



Appeal Decision

Site visit made on 16 July 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19TH AUGUST 2024

Appeal Ref: APP/W0340/X/23/3321289

Field View, Kiff Green, Upper Woolhampton, West Berkshire, Reading RG7 5TN

- 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 Steve Collins against the decision of West Berkshire District Council.
 - The application ref 23/00423/CERTP, dated 21 February 2023, was refused by notice dated 19 April 2023.
 - The application was made under section 192(1)(a) 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 construction of a detached double garage with space for storage of tools and garden machinery.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the construction of a detached double garage with space for storage of tools and garden machinery, which is found to be lawful.

Applications for costs

2. An application for costs was made by Mr Steve Collins against the West Berkshire District Council's decision to refuse the Lawful Development Certificate (LDC). This application is the subject of a separate decision.

Preliminary Matters

3. This current LDC application included an Application Form, a Location Plan (drawing reference 2023-01/FV01/LP1); a Block Plan (drawing reference 2023-01/FV01/BP1) as well as a Floor and Elevations Plan (drawing reference 2023-01/FV01/EV1). As part of the appeal submissions the appellant provided additional evidence in the form of a Supporting Rationale and Evidence Statement with Appendices A to D. They include Appendix A- table of garden sizes in the locality, Appendix B- chart outlining compliance of proposed development with Class E of the Town and Country (General Permitted Development) Order 2015 (as Amended); Appendix C and D- Curtilage Principals and Assessment respectively.
4. Both parties have discussed the planning history as part of the appeal, specifically, a recent section 191 LDC application relevant to the determination of this appeal. The previous LDC application sought a certificate for the existing residential use of land to the side and rear of Field View, incidental to the dwellinghouse. The LDC

application was refused by the Council but later allowed on appeal¹. I will hereafter refer to it as the '2022 appeal.'

5. The relevant test is the balance of probability, not the more onerous test of beyond reasonable doubt. The onus rests with the appellant to provide sufficient information to demonstrate this to be the case. The Planning Practice Guidance (PPG) states that if the Council has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous².

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

7. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for classes of development listed in Schedule 2. Subject to several limitations, Class E(a), Part 1, Schedule 2 includes the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of that dwellinghouse.
8. The main area of contention between the parties is whether the proposed building would be located in the curtilage of the dwellinghouse. It is correctly set out in the submissions that curtilage is not a use of land. However, to benefit from express permission via Class E, Part 1, Schedule 2 of the GPDO, the land upon which the building would be constructed must be within the curtilage of the dwellinghouse at the time the application was submitted. Whether the land where the building is proposed can be regarded as being within the curtilage of a dwellinghouse is a matter of fact and degree.
9. The appellant has indicated that the Council describes 'curtilage' within their own policy documents as '*The defined residential boundary of a dwelling, normally (but not necessarily) the domestic garden area*' and '*The area of land around a property, e.g. gardens, grounds.*' I have not been provided with a copy of the policy documents being referred to by the appellant, however, the Ministry of Housing Communities and Local Government (MHCLG) Technical Guidance for Householder Development provides some assistance in respect of the term. At page 7 it states:

"Curtilage" – is 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.
10. Curtilage of a building must, therefore, be land that is part and parcel with the dwelling and intimately associated with the building. There is also established caselaw that has had regard to the issue of curtilage, some of which has been highlighted by the appellant and Council. For instance, *Sinclair-Lockhart's Trustees*³ established that land may be regarded as being within the curtilage of a

¹ Council Reference No. 21/02873/CERTE and Appeal reference APP/W0340/X/22/3290914

² Paragraph: 006 Reference ID: 17c-006-20140306

³ *Sinclair-Lockhart's Trustees v Central Land Board (1950) 1 P&CR 195*

building if it serves the purpose of the house or building in some necessary or reasonably useful way. *Methuan-Campbell*⁴ determined that, to be curtilage, land must be associated with [the building] as to lead to the conclusion that the former in truth forms part and parcel of the latter. The relative size of the building and its curtilage, whether the building or land would be ancillary to the main building (*Skerritts*⁵) and the degree to which the building and claimed curtilage fall within one enclosure (*Sumpton*⁶).

