



Appeal Decision

Site visit made on 13 May 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2020

Appeal Ref: APP/H0738/X/19/3231792

3 The Courtyard, Aislaby Road, Eaglescliffe TS16 0QE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 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 and Ms Brundall and Colligon against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 19/0309/CPE, dated 12 February 2019, was refused by notice dated 10 April 2019.
 - The application was made under section 191(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 use of land for domestic purposes and for use as domestic curtilage.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. From the appellants' statement and the Council's decision notice it appears that the appellants are seeking an LDC for the continued use of the land as residential curtilage. However "curtilage" is not actually a use of land and, it would not therefore be appropriate to make my decision on this basis. Having regard to the appellants' covering letter at the time the application was submitted to the Council, I consider that the description of the proposal can be changed to "the use of the land for residential purposes and whether that land forms part of the curtilage of the dwelling" without resulting in injustice to the parties.

Reasons

3. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development or require planning permission or because the time for enforcement action has expired (s191(2)). In this case, the appellants seek to rely on the proposition that no development has been involved and also the period of time over which the use has continued.
4. In cases where there is a dispute as to whether a material change of use has occurred it is necessary to ascertain the correct planning unit, as it is the planning unit against which the question of a material change of use would need to be judged. The planning unit is usually the unit of occupation, unless a

smaller area can be identified which is physically separate and distinct, and/or occupied for different and unrelated purposes; the concept of physical and functional separation is key.

5. In terms of the unit of occupation there is no dispute that the dwelling and appeal site fall within a single ownership. It seems to me that, from the information provided, there is a functional relationship between the appeal site and the domestic dwelling, notably in terms of the keeping and exercising of the appellants' horses and parking of vehicles. I have also had regard to the presence of a pedestrian gate in the boundary wall of the dwelling, directly opposite the appeal site, and to the fact that the parking area to the front of the garage, on the appeal site, is open, not being enclosed with the adjacent buildings and manege area.
6. Notwithstanding this, from my site visit I was able to see that the appellants' dwelling comprised a single storey building with a small area of garden, including lawn, patio and seating area, situated immediately adjacent to it. The edge of the garden is demarcated by a substantial and imposing brick retaining wall. This feature strongly delineates the ending of the garden area, as it gives way to a wide public bridleway at lower ground level.
7. The appeal site, by contrast, is quite different in character to the dwelling and its immediate surroundings. It comprises of timber buildings, including a garage, workshop and stables and the sand surface of the manege area. This area is significantly enclosed by post and rail fencing and gates. The appeal site and the area enclosed by the brick retaining wall are separated from one another by the public bridleway with an embankment to the side.
8. The respective parcels of land therefore form physically distinct character areas and the sense of the appeal site being physically separated from the owners' dwelling and its immediate surroundings is very strong. Furthermore, irrespective of the extent of its use, the intervening public bridleway serves to interrupt the functional continuity of the respective land uses.
9. Therefore, despite being within the same area of ownership I consider, on balance, and as a matter of fact and degree, that the appeal site forms a physically and functionally separate parcel of land to the dwelling and its immediate surroundings. The two areas are therefore in separate planning units.
10. It follows that, whilst possible in principle, in this case the uses of the appeal site, which include car parking, and the keeping of horses, cannot be regarded as being lawful uses of the land for residential purposes. Rather than being uses incidental or ancillary to residential use, the uses should therefore be regarded as primary uses of the land in question. Furthermore, irrespective of the statutory declarations submitted, which refer to the continuous and non-commercial use of the land, and whether use of the land is lawful because of the passage of time, this does not alter my conclusions as to whether the land is being used for residential purposes; that being the purpose for which the certificate is sought.
11. In terms of the use of the land I acknowledge that there is no dispute that horses may be kept within a residential curtilage. However, because I have found that the appeal site and the dwelling associated with 3 The Courtyard are

situated within separate planning units, it follows that the appeal site cannot form part of the curtilage of that dwelling.

12. In accordance with s 55(2)(d) of the Act, the uses of the appeal site cannot therefore be said to not constitute development on the basis of being uses within the curtilage of the dwellinghouse for a purpose incidental to the enjoyment of that dwellinghouse.
13. I have had regard to the various appeal decisions drawn to my attention by the appellants. With regard to the Frosterley case¹, the Inspector referred to the curtilage as a clearly defined, modest area attached to the dwelling; similarly in the Hitchin case², the curtilage was considered by the Inspector to be 'well defined', with no suggestion in the Thurmaston case³ that the curtilage arrangements were similar to the present appeal case. It therefore does not automatically follow that the findings in those appeals should mean that a certificate of lawfulness be granted in this case.
14. I have also had regard to the *Emin* court case. However it seems to me that that case was concerned with whether a building could be regarded as required for an incidental purpose so as to benefit from permitted development rights. It is therefore distinguishable from this case which concerns the question of incidental use of land, as opposed to operational development, for residential purposes. Furthermore the question of whether activities on the site would be outside what would normally be expected to occur within a dwellinghouse and its curtilage, in accordance with the *Wallington* court case referred to by the appellant, does not arise as I have found that the appeal site is not in use for residential purposes or part of the curtilage of the dwelling.
15. In terms of the other matters raised, the past inadvertent use and acceptance by the Council of the householder application form in relation to development on the appeal site, does not confer curtilage status. Nor, with regard to the 1993 garage application, does the inclusion of the current appeal site and dwelling within a single boundary line, have any such effect. Furthermore, I am not persuaded, from the information before me, that either of these applications has resulted in a material change in the use of the appeal site for residential purposes.
16. Therefore, 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 use of the land for residential purposes and whether that land forms part of the curtilage of the dwelling" at 3 The Courtyard, Aislaby Road, Eaglescliffe TS16 0QE was 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.

Roy Merrett

INSPECTOR

¹ Ref APP/X1355/C/16/3142407/3142408

² Ref APP/P0240/C/09/2114057

³ Ref APP/X2410/C/09/2100987