The Planning Inspectorate

Appeal Decision

Site visit made on 11 January 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2021

Appeal Ref: APP/B3438/X/20/3259656
Highfield House, School Lane, Longsdon, Stoke-on-Trent ST9 9QS

- 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 Andrew Mellor against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2020/0109, dated 28 February 2020, was refused by a notice dated 3 August 2020.
- The application was made under section 191(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 a detached garage.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.

3. The proposed development is a detached garage on land at Highfield House, which is a detached dwelling. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for purposes incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure is permitted by Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO), subject to the restrictions set out in E.1, E.2 and E.3. However, the Council does not consider that the proposed building benefits from the aforementioned rights as the proposed garage would not be within the curtilage

of Highfield House, and nor would it be for a use incidental to the enjoyment of the use of that dwellinghouse as such.

Curtilage

4. Curtilage defines an area of land in relation to a building and not a use of land. There is no all-encompassing, authoritative definition of the term curtilage. The Technical Guidance[1] defines "curtilage" for Part 1 purposes 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, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.

5. Generally, to fall within the curtilage of a building, it is enough that the land serves the purpose of the building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way. However, other considerations, such as past and present relationships of ownership and function, must be taken into account. In the absence of any statutory or authoritative definition, it was held in *Dyer*[2] that the term bears its restricted and established meaning, a small area forming part and parcel with the house or building which it contained or to which it was attached.

6. The relevant authorities were reviewed in *McAlpine*[3] and the following characteristics of curtilage defined: a) it is confined to a small area about a building; b) intimate association with land which is undoubtedly within the curtilage is necessary to make the land under consideration part and parcel of that undoubted curtilage land; and, c) physical enclosure is not necessary. I have also had regard to the Council's reference to Tandridge (11/09/1996 DCS No. 035-505-753), which established that the garden area should normally be proportionate to the size of the dwelling.

7. Having regard to all the authorities it is apparent that whether something falls within a 'curtilage' is a question of fact and degree and, thus, primarily a matter for the decision maker. What it also apparent is that the relevant date on which to determine the extent of the curtilage is the date of the LDC, 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. It is possible for the extent of curtilage to change over time.

8. The dwelling known as Highfield House is situated within a rectangular plot of land which is situated on the corner of School Lane and Leek Road. The dwelling fronts onto Leek Road and sits within a generous sized plot, which the Council describe as providing off-road parking and external amenity space. The garden is laid as lawn, has some areas of hardstanding and vegetable plots. There is also an outbuilding used as a garage/workshop, a small store and evidence of a septic tank within the lawn. A low stone retaining wall and mature hedgerow enclose the northern and western boundaries of the garden, and vehicular access is provided into the garden and the parking area from School Lane. The proposed garage would be situated within this garden area and to the west of the existing store. This part of the garden is laid as a

[1] Permitted Development Rights for Householders: Technical Guidance, September 2019.
[2] Dyer v Dorset CC [1988] 3 WLR 231.
[3] McAlpine v SSE [1995] JPL B43

mixture of hardstanding and lawn, and at the time of my site visit there was a motorhome parked on it.

9. It is clear from aerial photographs provided by both the Council and the appellant that the land to the north of Highfield House has been used as a garden and parking area in association with the house since at least 2003. This was acknowledged by the Council when they permitted a new access from School Lane to serve the property, and which also facilitated a further parking area for the house within the garden[4]. There is no physical separation between the garden area and the house. The whole area is enclosed by a mature hedge, which considering its size, species and growth, has clearly been in existence for a significant number of years.

10. The garden is relatively large. However, size alone is not a critical factor as shown by established case law. The Council has provided extracts from historic maps to show that a physical boundary previously existed to delineate the garden to the west of Highfield House from the land to the north. It is based on this evidence that the Council consider that the garden area to the north of the house, where the garage is proposed, is not what they would classify as "original curtilage." I noted on my site visit the remains of a small stone wall in this location. However, whilst physical separation can indicate dissociation with the building, this is not the case here. The garden area to the north of the house, which includes the site of the proposed garage, has been used for residential purposes by the occupiers of the house for a significant period of time. Importantly, it serves as an access, parking and garden area for the house and is functionally associated with it. Furthermore, I have not been provided with any evidence to show that this part of the garden has ever been in a separate ownership. Therefore, I am satisfied that, as a matter of fact and degree, the land where the garage would be sited is within the curtilage of the dwellinghouse for Part 1 purposes.

Incidental

11. E.4 of the GPDO says that for the purposes of Class E, Part 1 "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The Technical Guidance advises the rules also allow, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking, as long as they can be properly described as having a purpose incidental to the enjoyment of the house.

12. I have taken into account the judgements cited by the Council, including *Emin v SSE & Mid Sussex DC [1989] JPL 909* which confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably

[4] Delegated Report: SMD/2014/0603, Appellant's Statement of Case.

required in order to accommodate the proposed use. The use of the building should be subordinate to the use of the house as a dwellinghouse.

13. The appellant has advised that the garage is required to park/store his motorhome and to provide a covered area to carryout maintenance work on it. It is also required to provide secure storage for the appellant's tools, work benches, bikes and other ancillary domestic storage. A toilet is also proposed within the building. The existing garage on the site has permission to be converted for use as holiday accommodation and therefore new storage space is required to house the items currently stored in this building.

14. There does not appear to be any dispute that the appellant owns a motorhome, and I was able to see this on my site visit. It is currently parked/stored outside in the approximate location of the proposed garage. I was also able to gain access to the existing garage on site which I noted was fully utilised as a workshop and store. I saw a number of work benches/units within the garage, tools and other domestic and garden items being stored.

15. I have taken into account the Council's concern over the size of the proposed garage. However, the intended use of the building is clear and unambiguous. Taking into account the need to provide space to store and maintain the family motorhome and provide replacement storage space for that which would be lost when the existing garage is converted, I do not consider the size of the proposed building to be excessive. Furthermore, the building would be single storey, and clearly subordinate to the use of the house as a dwellinghouse. Whilst its location at the end of the garden is not especially convenient, this would not prevent it providing for the incidental purposes that are indicated and it would be adjacent to the existing driveway.

16. For the reasons set out above, I conclude that the proposed detached garage would be for a purpose incidental to the enjoyment of the dwellinghouse as such.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a detached garage at Highfield House, School Lane, Longsdon, Stoke-on-Trent ST9 9QS was not well-founded and the appeal should succeed. I will exercise powers transferred to me under section 195 (2) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 28 February 2020 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed detached garage is for a purpose incidental to the dwellinghouse, as such. The proposed detached garage is "permitted development" falling within Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3 (1) of that Order.

Signed

Elizabeth Pleasant

INSPECTOR

Date 28 January 2021
Reference: APP/B3438/X/20/3259656

First Schedule

Detached garage (as shown on Drawing No: 5764-PD-01 Rev A, dated February 2020. Scale 1:50.

Second Schedule

Land at Highfield House, School Lane, Longsdon ST9 9QS.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 28 January 2021

by E Pleasant DipTP MRTPI

Land at: Highfield House, School Lane, Longsdon ST9 9QS.

Reference: APP/B3438/X/20/3259656

Scale: Not to Scale

