



Appeal Decision

Site visit made on 6 June 2024

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2024

Appeal Ref: APP/H1033/X/23/3327762

22 Spinnerbottom, Birch Vale, High Peak SK22 1BL

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr W Harrison against the decision of High Peak Borough Council.
- The application Ref HPK/2022/0308, dated 4 July 2022, was refused by notice dated 21 February 2023.
- 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 the erection of 2 garden outbuildings.

Decision

1. The Appeal is dismissed. See formal decision below.

The appeal site, the two outbuildings and the surroundings

2. This part of the appellant's land, on which the two outbuildings ('A' and 'B') have been constructed, is approximately 0.1ha in area and is located within the Green Belt. It lies immediately to the west and south-west of the appellant's end of terrace, 19th Century, gritstone dwelling in the hamlet of Birch Vale on Spinnerbottom. This is a small section of road which links the A6015 Hayfield Road to Thornsett Road. There are three other linked, stone, terraced houses at Nos 24, 26 and 28 immediately to the east of No 22.

3. From Spinnerbottom itself the front elevations of the houses appear as typical two-storey, former mill-workers' cottages with traditional gritstone elevations and surrounds to doors and window openings, timber sash and case windows and stone roof slates. However, due to the steep slope on which they have been built, the rear elevations of the houses are four storeys in height. These are similar to the front elevations, although No 28 has timber casement windows, not sash and case ones.

4. From the east of No 28 a shared unsurfaced access track slopes down from Spinnerbottom to the rear of the terraced houses. This rear area is known as 'Back Spinnerbottom' and between the houses there are small patio areas. On the opposite side of the access track there are small gardens, vegetable plots, outbuildings and car parking spaces.

5. The track extends past No 22 and its recently built, modern, two-storey glazed extension, into the appeal land which is all in the ownership of the appellant. The extension looks out onto the appellant's garden and the appeal land. To the west the sloping land, behind the Sycamore Inn, is jointly owned by the appellant and his wife, whilst the land around the Mill Pond to the south is in separate ownership.

6. Building 'A' measures 6.79m x 6.2m. It has a dual-pitched roof with a maximum height of 2.945m and an eaves height of 2.465m. Construction of the building initially started in 2019, but building work stopped following the initial enforcement investigation. The building, which is on level ground, is unfinished. Building 'B' measures 5.78m x 3.85m and is positioned closer to the road at a higher level than building 'A', cut into the slope of the land. It has a part flat, part mono-pitch roof with a maximum height of 2.806m and an eaves height of 2.416m. The construction is complete and during my site visit I noted that it is used seemingly as a hobby room by the appellant. The submitted plan does not accurately indicate the positions of the two outbuildings with building 'A' being located further to the west than is shown. However, they are both within the red-line boundary of the application and, as a LDC application, this inaccuracy of position is not critical to my consideration of the appeal.

Background information

7. The appellant purchased the property in 1976. At that time the appeal land contained a number of outbuildings and garages. The garages were owned by various occupiers of the 4 terraced houses. The garages were purchased by the appellant and in 2003 the appellant also purchased the land on which the garages stood. They were then used for a variety of uses including storage of building materials, machinery, livestock items, a workshop and as a personal gym.

8. The rest of the appeal land was used as a play area and for the keeping of chickens. It is also indicated that it was occasionally used for the keeping of horses and the rearing of sheep and pigs. Submitted photographs and historic maps illustrate the locations of the buildings and some of the activities which took place on the land. Due to their disrepair the garages were removed from the land around 2019/20. The two appeal buildings were then erected; one ('A') on the level ground formerly occupied by the garages and the other ('B') at a higher level.

9. The extension to No 22 had been granted planning permission in May 2003 (Ref: HPK/2003/0263). In December 2021, following the erection of the two appeal buildings, a Lawful Development Certificate (LDC) application (Ref: 2021/020) was submitted and sought an LDC for the '*Retention of land for incidental domestic purposes (domestic garden)*' on the appeal land. The application was made in response to an enforcement complaint relating to the two outbuildings 'A' and 'B'. It was intended to establish that the two buildings constituted permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).

10. Following discussions between the LPA and the appellant's agent at that time, an agreed revised application description was agreed. This stated that the use applied for was '*Existing use for purposes of horticulture or as a 'garden' to the extent that it is limited to the cultivation, planting or growing of grass, trees, seeds, vegetables, fruit, plants, shrubs, bushes or flowers; and the tending to and enjoyment of such land by persons who have a private right to access and enter the land)'enjoyment' in these respects includes sitting, walking, roaming, running and play that does not involve the use of installed or fixed apparatus or equipment*'.

