



Appeal Decision

Site visit made on 22 October 2024

by Mr Phillips BA(Hons), DipTP, MTP, MRTPI, AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal Ref: APP/B1550/X/23/3328780

Pondside Lark Hill Road, Canewdon, Essex SS4 3RA

- 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 P Finch against the decision of Rochford District Council.
 - The application ref 23/00522/LDC, dated 8 June 2023, was refused by notice dated 8 August 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 demolition of existing stables and erect proposed replacement stables.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on whether the proposed development would constitute permitted development by virtue of the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

3. The matter at dispute in this case is whether the appeal site is located within the curtilage of the dwellinghouse. The area of land in question is associated with Pondside, Lark Hill Road, which is a dwellinghouse currently under construction. The proposed stables would be constructed as an L-shaped building with a hipped roof and an approximate footprint of 247 square metres. It would accommodate four stables, a wash barn, tack room and hay/feed store.
4. Recent caselaw¹ sets out that curtilage is so intimately connected with a building so as to result in the conclusion that the former forms part and parcel of the latter. The judgement also confirms that physical layout, ownership past and present and function, past and present are factors that may be used but they are not necessarily determinative, nor should they be used instead of the "part and parcel" test.
5. It is also important to understand that curtilage is not necessarily defined by particular forms of enclosure, nor is it necessarily small. However, relative

¹ Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd [2020] EWHC 959 (Admin), EWCA 398, [2020] JPL 1359

size in terms of the size of the land in relation to that of the building should be assessed. Furthermore, there is no requirement for land to be “ancillary” to a building to fall within the curtilage.

6. The boundary line submitted with the LDC application is an irregular shape and the land on which the proposed stables would be built is on an extended small parcel of land approximately 66.5 metres from the main dwellinghouse. I understand that distance is not in itself a determinative factor, but in this case the land in question is to the rear of an existing large agricultural building which is on adjacent land. The appeal land appears to be an extended parcel of land with a separate side access.
7. Aerial photographs appear to show that the land has been separated from the curtilage of the dwellinghouse by a track and there is also evidence of boundaries separating the appeal land from the dwellinghouse. It may be that those boundaries were in place for a specific purpose such as securing land for pets, but that is also an indication that the curtilage was separated from other land for specific purposes. Therefore, in my judgement the appeal site is separate from the dwellinghouse as a result of physical layout.
8. It is my understanding that the whole site comprising the dwellinghouse, its garden area and the wider parcel of land including the appeal site has historically been included in a single land title and this remains the case. In addition, there is also evidence before me showing that a previous planning permission for an agricultural building supports this. Therefore, the land the subject of the current LDC has historically been part and parcel of the same land ownership, past and present.
9. With respect to the use or function of the land, the appellant argues that the buildings currently on the appeal site have and continue to be used for purposes associated with domestic storage for the residential use of the wider site. At my site visit I observed that the former Anderson shelter is used for storing wood used to heat the previous dwellinghouse and the one which is currently being built. There is also reference in the supporting documentation to storing hay in the buildings, but it is acknowledged that this has been limited and may have related to the maintenance of the wider residential curtilage.
10. Previous domestic-related planning applications have drawn the red line in accordance with the appellant’s understanding of the extent of the residential curtilage. Although the plans have not been challenged by the Council the position of a red line on a plan does not necessarily define what actually is curtilage on the ground.
11. The existing stables building on the appeal site is used for some general storage purposes, including materials being used to construct the new dwelling and fencing. Historically, this building has been used for stabling horses which, it is contended, was a purpose incidental to the enjoyment of the dwellinghouse.
12. The general storage use of the buildings, including wood storage may be associated with the dwellinghouse, but use for hay storage and stabling is less conclusive because the hay storage is less clear and stables could easily be situated on land outside a defined residential curtilage and is not necessarily defined as a purpose incidental to the enjoyment of a dwellinghouse.

13. The ownership of the appeal site past and present has been the same as the associated residential property now known as Pondside. In addition, there has been some use of the site, past and present for ancillary purposes or uses which may be incidental to the enjoyment of the dwellinghouse. However, not all the uses identified are helpful in defining the extent of curtilage because they are not necessarily incidental to the enjoyment of the dwellinghouse and would not necessarily normally be situated within residential curtilage.
14. However, my main concern relates to the physical layout of the appeal site and its surroundings in relation to the dwellinghouse. This includes its appearance as an extended parcel of land, the awkward shape, distance from the main dwellinghouse and the presence of a track and boundaries which have separated the parcel from the dwellinghouse. These are determinative in this case and are indicative that the appeal site where it is proposed to demolish the existing stables and erect proposed replacement stables is not as a matter of fact and degree part and parcel of the domestic curtilage associated with Pondside. As such, permitted development rights pursuant to Class E do not apply and planning permission would be required for the development described above.

Conclusion

15. I conclude that the demolition of existing stables and erect proposed replacement stables is situated outside the curtilage of the dwellinghouse and, as such it would not be permitted development by virtue of Class E of Part 1 of Schedule 2 of the GPDO.

A A Phillips

INSPECTOR