The Planning Inspectorate

Appeal Decision

Site visit made on 28 July 2022

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2022

Appeal Ref: APP/H0738/X/22/3298239
Cherry Cottage, The Barns, 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 21/2574/CPL, dated 4 October 2021, was refused by notice dated 23 March 2022.
- 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 an outbuilding incidental to the enjoyment of the dwellinghouse (Class E of GPDO).

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 1, Class E(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

3. In order for an LDC to be granted under s192, it is necessary for the appellant to show, on the balance of probabilities, that the development would be lawful at the date of the application. Under Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development, subject to various provisos. There appears to be no dispute between the parties that the proposed building would comply with the physical limitations set out in paragraph E.1. of Class E.

4. The area of dispute between the parties is limited to the question of whether or not the proposed structure lies within the curtilage of the dwelling.

5. The appeal site is part of a quadrangular development, previously used for agricultural purposes and since converted into a number of dwellings. The appellant's dwelling is on the eastern side of the complex. There is some land

immediately adjoining the eastern, southern and northern sides of the dwelling, which is set out and in use as a domestic garden or for other external amenity purposes. These external areas all form part of single fenced enclosures with the dwelling itself. It seems to me that cumulatively they provide a relatively spacious external amenity area, proportionate to the scale of the dwelling.

6. Beyond this layout, to the north-east, and outside areas enclosed with the dwelling itself, is the driveway and hardstanding area serving the appeal premises, understood to be part of a former track to the adjacent property. This is followed by a substantially grassed area within which the proposed building would be located. Part of this area, nearest to the dwelling itself is closely mown and contains some landscaping features. During my visit I observed various domestic items present there, including garden furniture and play equipment. Further to the north, the site becomes more 'unkempt', with the grass having been left to grow naturally. To the south of the proposed building is an existing building that appears to be used as a workshop and for storage, possibly in connection with the dwelling.

7. By way of background, an application relating to an essentially identical proposal was previously refused by the Council, and subsequently dismissed following an appeal[1]. The Inspector in that case found the proposed building to be located on paddock land, in relation to which it was difficult to establish that it served the dwelling in a reasonably necessary or useful manner; that a clear functional relationship between the use of the land and the dwelling was in doubt; that the paddock appeared as a distinct area apart from the immediate area adjacent to the house and that an intimate connection between the paddock and the dwelling was lacking.

8. The Inspector acknowledged that an authoritative definition for the term 'curtilage' is lacking, but the Government's technical guidance for interpreting householder permitted development rights[2] advises that curtilage *"is 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."* For the aforementioned reasons she concluded that the appeal site did not form part of the curtilage of the dwelling.

9. In s192 cases, the question is whether the proposed use or operation would be lawful if 'instituted or begun' on the date of the application. It is therefore important to consider the significance of any change in circumstances between the time of the previous appeal decision and the date of the current application subject to the appeal. The previous Inspector observed that the site "remains as open grassland, with little evidence of domestic use or indeed any other use". From my visit it seems the key difference is that because of the presence of garden furniture, play equipment and mown grass within part of the paddock, there is now greater evidence of domestic use. The appellant argues that this land should now be regarded as part of the curtilage.

10. However to my mind this is not determinative, because although the use of land can be relevant to the consideration of curtilage, they are still distinct concepts. The use of more land for garden related purposes, than may previously have been the case, does not automatically serve to bring that land

[1] Appeal Ref APP/H0738/D/21/3270584
[2] Permitted development rights for householders Technical Guidance – September 2019

within the 'curtilage' of the dwelling. Having regard to the technical guidance referred to above, also to the spacious external amenity space that immediately adjoins the dwelling, in single enclosures with it, I am not persuaded that the site of the proposed building can reasonably be described as in the area within which the house sits or to which it is attached. In reaching this view I acknowledge that it is not essential for land to be physically enclosed in order to be regarded as curtilage.

11. Moreover, despite the current appearance and apparent use of the land, including in association with existing landscape features, also that the site is relatively near, and easily accessible from, the dwelling, I concur with the finding of the previous Inspector that "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".

12. The appellant has referred to case law on the matter of curtilage[3]. He refers to the point that "in order to be within the curtilage of a building, the land in question must not only have a close spatial relationship with the building but it must also share a functional relationship with the building." However as set out above, notwithstanding any functional linkage between the dwelling and appeal site, and also that there is no doubt that the dwelling and land in question are in the same ownership, I have found that a close spatial relationship between the two does not exist in this case. In this context, the previous Inspector cited relevant case law which found 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[4]. As a matter of fact and degree, I find an intimate association to be lacking and that the site of the proposed appeal building falls outside the curtilage of the dwelling.

13. Notwithstanding the above findings, there have been no details provided by the appellant as to the precise nature and scale of the use(s) to which the proposed building would be put. Accordingly it is not possible to determine whether the proposed building could be deemed as <u>required</u> for a purpose incidental to the enjoyment of the dwelling house [my emphasis].

14. The appellant has not therefore demonstrated on the balance of probability that the proposed development would fall within the limitations of Schedule 2, Part 1, Class E(a) of the GPDO. 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 Erection of an outbuilding incidental to the enjoyment of the dwellinghouse (Class E of GPDO) 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

[3] *Sinclair Lockhart's Trustees v Central Land Board (1950) 1 P.& C.R. 195*
[4] *Methuen-Campbell v Walters [1979] 1 QB 525*