



Appeal Decision

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 27 August 2026

Appeal Ref: APP/E3335/X/24/3353647

Land At 355011, 133865, Martin Street , Baltonsborough, Glastonbury , Somerset, BA6 8PQ

- 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 Nicholas Heath against the decision of Somerset Council.
- The application ref 2024/0349/CLP, dated 21 February 2024, was refused by notice dated 5 June 2024.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is to extend the existing curtilage.

Decision

1. The appeal is dismissed.

Reasons

2. For the avoidance of doubt, the planning merits of any use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case, and on relevant planning law and judicial authority. The burden of proof rests with the appellant and the appropriate test of evidence is the balance of probabilities.
3. The appeal concerns a former agricultural barn for which prior approval was granted¹ in October 2021 for the change of use of the barn to a dwellinghouse. Class Q of part 3 of Schedule 2 to the GDPO² permits the change of use of buildings on agricultural units and former agricultural buildings to dwellinghouses. The change of use applies to the building and any land within its curtilage. Curtilage is not a use of land for planning purposes, but it is a legal concept describing the relationship between a building and land used with that building. There is no legal definition of curtilage, the extent of a building's curtilage is essentially a matter of fact and degree. However, for the purposes of Class Q, "curtilage" is defined and means the lesser of: (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the building on an established agricultural unit or former agricultural building (as the case may be), closely associated with and serving the purposes of that building, and (b) an area of land immediately beside or around the building on an established agricultural unit or former agricultural building (as the case may be) no larger than the land area occupied by that building. As should be clear, the permitted change of use does not apply to all of the land that had been curtilage of the agricultural building.

¹ Council ref. 2021/1957/PAA

² The Town And Country Planning (General Permitted Development) (England) Order 2015 (As Amended)

4. The prior approval application plans show the barn and the proposed curtilage, which is approximately the same area as the barn footprint, and the prior approval was granted on that basis. Upon implementation therefore the land indicated as curtilage on the application plan changed use along with the building, from agricultural to use as a single dwellinghouse. The basis of the appellant's argument is that because there was a larger area around the barn when it was in agricultural use that was enclosed with the barn, and which they considered to be the barn's curtilage, then that land would remain as the curtilage of the building following the change of use.
5. However, Class Q does not permit all of the land that was the curtilage of the relevant agricultural building to change use to a dwellinghouse use. As set out above, the extent of the land which is granted permission for the change of use is limited by Q3(1). It follows that the land that had been curtilage of the agricultural building but which was not specified as curtilage in the Class Q prior approval application remains in agricultural use. Any subsequent use of that land for the purposes of the Class Q dwellinghouse would be a material change of use of the land and thus constitute development as defined by the section 55 of the 1990 Act. The GDPO does not grant planning permission for that development, hence it would require express planning permission.
6. However, I should make it clear in any case that an application made under section 191(1)(a) of the 1990 Act must seek to ascertain whether any existing use of buildings or other land is lawful. Because curtilage is not a use of land, Section 191(1)(a) simply does not apply. It may be necessary in certain cases to establish the extent of curtilage, such as where a person wishes to erect an outbuilding for incidental purposes relying on GDPO permitted development rights, but Section 191(1)(a) cannot be used to simply establish the extent of a building's curtilage. The application and appeal were therefore misconceived, but in any case, had the application sought to establish that it would be lawful to use all of the former curtilage of the barn for purposes incidental or ancillary to the Class Q dwellinghouse use it would have been refused, for the reasons given above.

Conclusion

7. I conclude accordingly that the Council's refusal to grant a certificate of lawful use or development to extend the existing curtilage 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).

Paul Dignan

INSPECTOR