11. The application had been accompanied by a number of documents including photographs, historic maps, and statutory declarations to demonstrate that the land had in fact been used continuously as a domestic garden for a period in excess of 10 years. A LDC for the existing use and development was issued in accordance with the revised description on 1 March 2022.

12. The appellant's current agent was appointed in May 2022 to advise on the outcome of the LDC application. In agreement with the LPA, it was concluded that

the issued certificate was not *'sufficient for the garden outbuildings to qualify as permitted development'*. This was because, although it was agreed that the land was 'domestic garden', it did not automatically follow that the appeal land and the buildings erected were within the curtilage of the dwellinghouse at No 22. However, on behalf of the appellant, it was argued that the land was *'within the curtilage of the dwellinghouse at No 22'*.

13. The appellant therefore instructed that a second LDC application be submitted and this is now the subject of this appeal. The application was made on 1 July 2022 and sought a LDC for the erection of the two outbuildings. The application was accompanied by a Site Location Plan (Plan No 100); a Site Plan (Plan No 101); Plans and Elevations of Outbuildings A and B (Plan No 102); a photographic sheet and a covering letter. The application was revised because the 'red-line' had not been drawn around the whole of the appeal site. Revised plans with the same numbers were submitted and the application was validated.

14. The submitted covering letter set out the appellant's case as to why the appeal land was considered to be part of the 'residential curtilage' of No 22. Contrary to the LPA's delegated Report, it is argued that *'it is perfectly possible for domestic garden land to become 'residential curtilage' and, unlike the lawful use of the domestic garden land that was established by the 10 year rule, there is no qualifying time to establish that land falls within the curtilage of a dwellinghouse'*.

15. It is common ground that, in the event that the land subject of this appeal was found to be contained within the curtilage of the dwellinghouse at No 22, the two outbuildings would comply with all of the other relevant parameters/requirements set out under Schedule 2, Part 1, Class E of the GPDO.

My Assessment

Introduction

16. An appeal relating to a Certificate of Lawful Use or development (LDC) is confined to the narrow remit of reviewing the LPA's decision and Section 195(2) of the Act requires an assessment to be made as to whether the refusal of the application was, or was not, well-founded. The assessment is based on whether or not the proposed development, for which the certificate is sought, would have been lawful at the time of the application (4 July 2022). Irrespective of the fact that the site lies within the Green Belt, the planning merits of the proposed development are not relevant and there is no planning application before me.

17. Outbuildings fall under Schedule 2, Part 1, Class E of the General Permitted Development Order (Amendment) (No2) (England) Order 2008 (the GPDO). This permits, within the *'curtilage of a dwelling house'*, any building which is incidental to the enjoyment of the dwelling house. As indicated above it is common ground between the parties that all of the other constraints and conditions in relation to Class E are satisfied. The only disagreement relates to whether or not the two existing outbuildings 'A' and 'B' lie within the *'curtilage'* of No 22.

18. In relation to the Act, the word *'curtilage'* has not been defined and decision-makers have to rely on dictionary definitions and to the case law authorities set out over the years. Some of these have been referred to in the parties' submissions.

19. The concept of *'curtilage'* is different to *'land use'* and *'residential curtilage'* is not a defined use of land as set out in the Use Classes Order (UCO). A lawful residential or garden use of land does not necessarily equate to it falling within the *'curtilage of a dwelling house'*.

20. The courts have held that whether or not land falls within the '*curtilage of a dwelling house*' is a matter of fact and degree, based upon the particular material planning circumstances of the case. This is how I have dealt with the facts in this appeal. In doing so I have taken into account all of the case law references referred to on behalf of the appellant, and by the Council.

21. There are certain tests which should be applied in assessing what constitutes curtilage and these apply '*whatever may be the strict conveyancing interpretation*' (*Sutcliffe Rouse & Hughes v Calderdale BC (1983) JPL 310*). These are physical layout; ownership, past and present and use and function, past and present.

22. With regard to the tests relating to ownership, the evidence is clear that the appellant has owned the appeal land (and adjoining land) for some considerable time and that this is still the case. Although the land has been shown to have been functioning as a 'residential garden' for well over 10 years, in the past it had functioned as land used for garaging related to the houses in the terrace. However, it is now in lawful residential/garden use (of No 22) following the issuing of the previous LDC and on the basis as worded in the certificate.

