site, including sub-base and foundations.
    - b) Return the land back to its previous condition before the development took place.
  - The period for compliance with the requirements is 90 days.
  - The appeal is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. The appeal is dismissed and the enforcement notice is upheld.

### Appeal on ground (c)

2. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. On this legal ground of appeal, the onus of proof is on the appellant to make his case and the test is the balance of probabilities.
3. The building was constructed in 2020 and the appellant's case is that the development is situated within the curtilage of his dwelling and is used for a purpose incidental to the enjoyment of Pule Hill Farm. As such, having regard to the provisions of Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO) the building is permitted development and does not constitute a breach of planning control.
4. On the other hand, the Council do not consider the building to be situated on land within the curtilage of the dwelling known as Pule Hill Farm. Furthermore, the Council do not believe that the building, when first constructed, was utilised for purposes incidental to the enjoyment of the dwellinghouse, and consider the building to be sited in a position forward of the principal elevation of Pule Hill Farm. As such, it is the Council's case that the building is not permitted by the GPDO.

## *Curtilage*

5. Curtilage defines an area of land in relation to a building and not a use of land. There is no all-encompassing, authoritative definition of the term curtilage. The Technical Guidance<sup>1</sup> defines “curtilage” for Part 1 purposes as land which forms part and parcel with the house. Usually, it is the 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.
6. Generally, to fall within the curtilage of a building, it is enough that the land serves the purpose of the building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way. However, other considerations, such as past and present relationships of ownership and function, must be taken into account. In the absence of any statutory or authoritative definition, it was held in *Dyer*<sup>2</sup> that the term bears its restricted and established meaning, a small area forming part and parcel with the house or building which it contained or to which it was attached.
7. The relevant authorities were reviewed in *McAlpine*<sup>3</sup> and the following characteristics of curtilage defined: a) it is confined to a small area about a building; b) intimate association with land which is undoubtedly within the curtilage is necessary to make the land under consideration part and parcel of that undoubted curtilage land; and, c) physical enclosure is not necessary. I have also had regard to the Council’s reference to *Hampshire*<sup>4</sup> and *Methuen-Campbell*<sup>5</sup> and *Challenge Fencing*<sup>6</sup>.
8. Having regard to all the authorities it is apparent that whether something falls within a ‘curtilage’ is a question of fact and degree and, thus, primarily a matter for the decision maker. This involves considering both the past history of the land, and how it is laid out and used at the time the building was erected. It is possible for the extent of curtilage to change over time.
9. Aerial images provided within the Council’s Statement of Case (SOC), and the site’s planning history, indicate that Pule Hill Farm was formerly a farmhouse with associated barns/workshops and land attached to it. The farmhouse fronted onto Manchester Road in a roughly triangular plot, with its garden/land to the West enclosed by a drystone wall. The farmhouse and barn/workshop took access directly from the Manchester Road.
10. Between 2000 and 2018 a new access from Manchester Road was created to the West of the farmhouse. The adjacent barn/workshop was subsequently converted into a separate dwelling. Both dwellings now utilise the new access and track which runs to the south of Pule Hill Farmhouse and its enclosing drystone wall. The building the subject of this appeal has been constructed on an area of hardstanding created to the south of the track and in the recent past utilised as a parking/turning area.

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<sup>1</sup> Permitted Development Rights for Householders: Technical Guidance, September 2019.

<sup>2</sup> *Dyer v Dorset CC* [1988] 3 WLR 231.

<sup>3</sup> *McAlpine v SSE* [1995] JPL B43

<sup>4</sup> *Hampshire County Council v Secretary of State for Environment, Food and Rural Affairs* [2020] EWHC 959 (Admin)

<sup>5</sup> *Methuen-Campbell v Walters* [1979] 1 QB 525

<sup>6</sup> *Challenge Fencing Limited v Secretary of State for Housing Communities and Local Government* [2019] EWHC 553 (Admin)

11. From the evidence available, including observations on my site visit, the building has been erected on land which formed part of the original farmstead at Pule Hill Farm. However, having regard to the Council's image dated 2000<sup>7</sup>, this land was not, nor is it currently intimately associated with the farmhouse, such that it forms part and parcel of the enclosed garden area which surrounds it. Although physical enclosure is not necessary, the building has been erected on land more associated with the new access track which serves both Pule Hill Farm and the neighbouring converted dwelling. Albeit the land where the building has been erected has been used in recent years for parking of vehicles, there is no evidence that this land had previously been utilised for residential purposes in connection with the former farmhouse and it is visually and physically isolated from the farmhouse and its immediate enclosed garden area. I therefore conclude that as a matter of fact and degree, the land where the building has been sited is not within the curtilage of the dwellinghouse for Part 1 purposes.
12. I have had regard to Condition 4 attached to the planning permission for the change of use of the adjacent workshop/barn to form a dwelling<sup>8</sup>. However, although Condition 4 refers to curtilage, the permission relates to the approval for a new dwelling, and not the original farmhouse which is the subject of this appeal. I therefore give this consideration little weight.

### *Conclusion*

13. The GPDO in Article 3 grants planning permission for classes of development described as permitted development. Given that I have found that the building has not been erected on land within the curtilage of a dwellinghouse, none of the classes provide for the development alleged as a breach of control. There is also no record of planning permission being granted for this building operation.
14. My conclusion is that operational development took place for which no planning permission was granted by the local planning authority. This development is not permitted under the provisions of the GPDO. A breach of planning control has occurred. The appeal on ground (c) fails.

*Elizabeth Pleasant*

INSPECTOR

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<sup>7</sup> Exhibit 3 Council's SOC.

<sup>8</sup> LPA Ref: 2009/62/93583/W1