



## Appeal Decision

Site visit made on 22 June 2021

**by Elaine Gray MA(Hons) MSc IHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 July 2021**

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**Appeal Ref: APP/H0738/D/21/3270584**

**The Barns, Cherry Cottage, Blakeston Lane, Stockton-on-Tees TS21 3LE**

- 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 J Corner against the decision of Stockton-on-Tees Borough Council.
  - The application Ref 20/2345/CPL, dated 20 October 2020, was refused by notice dated 17 December 2020.
  - 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 erection of ancillary building measuring 13.716m x 9.144m and will be 4m tall at the apex.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The burden of proof regarding decisive matters of fact rests on the appellant. The relevant test of the evidence is 'the balance of probability'.

### Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

### Reasons

4. Cherry Cottage is one of a number of dwellings located in a converted barn complex. The land associated with the dwelling includes a paddock area of approximately 0.8-1 acres situated to the north east.
5. Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) allows for 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, or the maintenance, improvement or other alteration of such a building or enclosure.

6. The proposed building, described as an ancillary building for purposes incidental to the enjoyment of a dwellinghouse, would be located in the corner of the paddock close to an existing barn. The Council refused to issue an LDC for the development on the grounds that it would not sit within the residential curtilage of Cherry Cottage. Therefore, the question to be determined is whether the curtilage extends to the area referred to as the paddock.
7. The GPDO does not attempt to define the term 'curtilage' and there is no other authoritative definition for planning purposes. The 'Technical Guidance - Permitted development rights for householders'<sup>1</sup> document explains that some terms are not defined in the GPDO but are understood in the case of 'curtilage' to mean '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, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.'
8. Ultimately, it is apparent that whether or not land comprises 'curtilage' is a question of fact and degree to be considered on a case by case basis and thus primarily a matter for the decision maker. A key factor is that the relevant date on which to determine the extent of the curtilage is the date of the LDC application, but this involves considering both the past history of the land and how it is laid out and used at the time of the application.
9. Permission for the conversion of the barn complex was given in 1990 (ref: 90/2387/P). The planning officer's report includes a copy of the approved site plan for Cherry Cottage. This unannotated plan shows a fairly small area outlined in a thick black line around the dwelling, and the larger area comprising the paddock in a lighter black outline. The appellant's Figure 1 in his statement of case is also a site plan excerpt, albeit a slightly different plan. It encompasses the same area, but denotes in a shaded section a 'former track to adjacent property'. This track separates the paddock from the area immediately around Cherry Cottage.
10. The Council go on to state that since the permission for the conversion, the appeal site was the subject of an approved application for its use as a small holding (ref: 01/0207/P), although few details of this permission have been made available.
11. With regard to the status of the appeal site, the appellant provides a copy of the Register of Title, showing the transfer of the property known as Cherry Tree Cottage on 18 June 1999. The accompanying Title Plan shows the freehold land edged in red, which includes the paddock and corresponds to the areas outlined in black on the approved site plan. However, these documents merely confirm the land is part of one registered land title under the same ownership, and does not go to the use of the land.
12. Furthermore, the appellant's Appendix III is an excerpt from Landinsight which gives the type of property as 'terraced' and gives the current use class as Residential (C3). Again, the land outlined in white on this document corresponds to the other documents. He states that these documents show that the land comprises a single planning unit. However, it appears that it is not the purpose of this document to provide an in-depth consideration of the

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<sup>1</sup> September 2019  
Ministry of Housing, Communities and Local Government

land use or uses in question. Moreover, it is possible for a single planning unit to incorporate mixed or dual uses within one ownership.

13. The appellant's Appendix V shows a series of Google Earth images dating from 2001 to 2020. These essentially show the same situation I saw on site, which is that features such as the pond, the gravelled area, the shed and the landscaped area close to the existing barn are all clustered close to the dwelling. The appellant's Appendix III shows photographs of these elements being created, but not extending into the paddock. The paddock area now appears much as it has done for some considerable time. It remains as open grassland, with little evidence of domestic use or indeed any other use.
14. That being the case, it is difficult to establish that the paddock land serves the purposes of the dwelling in some reasonably necessary or useful manner, such that there is a clear functional relationship between the use of the land and the dwelling.
15. The paddock is fairly close to the dwelling, but not right next to it. Although not physically enclosed or fenced off from the hardstanding area, it does appear as a distinct area apart from the immediate area adjacent to the house. I am mindful that, in *Methuen-Campbell v Walters* [1979] 1 QB 525, the Court of Appeal 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 question is not whether the building forms part and parcel of some unit which includes the land, or whether the two items taken together form part and parcel of an entity or an integral unit.
16. In this case, I have not been able to discern an intimate connection between the paddock and the dwelling.

### **Conclusion**

17. Drawing these factors together, I conclude that the appellant has not shown, on balance of probability, that the proposed building would fall within the limitations of Class E of Schedule 2, Part 1 of the GPDO.
18. As set out in the National Planning Policy Guidance, the refusal of an LDC does not preclude another application being submitted at a later date, if more information can be produced.
19. Nevertheless, on this occasion, I conclude that the Council's refusal to grant an LDC for the erection of the proposed ancillary building was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

*Elaine Gray*

INSPECTOR