



Appeal Decision

Site visit made on 30 April 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1ST MAY 2025

Appeal Ref: APP/F2415/X/24/3336509

41 Alvington Way, Market Harborough, Leicestershire, LE16 7NF

- 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 & Mrs K Francis against the decision of Harborough District Council.
 - The application ref 23/01428/CLU, dated 22 September 2023, was refused by notice dated 30 November 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 for confirmation that all of the extent of the land forming the property known as No. 41 Alvington Way is residential curtilage and therefore enjoys householder permitted development rights.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the confirmation that all of the extent of the land forming the property known as No. 41 Alvington Way is lawfully residential curtilage and, to this extent, therefore enjoys householder permitted development rights.

Reasons

2. Section 192(2) of the Act states that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
3. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposal are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The Planning Practice Guidance states that in the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.
4. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether all of the land within the appellant's submitted red edged block plan and location plan (drawing 1 dated September 2023) is residential curtilage in association with use of the

dwellinghouse on the land known as No. 41 Alvington Way, Market Harborough. There is no dispute between the main parties that most of the land falling within the red edged block plan and location plan is residential curtilage. The dispute appears to relate to the land between the rear garden wall of the property and the adjacent highway. There is a relatively low wooden 'knee rail' enclosure that separates this land from the edge of the pavement.

5. The term 'curtilage' must not be confused with the planning unit. The two will sometimes cover the same area on the ground, but that will not always be the case and does not in any event mean that they are the same thing. Curtilage should also never be confused with a use of land. It is a matter of judgement in terms of what is a curtilage, but the Courts have held that it may be defined as the ground used for the comfortable enjoyment of a dwellinghouse or other building and which serves the purpose of the house or building in some necessary or reasonably useful way.
6. The Courts have held that regard should be had to three tests of (i) physical layout of the building, and the land or building said to be in the curtilage, (ii) ownership (past and present), and (iii) use or function (past and present). Physical enclosure is not necessary, but the degree to which the building and claimed curtilage fall within one enclosure is relevant as an aspect of the test of physical layout. I consider that for land to be in the curtilage, it must have an intimate association with the property so that it is part and parcel of it.
7. There is no dispute between the parties that the land between the wall and the highway has always fallen within the land ownership title belonging to No. 41 Alvington Way. In other words, the land has never been owned by anyone other than the occupier(s) of No. 41 Alvington Way.
8. While the Council contends that such land does not function in the same intimate way as the car parking area to the front, or the private garden space to the rear which is enclosed with a wall, I have no reason to doubt the appellants' claim that the land has always been maintained by the occupiers of No. 41 Alvington Way. The Council appear to accept this point and state that *'it is clear that the land is maintained, the grass is cut, and it does not appear unkempt'*. I recognise that the land is separated from the rear garden area by a wall. However, the land is not physically separated from the front garden space. Indeed, there is a formal path leading from the front garden to the said land. The evidence may indicate that this land is not used for sitting out or other day to day private garden activities, but that does not mean that it is not functionally related to use of No. 41 Alvington Way as a dwellinghouse.
9. In my judgement, the evidence indicates that the land has a visible garden function alongside that associated with the front garden space. To the passer-by, the knee rail, which is understood to have been in situ for many years, does not lead me to consider that it is a separate piece of amenity space within the wider housing estate. Indeed, the knee rail, which extends as far as the front of No. 41 Alvington Way, gives the passer-by the visual impression that the land is part and parcel of the dwellinghouse and that it is functioning as side garden area in a similar manner to the front garden space. The land includes some shrubs, and the evidence is that the grass is cut by the owners as part of the upkeep of the rest of the land associated with No. 41 Alvington Way.

10. I have been provided with a copy of a planning layout from the appellants and a soft landscaping plan from the Council associated with the original planning permission for the housing estate. This includes the appeal property. The plans show the land to the side of the rear garden wall and the front garden as being landscaped. There are no enclosures abutting the pavement on these plans. I do not know if these plans relate to public open space or general amenity land associated with the housing estate, or whether it simply depicts those areas that would be in public view and hence were proposed to be landscaped. Indeed, it is noteworthy that rear garden areas of the dwellinghouses are not shown with any sort of landscaping (i.e., trees or shrubs). There is uncertainty about this matter and, in any event, in this case I find that the other matters considered above are collectively more decisive in terms of determining whether the whole of the land constitutes the curtilage of the dwellinghouse.
11. I conclude, based on the evidence as a whole and as a matter of fact and degree, that all the land within the red edged block plan and location plan constitutes the residential curtilage of No. 41 Alvington Way. In terms of ownership, physical layout, and its use/function, I find that the land has an intimate relationship with No. 41 Alvington Way. The land is part and parcel of No. 41 Alvington Way. Householder permitted development rights in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) are therefore applicable in so far as they relate to development within the curtilage of a dwellinghouse.
12. It is important that I emphasise, however, that in confirming that householder permitted development rights are applicable in so far that the whole of the land is residential curtilage, the appellant must still separately check (or if necessary seek separate confirmation as part of a different LDC application) that any proposed development meets the limitations, restrictions and/or conditions that might be imposed in respect of any relevant class of development in the GPDO.

Conclusion

13. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of confirmation that all of the extent of the land forming the property known as No. 41 Alvington Way is residential curtilage and therefore enjoys householder permitted development rights 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).

D Hartley

INSPECTOR



Plan

This is the plan referred to in the Lawful Development Certificate dated: 1ST MAY 2025

by D Hartley

Land at: 41 Alvington Way, Market Harborough, Leicestershire, LE16 7NF

Reference: APP/F2415/X/24/3336509

Scale: Not to Scale



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 22 September 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

As a matter of fact and degree, the whole of the land hatched in black on the plan attached to this certificate constitutes the residential curtilage of No. 41 Alvington Way, Market Harborough, Leicestershire, LE16 7NF and, to this extent, householder permitted development rights in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) are applicable in so far as they relate to development within the curtilage of a dwellinghouse.

Signed

D Hartley

Inspector

Date: 1ST MAY 2025

Reference: APP/F2415/X/24/3336509

First Schedule

Confirmation that all of the extent of the land forming the property known as No. 41 Alvington Way is residential curtilage and therefore enjoys householder permitted development rights.

Second Schedule

Land at No. 41 Alvington Way, Market Harborough, Leicestershire, LE16 7NF

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.