11. While concerning a listed building, but equally applicable to any building, *Calderdale*⁷ sets out three important factors that must be considered and are important to my consideration of the matter (i) The physical layout of the building and land; (ii) Their ownership, past and present; and (iii) Their function, past and present. The factors set out are relevant considerations, but they are not determinative on their own.

Physical Layout of the Building and Land

12. The appellant proposes a detached garage building on an area of land to the side of the dwellinghouse. It would be located a few metres further east than the existing shed, just beyond a gravelled parking and turning area. The appellant's Supporting Rationale and Evidence Statement claims that the garden is fully enclosed by hedges and fencing, and there are now no physical traces of the previous boundary between the areas that would have formed the original curtilage and the extended area approved in the 2022 appeal.
13. From what I saw on site, the front boundary is delineated by a hedgerow followed by a line of mature trees and a low lying chestnut paling fencing. The fencing and vegetation extend from east to west where it meets an access track to a field. The fencing then extends north to south, which together with trees and vegetation, forms an eastern boundary. At the back of the site there is a mix of hedgerow, vegetation and trees separating the site from the field behind. A hedgerow forms a boundary between the land and adjoining neighbour to the west. These boundaries enclose the land within the site edged red identified on the location plan.
14. However, within the site I do not agree that there are no physical traces of previous boundaries between the original and extended area. To the side of the dwelling, between the large shed and an electricity pylon, there is a flat, well maintained lawned garden that is enclosed by a fairly distinct line of mature trees. These trees are inside of the eastern boundary line of the extended land described above. The trees form a line from the front boundary, which extends to the south and curves around the back of the existing outbuildings. Towards the rear, the line of trees extends to the rear boundary, enclosing a lawned garden to the back. Within the tree line described is the dwelling; the side extension; parking area; existing outbuildings; a rotary washing line and a side and rear lawned garden.
15. It is accepted that there are several gaps in the tree line, allowing access to the extended land, which includes items such as a picnic table; a vegetable patch; a well and tap (in use) and benches. Also some chain link fencing and a mature hedgerow described in the 2022 appeal decision⁸ have now been removed. However, in terms of the physical layout of the building and land together with

⁴ *Methuan-Campbell v Walters* [1979] 1 QB 525

⁵ *Skerritts of Nottingham Ltd v SSETR* [2001] QB 59

⁶ *Sumpton v London Borough of Greenwich* [2007] EWHC 2776 (Admin)

⁷ *Attorney General, ex r Sutcliffe v Calderdale Borough Council* (1983) 46 P&CR 399

⁸ paragraph 12

enclosures, I am of the view that the land within the tree line is within a single enclosure and appears as part and parcel of the dwelling as well as intimately associated with the building.

Ownership

16. The appellant states that they purchased the property of Field View in 1985, and the additional land to the side and rear in 2001. Although a land registry document and plan has not been provided with the application or appeal, the Council has not provided any evidence to the contrary. I have no reason to doubt that the plan with the LDC identifies the area of land that has been owned and occupied by the appellants since 2001.
17. As such, based on the evidence before me, the dwellinghouse at Field View, and the surrounding land identified by the site edged red has been in single ownership, by the appellant, since at least 2001. This is, of course, some considerable period of time.

Use or Function

18. I recognise that there is not a significant amount of evidence submitted with the LDC application or the subsequent appeal submissions, which sets out in detail the specific use and function of the land where the garage is proposed.
19. Nonetheless, the 2022 appeal is particularly relevant as it considered whether the land surrounding Field View, within the appellant's ownership, had been used for residential activities incidental to the dwellinghouse. The 2022 appeal is a recent decision and determined that all of the land to the side and rear within the appellant's ownership has been used incidentally to the residential use of the dwelling since at least 2001. The appellant has not indicated that the use or function of the land has changed since the 2022 appeal, and the Council has not provided any evidence to the contrary.
20. As such, with specific regard to the area to the east of the dwellinghouse, where the garage building is proposed, I have no reason to doubt that the appellants have used this land as garden incidental to the dwelling since the purchase of the property. As such, the land has been used for some significant time for this use or function.

