



Appeal Decision

Site visit made on 1 April 2025

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 April 2025

Appeal Ref: APP/C2741/X/24/3343593

The Old Vicarage, Main Street, Askham Richard, York YO23 3PT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr James Metcalfe against the decision of City of York Council.
- The application ref 23/02153/CPD, dated 22 November 2023, was refused by notice dated 18 January 2024.
- 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 construction of an outbuilding and in-ground pool within the garden of the property.

Decision

1. The appeal is dismissed.

Reasons

2. The **main issue** is whether the Council's refusal to issue an LDC is well founded.
3. The appellant argues that the proposed outbuilding, which is shown on the 'Proposed Site Plan' and drawing Numbers: JM.1 and JM.2, and the in-ground pool would be located within the dwelling's curtilage and would satisfy all the physical criteria set out in Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) ('the GPDO').
4. Subject to the conditions and limitations set out in paragraphs E.1, E.2, E3 and E.4, Class E permits: *'The provision within the curtilage of the dwellinghouse of – (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'*
5. Paragraphs E.2, E.3 and E.4 are not applicable to the proposed development. There is no disagreement between the appeal parties, and I concur, that the proposed outbuilding and in-ground pool would satisfy the physical criteria in Class E.1, but this is not determinative in isolation. Class E (a) requires the development to be within the dwelling's curtilage and to be *'required for a purpose incidental to the enjoyment of the dwellinghouse as such...'*

Curtilage

6. The land identified within the red line on the site location plan encompasses two dwellings: The Old Vicarage and The Old Stables. The LDC relates to proposed development incidental to the enjoyment of The Old Vicarage, and I shall proceed on that basis. All the land within the red line is owned by the appellant and has been for some considerable time.

7. The Council is correct in that ‘curtilage’ is not a use of land. The extent of the curtilage of a building is a question of fact and degree, and it is therefore a matter for the decision maker, subject to normal principles of public law. There are several authorities on the matter of curtilage, which are set out below for clarity.
8. *Sinclair-Lockhart’s Trustees*¹, established that land may be regarded as being within the curtilage of a building if “...it serves the purpose of the house or building in some necessary or reasonably useful way”. *Methuan-Campbell*² established that, to be curtilage, land must be “...so intimately associated with [the building] as to lead to the conclusion that the former in truth forms part and parcel of the latter”. This is the relevant test.
9. While concerning a listed building, but equally applicable to any building, *Calderdale*³ set out three important factors that must be considered:
 - (i) *The physical layout of the building and land;*
 - (ii) *Their ownership, past and present; and*
 - (iii) *Their function, past and present.*
10. Other factors include, the relative size of the building and its curtilage, whether the building or land would be ancillary to the main building (*Skerritts*⁴), or the degree to which the building and claimed curtilage fall within one enclosure (*Sumpton*⁵). These factors are relevant considerations, but they are not determinative.
11. *Blackbushe Airport Ltd*⁶ reinforced that the approach to be taken was to ask not whether the land and building comprise part and parcel of the same planning unit, but whether the land is part and parcel of the building as a matter of fact and degree. Andrews LJ found that “on a proper reading of [*Methuen-Campbell*], the conclusion that the land and building together constitute an integral whole is the consequence of applying the intimate association...test”.
12. The Old Vicarage is only accessible via a gated entrance located off Jackson’s Walk. There is an area of hardstanding to the front of the dwelling, used for the parking and turning of vehicles associated with its residential occupation. To the southern side and rear of the dwelling is an area of lawn with planted borders. Beyond the rear area of lawn is a less well-maintained area of grass and an area of woodland. Despite sections of hedgerow being between the lawn and less well-maintained area of grass, all the land behind the dwelling clearly serves no other purpose than being garden to the dwelling.
13. The historic aerial photograph (Appendix 5 of the appellant’s Statement of Case) shows lengths of hedgerow in two other locations within the rear garden, closer to the dwelling than the two that have been retained. Those previous sections of hedgerow and the two remaining sections do not meet either side boundary and are not joined. The hedgerows therefore serve no means of enclosure purpose.
14. The rear garden of the dwelling is bounded by a wall, post and wire fencing, mature trees and, in places, by open watercourses. The only means of access to the

¹ *Sinclair-Lockhart’s Trustees v Central Land Board* [1950] 1 P&CR 195

² *Methuan-Campbell v Walters* [1979] 1 QB 525

³ *Attorney General, ex r Sutcliffe v Calderdale Borough Council* (1983) 46 P&CR 399

⁴ *Skerritts of Nottingham Ltd v SSETR* [2001] QB 59

⁵ *Sumpton v London Borough of Greenwich* [2007] EWHC 2776 (Admin)

⁶ *Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd* [2020] EWHC 959 (Admin), [2021] EWCA 398, [2020] JPL 1359

garden is from Jackson's Walk via the front access gates. The different forms of boundary treatment and the position of the Conservation Area boundary are not determining factors as to whether the land beyond the hedgerows constitutes an integral whole with the dwelling.

