



Appeal Decision

Site visit made on 23 June 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 3 July 2025

Appeal Ref: APP/T0355/X/24/3353760

39-41 North Town Road, Maidenhead SL6 7JQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S Innes against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 24/00415, dated 14 February 2024, was refused by notice dated 2 May 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 the proposed erection of 2no detached double garages and alterations to internal boundary arrangements within the existing residential curtilage.
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Summary Decision: the appeal is dismissed

Procedural Matters

1. The Council contends that the proposed boundary arrangement in the plans submitted does not match with the current arrangement on site. The Council does then not go on to explain why that is considered to be the case. It appears to me, however, that the 'red line' for the application site is intended to reflect the development that is proposed, and for that reason the 'red line' incorporates the application site as whole. The boundary arrangement shown is intended to reflect that. I am therefore satisfied that the application drawings are accurate in this respect.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that 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 shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

3. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out at Classes E.1, E.2 and E.3. The Council is satisfied that the proposed detached double garages comply with the limitations at Classes E.1, E.2 and E.3, and I see no reason to take a different view.
4. The area of dispute is whether the part of the site on which the proposed garages would be located is within the curtilage of the dwellings. There is no all-encompassing, authoritative definition of the term 'curtilage'. The matter has been the subject of extensive case law over the years, but the main principles derived from that case law have been distilled by the High Court as being:
 - i) The extent of the curtilage of a building is a question of fact and degree
 - ii) The three 'Stephenson' factors of physical layout, the ownership past and present, and the use or function of the land or buildings, past and present must be taken into account
 - iii) A curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration
 - iv) Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration
 - v) The degree to which the building and the claimed curtilage fall within one enclosure is relevant
 - vi) The relevant date on which to determine the extent of the curtilage is the date of the application; but this will involve considering both the past history of the site, and how it is laid out and used at the time of the application itself.
5. The application form indicates that the appellant is the owner of the land to which the application relates. The use or function of the land is less clear-cut. The land appears to be used, in part at least, for the parking of vehicles. However, aerial photographs show that this was not always the case. The area used for car parking was constructed at some point between 2010 and 2015. Prior to that, the area appears to have been covered by vegetation, albeit the aerial photograph taken in 2010 is not of sufficient clarity to discern any details. It is also not possible to know from that photograph whether that area was available to the occupiers of No 39 or 41 North Town Road, or both.
6. The appellant refers to a planning permission granted in December 2023 for the construction of first floors over the existing dwellings, 2no. front entrance canopies, 2no. integral garages and alterations to fenestration at 39-41 North Town Road (Council Ref: 23/02220). The application drawings to which that permission relates show the rear gardens of each property extending to the rear boundary. There is no parking area to the rear as presently existing. The salient point is that these drawings show the proposed layout following the implementation of that permission.

7. Consequently, whilst the planning permission indicates that the Council has no objection to the land at the rear being incorporated into the curtilage of the dwelling, until and unless that permission has been implemented in accordance with that permission (which was clearly not the case at the time of my site visit), the permission does not confirm that the area to the rear of the dwellings is within the curtilage of the dwellings.
8. There is no evidence before me as to whether the land at the rear of the dwellings is ancillary to the main building. I can understand how the land to the rear could potentially be ancillary to the dwelling at No.41 North Town Road, given that direct access to it is possible from that dwelling. However, I noted at the site visit that there is no direct pedestrian access to that land from No 39 North Town Road. I am therefore not persuaded that the land to the rear can be considered as being ancillary to that dwelling.
9. The most significant consideration, in my view, is that the building(s) and the claimed curtilage do not fall within one enclosure. The area to the rear is enclosed by a close-boarded fence. It is an entirely separate enclosed space to the defined rear gardens of Nos. 39-41 North Town Road, albeit that access to it is possible from the latter.
10. Having regard to the main principles identified by the High Court, I conclude that as a matter of fact and degree the land to which the LDC relates was not within the curtilage of Nos 39-41 North Town Road on the date that the application was made. It follows that the proposed detached double garages are not permitted by Class E, Part 1, Schedule 2 of the GPDO.
11. It is entirely possible that the alterations to internal boundary arrangements that are also proposed would constitute permitted development under other Classes/Parts of the GPDO, or may not constitute development for the purposes of Section 55(1) of the 1990 Act. However, I do not have sufficient evidence in relation to those elements to make an informed conclusion as to whether they were lawful on the date that the application was made.
12. Accordingly, I conclude that on the balance of probability, the development for which the LDC is sought was not lawful on the date on which the application was made.

Conclusion

13. 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 proposed erection of 2no detached double garages and alterations to internal boundary arrangements within the existing residential curtilage at 39-41 North Town Road, Maidenhead SL6 7JQ is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

14. The appeal is dismissed.

Paul Freer
INSPECTOR