Summary on Curtilage

21. I have viewed the layout of the building and land around it differently to the appellant. I do not consider that the curtilage of the property extends to the entirety of the land owned by the appellant. However, the land where the garage building is proposed is within the boundary of trees I have described, close to the dwellinghouse and its outbuildings. The land is within the same, single ownership and has a use or function that is incidental to the residential dwellinghouse. Accordingly, I find that the land where the garage building is proposed is intimately associated with the dwelling, and the former in truth forms part and parcel of the latter. Based on a matter of fact and degree, the garage building is proposed on land that is within the curtilage of the dwellinghouse.
22. I have had regard to the previous Inspector's comments on the curtilage. However, in my judgement, the previous Inspector's decision focussed on whether the land (subject of that appeal) was being used incidentally to the residential use of the property over a 10 year period. His observations on curtilage related to the

entirety of the land in question and would not have been determinative on the decision he was making. As such, although I have had regard to the 2022 appeal, the approach I have taken in this instance is correct, it is consistent with established caselaw as well as the MHCLG technical guidance regarding the curtilage of properties with large grounds.

Compliance with Class E of the GPDO

23. The Council has not provided comment on whether the proposed building would be compliant with the remaining requirements and limitations set out in E.1 to E.3 to Class E(a) of the GPDO. However, as I have determined that the proposed building would have been within the curtilage of Field View at the time of the application, I must have regard to the remaining requirements and limitations of Class E(a) of the GPDO.
24. Based on the evidence before me, the proposed building is compliant with the limitations set out within E.1 to E.3. The proposed building is not within any of the protected areas outlined; it would not be forward of the principal elevation; it does not include a raised platform; it is single storey, and the eaves and roof heights would not exceed the maximum heights permitted. The building and other buildings within the curtilage would also not exceed 50% of the area.
25. There is no definition of 'incidental' in the GPDO, but the MHCLG Technical Guidance for Householder Development advises that a purpose incidental to a dwellinghouse would not cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen⁹.
26. The building is proposed as a double garage and for the storage of tools and machinery in connection with the residential use of the land. The use of the building as a garage for the purposes set out does not, therefore, include primary accommodation and would be considered an incidental use to the dwellinghouse. Furthermore, the size of the proposed building is not excessive for its purpose and would be reasonably required for the incidental uses set out.

Conclusion

27. I have taken into account the Council's concerns over the location of the proposed building. However, based on the evidence before me, I am satisfied that the proposed building would have been located on land that is within the curtilage of Field View. Consequently, it would have been compliant with the requirements and limitations set out in Schedule 2, Part 1, Class E of the GPDO.
28. Accordingly, on the evidence now available to me, the Council's refusal to grant an LDC in respect of the proposed detached double garage with space for storage of tools and garden machinery was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

M. P. Howell

INSPECTOR

⁹ Permitted development rights for householders Technical Guidance, DCLG (2019)



The Planning Inspectorate

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 21 February 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(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed construction of a detached double garage with space for storage of tools and garden machinery would have benefitted from deemed planning permission pursuant to Article 3 of, and Class E(a) of Part 1 of Schedule 2 to, the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

M. P. Howell
Inspector

Date: **19TH AUGUST 2024**

Reference: APP/W0340/X/23/3321289

First Schedule

The construction of a detached double garage with space for storage of tools and garden machinery.

Second Schedule

Field View, Kiff Green, Upper Woolhampton, West Berkshire, Reading RG7 5TN

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: **19TH AUGUST 2024**

by **M. P. Howell BA (Hons) Dip TP MRTPI**

Land at: Field View Kiff Green, Upper Woolhampton, West Berkshire, READING RG7 5TN

Reference: APP/W0340/X/23/3321289

Scale: Not to Scale