15. The appellant told of how the land beyond the sections of hedgerow is only used for purposes incidental to the enjoyment of the dwelling. The family's dogs are exercised here, their children play and build dens here, a garden shed is located here as is a beehive. I saw mature trees adjacent to the periphery of the land and additional trees have been planted in a more central position in recent years. The only purpose the land has been put to by the appellant is garden, which forms an integral whole with the dwelling.
16. While the appellant has only owned the property since 2017, The Old Vicarage is a high-status dwelling, which would undoubtedly have substantial gardens associated with it. This can be seen within the historic aerial photograph, which dates from the 1980's.
17. It is recognised by the courts that the extent of a building's curtilage can change over time, and its garden and curtilage need not be the same. At some point in the past, there may have been a means of enclosure in the approximate position of the hedgerows, however that would not necessarily have been determinative. There is no means of enclosure separating the two grassed areas now, nor has there been during the appellant's ownership or since the 1980's, having regard to the historic aerial photograph.
18. Taking all these factors together, I find the land located beyond the sections of hedgerow is so intimately associated with the dwelling that the former in truth forms part and parcel of the latter. In my judgement, the dwelling and garden taken together therefore constitute an integral whole. For these reasons, the land where the development is proposed was curtilage to the dwelling at the time the application was made.

Whether the development is required

19. The Courts have held that the word '*required*' in Class E should be interpreted to mean '*reasonably required*'. The words '*as such*' are also important. Thus, in this type of case, the appellant should show that what is proposed is reasonably required for a purpose incidental to the use of the dwelling as a dwellinghouse. The onus of proof is squarely upon the appellant and the relevant test is the balance of probabilities. It is therefore appropriate to examine the reasons for the development being required under Class E. The GPDO would be open to abuse otherwise, by proposals involving buildings being constructed for one stated purpose and then being used for a different purpose.
20. When evaluating whether a building to be erected or a pool to be constructed under the provision of Class E is reasonably required for the enjoyment of the dwellinghouse, matters such as personal preference are not conclusive factors. The matter does not rest solely on the unrestrained whim of the householder. An unusually large building will not necessarily be reasonably required just because a householder says it is. It is for the appellant to show that a building of a proposed size is reasonably required, and that it would be designed with incidental uses in mind, having regard to all circumstances. While the proposed physical size of the outbuilding or pool is not determinative of themselves, it is a relevant consideration.

21. The dwelling is more than modest in size and has previously been extended. The proposed outbuilding would be substantial in size, having a floor area of 12000mm by 9000mm⁷. The elevation plan JM.1 shows that the outbuilding would have a pedestrian access door located in the front elevation and, what appears to be, a pair of glazed doors in the rear elevation. The outbuilding is shown having no windows. While the internal space is shown subdivided, there is no annotation showing what the subdivided areas would be used for.
22. The first paragraph on page 4 of the application's covering letter and paragraph 5.1 of the appellant's Appeal Statement state *'The outbuilding will be utilised as a garden room – with multipurpose functionality for use as home gym, tv room, study etc with additional garden storage too.'* No other information is provided to show what actual purpose the outbuilding would serve, why it is required or why it needs to be the size proposed. The only information pertaining to the in-ground pool is that it is identified as a swimming pool.
23. There is no planning definition of a *'garden room'* and the appellant has offered none. Stating the outbuilding would have *'multipurpose functionality'* suggests that its purpose has not yet been decided. Therefore, even if the meaning of *'garden room'* had been defined, its purpose is unclear.
24. For the outbuilding to be used for a purpose incidental to the enjoyment of the dwellinghouse as such it could not contain habitable accommodation. A study and tv room are facilities that are normally provided in a dwelling and, in my judgement, they are habitable accommodation. Furthermore, no explanation is offered as to why these facilities could not be accommodated in the dwelling.
25. A home gym and additional garden storage could be reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. However, no explanation is given as to why the gym cannot be accommodated within the dwelling or why an outbuilding of the size proposed is necessary to accommodate them.
26. In the absence of a fixed list of proposed uses and activities that the outbuilding would be put to and evidence to justify the size of the outbuilding, and any information relating to the need for a swimming pool, I am unable to determine that the development is reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. The appellant has therefore failed to demonstrate, on the balance of probability, that the development would benefit from the deemed planning permission granted under Article 3 and Class E, Part 1 of Schedule 2 of the GPDO.

Conclusion

27. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of an outbuilding and in-ground pool within the garden of the property is well-founded and that the appeal should fail.

M Madge

INSPECTOR

⁷ Drawing number JM.2