



Appeal Decision

Site visit made on 17 December 2024

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th January 2025

Appeal Ref: APP/B2355/W/24/3348457

Hodge Hill Nook Farm, Cobden, Whitworth OL12 8XJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr J Magill against Rossendale Borough Council.
 - The application Ref is 2024/0140.
 - The development proposed is boundary treatment and landscaping to the rear amenity land (part retrospective).
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. This appeal against the Council's failure to give notice of a decision results from a validation dispute between the main parties. An assessment by the Council of the scheme's planning merits has now taken place at appeal stage. I have identified the main issues in this appeal having considered the Council's Statement of Case, which sets out their main concerns should it be determined that a valid planning application was in fact made.

Main Issues

3. The main issues are:
 - Whether or not the planning application should have been validated by the Council; and, in the event that I find it should have been validated,
 - The effect of the proposal on the character and appearance of the area.

Reasons

Validation

4. The planning application that is now the subject of this appeal, was submitted on 8 April 2024, as a householder application for planning permission for boundary treatment and landscaping, with the requisite householder application form and fee. The Council initially accepted that the application was valid and started to process it. However, following a site visit, the Council wrote to the applicant on 8 May 2024 to advise that it did not consider that the application site formed part of the curtilage/garden of the house and, as such, the proposal could not be considered as a householder application.

5. In response, the appellant submitted a Notice, dated 8 May 2024, under the validation dispute process at Article 12 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMPO). Within the Notice the appellant argued that the application was valid as the site was garden land. An aerial photograph, and Deeds in respect of the sale of land for the construction of the farmhouse and water rights, were provided in support.
6. On 8 May 2024, the Council issued a Non-Validation Notice under Article 12 of the DMPO, advising that, in its opinion, the provided aerial photograph and Deeds did not indicate that the land is garden and for that reason the proposal could not be considered as a householder application.
7. The outcome is that the application is classified as a non-validated application, and the time periods for decisions set out under article 34 of the DMPO apply. This enables an appeal to be made under section 78(2) of the Town and Country Planning Act 1990 (the Act). The relevant time period for making an appeal is set out under article 37(2) of the DMPO. I am satisfied the appeal has been lodged in the relevant time frame.
8. The DMPO stipulates at article 2(1) that 'householder application' means:
"(a) An application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse, or
(b) An application for any consent, agreement or approval required by or under a planning permission, development order or local development order in relation to such development,
But does not include an application for change of use or an application to change the number of dwellings in a building".
9. Case law has established that, for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building. Further considerations arising from case law are that the interpretation of the word curtilage is a matter of fact and degree for the decision maker and that regard should be had to three tests (i) the physical layout of the building and land; (ii) ownership past and present; and (iii) use or function past and present.
10. The submitted aerial photograph indicates that in 2000 there were three, distinct, parcels of land within the appeal site. It shows an enclosed area of land, parcel 1, which is set in from the side boundaries of the appeal site and extends from a position towards the northern end of an outbuilding, referred to as stables on the proposed plans, to the northern boundary. In addition, the photograph shows an area along the eastern boundary of the site, parcel 2, that is separated from the remainder of the land by a boundary treatment stretching from the northeast corner of the dwellinghouse to the stables and from the northwest corner of the stables to the northern boundary. The photograph also shows an area directly to the rear of the dwellinghouse, parcel 3, containing landscape features typical of a garden which are not present within parcel 1 or parcel 2.
11. In the aerial photo there appears to be a strong physical relationship in terms of layout between the dwellinghouse and parcel 3, and strongly suggests that it forms part and parcel of that building. However, such a relationship is not apparent for parcels 1 and 2. The photo, therefore, does not provide compelling evidence that

parcels 1 and 2 were used, at that time, for the comfortable enjoyment of the dwellinghouse and, accordingly, may be regarded as being within its curtilage.

12. The submitted Statement of Truth (Statement), from the occupant of the cottage adjoining the appeal site, indicates that, for an 8-year period up to 14 July 2024, the rear area to the dwellinghouse was laid out as an established garden and looked like it had been used as a garden for a long time. However, notwithstanding that there is a location plan attached denoting the appeal site, it would not be unreasonable to consider that the description of garden use is comparable to the situation I have set out above. It does not clarify, for the avoidance of doubt, that the entirety of appeal site is being referred to. Consequently, this evidence is not sufficient to dispel the reasonable doubt that the appeal site includes land that is not within the curtilage of the dwellinghouse.
13. There is no dispute that the dwellinghouse and the land within the appeal site fall within a single ownership. Furthermore, the submitted Deeds suggest that the appeal site has been in the same ownership as the dwelling for a long period of time. Nonetheless, that is not sufficient to support a conclusion that the entire site forms land within the curtilage of a building. For the reasons set out above, having regard to the physical layout of the dwellinghouse and the entire appeal site, and its use or function past and present, the evidence before me does not demonstrate that, as a matter of fact and degree, parcels 1 and 2 form part of its curtilage.
14. Therefore, having regard to the evidence before me and noting that the proposal is to enclose land within parcels 1 and 2 in addition to that within parcel 3, I can only dismiss the appeal on the basis that the information before me does not allow me to conclude that the boundary treatment is within the curtilage of a dwellinghouse and, as such, meets the DMPO definition of a householder application.
15. Given my conclusion on the first main issue, there is no need for me to consider whether or not the proposal would harm the character or appearance of the area, as this would not alter the outcome of the appeal.

Conclusion

16. For the reasons set out above, I conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR