



Appeal Decision

Site visit made on 15 July 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 21st July 2025

APP/R1845/X/25/3361326

Moor Green Farm, Tenbury Road, Rock, Kidderminster DY14 9RQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Wyre Forest District Council to grant a certificate of lawful use or development.
- The appeal was made by Mr P Newton.
- The application, reference 24/0823/CLP, was made on 7 December 2024 under s.192(1)(b) of the Act. It was refused by a notice dated 22 January 2025.
- The Application for a Certificate of Lawful Development was for: Proposed domestic outbuilding at Moor Green Farm, Tenbury Road, Rock, Kidderminster DY14 9RQ.

Summary of decision: The appeal is dismissed.

Appeal property and application

1. The appeal property, Moor Green Farm, is a large detached house within a plot accessed by a partly shared driveway running south from Tenbury Road, A456. The appeal site is a roughly triangular area of land fenced off from, but immediately to the north of, and adjoining, the Moor Green Farm house's surrounding garden. It is otherwise bounded by high hedges to driveways on each side.
2. The Appellant, Mr Paul Newton, wishes to build a single storey outbuilding on the appeal land. It would incorporate a double garage, a studio/gym/shower/w.c., an office and a single garage/workshop. The building would have overall dimensions of 19m x 9m to a maximum height of under 4m with eaves less than 2.5m high.
3. Mr Newton said the existing use of the triangular land upon which the domestic outbuilding would be built was in a long-standing C3 dwelling use. It was part of the domestic curtilage of Moor Green Farm. He said the outbuilding project would be development permitted by Article 3, Schedule 2, Part 1, Class E *buildings etc incidental to the enjoyment of a dwellinghouse* to The Town and Country Planning (General Permitted Development), (England) Order 2015), (the Order), as it would amount to *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, or*

Wyre Forest District Council

4. The Council said the proposed outbuilding would not be development permitted by Part 1 of the Order as it would be sited on land outside the residential curtilage of the Moor Green Farm dwelling. Council historical photos appeared to show the land as a separate parcel of land away from the main garden and curtilage of the host dwelling. They said no evidence had been put forward to show the land had been used as a garden for more than 10 years.

Permitted development

5. As shown above, Class E to the Order permits buildings required for a purpose incidental to the enjoyment of a dwellinghouse built within the curtilage of the dwellinghouse. The Class E concessions are subject to limitations (a) to (k) as set out at Class E.1. However, the Council's sole reason for their refusal to grant a certificate of lawful development in this instance was because, in their view, the application land lies outside the curtilage of the dwelling at Moor Green Farm. They said the application proposal therefore could not benefit from the Class E permitted development concessions.

Considerations

Curtilage

6. The use of land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such is exempted from development under s.55(2)(d) of the Act. The Ministry of Housing, Communities and Local Government technical guidance September 2019 – Permitted development rights for householders, defines Curtilage as land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which it is attached, such as the garden.
7. Interpretation of the word curtilage is not a matter of law, but a judgment for the decision-maker given the ordinary meaning of words, (as determined in the Court cases of *Brutus and Cozens* [1973] AC854 and *Dyer v Dorset CC* [1988] 3 WLR 213). It is a matter of fact and degree, (*Burford v SSCLG & Test Valley BC* [2017] EWHC 1493). In the Court of Appeal decision in *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL, it was held 3 tests, (i) physical layout, (ii) ownership (past and present) and (iii) use or function (past and present) applied.
8. The Court of Appeal in *Methuen-Campbell v Walters* [1979] 1 QB 525 agreed 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. The *Burford v SSCLG* [2017] EWHC 1493 (Admin) judgement endorsed the view that curtilage is an area of land 'attached to' a house and 'forming one enclosure with it'. In *Lowe v SoS* [2003] EWHC 537 Admin, curtilage 'connotes a building or piece of land attached to a dwellinghouse and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers'. In *Dyer*, Nourse LJ further discussed the meaning of curtilage by reference to the Oxford English Dictionary definition: "*A small court, yard, garth or piece of ground attached to a dwelling-house, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwelling-house and its outbuildings.*". Nourse LJ then accepted the proposition drawn from the authorities in that case that "*an area of land cannot properly be described as a curtilage unless it forms part and parcel of the house or building which it contains or to which it is attached.*".
9. In *Burford*, Mr Justice Supperstone said it may be that an area of land has a lawful use as a domestic garden, but whilst the function of the land is relevant to the question of curtilage, it is not determinative. It was determinative only of one necessary condition of the site forming part of the curtilage. It did not assist, in particular, to resolve the question of whether the land was attached to the dwelling house forming one enclosure with it, (Nourse LJ, in *Dyer* above). A use for domestic garden purposes does not, of itself, define that land as curtilage land.
10. In the present instance, there was no disagreement that the south-western facing wall of the Moor Green Farm dwelling is its principal elevation. The application land behind, described on the application plan as rear garden, extends from about 30m from the rear

wall of the dwelling to over 100m, narrowing to a point at the northern end. In my view, the application land whilst apparently having been used for some domestic garden purposes, was not and is not part of the curtilage to the dwelling at Moor Green Farm. It clearly fails the test set out by Nourse LJ in *Dyer* discussing the meaning of curtilage as a “*A small court, yard, garth or piece of ground attached to a dwelling-house, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwelling-house and its outbuildings.*”. The application land is, in comparison with that test, somewhat remote from the dwelling, its northern corner being more than 100m from the rear of the dwelling.

11. The physical layout test to define a residential curtilage is not met. I conclude the Council were right to say the appeal land is a separate parcel of land physically outside the residential curtilage of the dwelling Moor Green Farm and that the permitted development rights conferred by Schedule 2, Part 1 of the Order are not available for the proposed erection of the application building on the land.

Conclusion

12. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful development on the application made for a Certificate of Lawful Development for: Proposed domestic outbuilding at Moor Green Farm, Tenbury Road, Rock, Kidderminster DY14 9RQ, was well founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

FORMAL DECISION

13. The appeal is dismissed.

John Whalley

INSPECTOR