



Appeal Decision

Site visit made on 12 November 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 18 DECEMBER 2024

Appeal Ref: APP/G1630/C/23/3332417

No 4 Clifford Avenue, Tewkesbury, GLOUCESTERSHIRE GL20 7RW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Robert Charles Jones against an enforcement notice issued by Tewkesbury Borough Council.
 - The notice was issued on 5 October 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of an outbuilding.
 - The requirements of the notice are: 1) Demolish/remove the unauthorised outbuilding hatched in blue on the attached plan; 2) Remove all debris and materials resultant from compliance with step 1 above.
 - The period for compliance with the requirements is: 1 calendar month.
 - The appeal is proceeding on the ground 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.

The appeal on ground (c)

2. The appeal on this ground is that the matters alleged do not constitute a breach of planning control. Planning merits (such as any effect on living conditions of neighbouring residents or on the character and appearance of area) are not relevant to my assessment.
3. The appellant submits that the outbuilding erected is not in breach of planning control on the basis that it represents permitted development under Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('GPDO').
4. There is no dispute between the parties that the proposed building would meet the limitations set out in paragraph E.1 of Class E. The matter in dispute between the parties is whether the proposed outbuilding would be located within the curtilage of the dwellinghouse.
5. The term 'curtilage' is not defined in the GPDO and there is no all-encompassing, authoritative definition of the term. Curtilage has been described in case law as land used for the comfortable enjoyment of a dwellinghouse and that it does not need to be marked off provided that it serves the purpose of the dwelling in some reasonably useful way. It should be intimately associated with the dwelling such that it forms part and parcel of it and regard should be had to (i) the physical layout of the building and the land said to be in its curtilage, (ii) ownership (past and present) and (iii) use

or function (past and present). The assessment of curtilage is a matter of fact and degree for the decision maker.

6. The outbuilding which is attacked by the notice is sited on an area of land which forms part of an open forecourt which sits adjacent to a series of garage structures. The appellant has advised that the end two garages to the east fall within his ownership and are within the same Land Registry title as the main house and garden. Each of the garage structures is two storeys high and the appellant has indicated that there is flatted accommodation at first floor level above his garages (which is not associated with the appeal dwelling). The two garages owned by the appellant sit very close to the main house and these, and the area of forecourt owned by the appellant can be accessed directly from the host property's garden via a side access.
7. There is nothing to suggest that the land in question has previously been in ownership other than in association with the host property. It would appear to have historically served and currently serves a useful purpose for the appeal property as a parking and manoeuvring area and in providing access to the garage buildings also owned by the appellant.
8. However, whilst the land is close to the main house and is attached to the remainder of the land within the appellant's ownership, it is not enclosed in any way from the remainder of the forecourt area. There is no evidence to suggest that it has ever formed one enclosure with the dwellinghouse and indeed, it is visually separated from the remaining land within the ownership of the appeal property by the appellant's boundary treatment and by the garage structures. The site has the character of being located within a shared space as part of the remainder of the forecourt.
9. Drawing these matters together, I therefore find as a matter of fact and degree on the available evidence that the land lacks the intimate association with the appeal property such as to represent part and parcel of the host dwelling. It does not therefore fall within its curtilage. It follows that the outbuilding attacked by the notice is not permitted development within Class E. Since it does not benefit from a specific grant of planning permission, it represents a breach of planning control. The ground (c) appeal accordingly fails.

Other Matters

10. Documentation submitted with the Council's questionnaire included a copy of the planning permission for the housing estate of which the appeal property forms a part¹. A condition of that permission removed a number of permitted development rights for houses on the estate, including for the erection of outbuildings. The appellant was given an opportunity to comment on this since neither the notice nor the Council's representations made reference to a breach of condition. Comments made have been taken into consideration but have not been determinative in view of my finding that the outbuilding was not constructed on land falling within the curtilage of the appeal property.
11. I have sympathy with the appellant's efforts to check permitted development rights before erecting the structure but ultimately I have found this to not be lawful for the reasons stated. The appellant has also raised a number of

¹ Ref: 98/8613/1033/FUL

concerns connected to the Council's handling of the enforcement and appeal process but these are not matters for me in determining this appeal.

Conclusion

12. For reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

V Bond

INSPECTOR