23. I now turn to the physical layout of the land. During my visit I noted the small, planted garden immediately adjacent to the extension and the vegetable garden with small greenhouse on the other side of the access track. These two areas are quite clearly perceived as being integral and part of the land immediately associated with the dwellinghouse at No 22. Like the other gardens to Nos 24, 26 and 28, I consider that these fall within the curtilages of the houses, when considering the usual definition of land belonging to a dwellinghouse.

24. The appeal land, on the other hand, is much more extensive and open. Although contiguous with the house, this area of land once housed other buildings, including the garages and stores to neighbouring properties. At that stage it would not have been perceived as being part of the curtilage to No 22. It would have been seen as being accessed along the track and some distance away from the then immediate and obvious garden areas of the house at No 22.

25. When walking along the track towards the land, in my view, it is still perceived as being distinctly separate, physically, from the house, its immediate garden and the new extension. This is also the case when seen from the road and from the south-western part of the site, beyond building 'A'. It is not simply a matter of the distance from the house. The appeal buildings; the track; other structures; the hardstanding areas and the sloping ground up to Spinnerbottom all combine to form what is perceived as a separate area of land. Overall, the appeal site is seen as land which is well remote from the dwellinghouse at No 22 and the other three houses.

26. In relation to the dictionary definition of 'curtilage' I consider, therefore, that, as a matter of fact and degree, the appeal land forms a separate piece of ground which lies outside of the original and main enclosure more closely associated with the dwellinghouse at No 22. As referred to above it is perceived as such and, irrespective of the fact that the land is in lawful 'residential use', I do not consider that it forms part of the 'curtilage' to No 22. It forms its own perceived 'spread-out' area of land with a boundary that is outside of the immediate curtilage of No 22.

27. I acknowledge that the appeal land and the two buildings are on '*ground used for the comfortable enjoyment of the house*' and that, they serve the purpose of the house '*in some necessary purpose or reasonably useful way*'. I accept that the land and outbuildings can be said to be '*required for the comfortable enjoyment of the dwelling house*' and are lawfully in use as 'residential garden land'. These are all typical characteristics of what normally constitutes 'curtilage'.

28. However, although it is used in all of these residential ways for the enjoyment of the appellant and his family, I do not consider that it forms '*an integral part of the same*' in terms of the '*curtilage of the dwelling house*'. From my perception of the overall site, I have concluded that the appeal land is separate, as opposed to being integral, to the rest of the land (its immediate garden and patio) and the house.

29. I can understand the appellant and others being confused or perplexed by a situation where land can be considered lawful for residential purposes and yet found not to be within the '*curtilage of a dwelling house*'. But, as indicated above, the word '*curtilage*' is not defined and a residential/garden use of land does not necessarily equate to it falling within the '*curtilage of a dwelling house*'. In this case I have considered the appeal on the established case law basis that, whether or not the land falls within the '*curtilage of a dwelling house*' is a matter of fact and degree in each particular case.

30. For the reasons set out above I have concluded that the appeal land does not fall within the curtilage of the dwellinghouse at No 22 Spinnerbottom. It follows that buildings 'A' and 'B' cannot, therefore, benefit from Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

31. I acknowledge the support that the appellant has had from neighbours and others. In particular I have noted that all those in support consider that the new outbuildings are a significant improvement on the old, dilapidated garages and other old buildings which were previously on the land. In terms of area, massing and volume it also seems that the two new buildings are smaller overall than the previous buildings on the land. However, this does not alter the fact that, for the reasons set out above, the outbuildings do not constitute permitted development.

32. If they are to remain in place then planning permission is required. With regard to their Green Belt location, it is evident that the land has been previously developed and that the outbuildings have replaced the former dilapidated garages and other structures. Thus, in terms of their effect in this part of the Green Belt they would fall to be considered in relation to paragraph 154 of the NPPF.

33. However, in conclusion as to whether or not they constitute permitted development, I consider that the Council's decision not to issue a Lawful Development Certificate was sound and that the appeal must fail.

Other Matters

34. In reaching my decision I have taken into account all of the submissions made by the appellant, by the Council and by interested persons. These include the full planning history; the Council's reason for refusal; the Council's Delegated Report; the detailed appeal Statements; the statements of support; all of the final comments and the photographic evidence.

35. However, none of these carries sufficient weight to alter my conclusions and nor is any other factor of such significance so as to change my decision that that a Lawful Development Certificate should not be issued.

Formal Decision

36. The appeal is dismissed and a Lawful Development Certificate, as applied for, is refused.

Anthony J Wharton

Inspector