

DELEGATED DECISION REPORT

SMD/2021/0165
Valid 27/04/2021

MOSS HOUSE FARM LEEK
ROAD
ENDON

LAWFUL DEVELOPMENT
CERTIFICATE FOR
PROPOSED REPLACEMENT
WITH BUILDING TO BE USE
AS ANCILLARY TO MAIN
DWELLING.

(CERTIFICATE OF
LAWFULNESS - PROPOSED)

MAIN ISSUES

Whether or not the proposed domestic outbuilding can be built in accordance with the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and therefore be deemed to be “permitted development” not requiring the submission of a full planning application.

DESCRIPTION OF SITE

The site is on the southern edge of Endon village but outside of the development boundary and in the Green Belt. It comprises a residential plot with detached two-storey sandstone cottage but also adjacent agricultural buildings within the confines of the property. It is reached via track off Leek Road to the west. The track continues past other residential properties and then crosses a former railway. The plot is just to the other side of this at the end of the track on the right (south) and is marked by gates. The cottage faces the Caudon Canal which runs along the east boundary with the rail track marking the western boundary. The canal is within a Conservation Area but the site is excluded from this. To the north lies other agricultural buildings at the end of the entrance track. The two farm buildings (one modern metal sheeted, the other a more ramshackle nissan hut) within the property itself lie to the south of the house. Fields lie to the south of this. The site is in Flood Zone 2.

PROPOSAL

This is an application for a Lawful Development Certificate for a proposed development, in this case a large detached triple garage/outbuilding to the rear of the dwelling. Amended plans have been received which show the building to be placed at least 2.0 metres from the rear boundary and with a max height (up to the roof ridge) of 3.7 metres and a height up to the roof eaves of 2.5 metres.

The original plans submitted for a much larger outbuilding with several windows, in place of an existing farm building in the form of Nissan hut in the south-west corner of the site. The final revised scheme has been reduced in scale and height and also placed roughly behind the dwelling (the front elevation of the dwelling faces the canal to the east).

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Not relevant. The application for a certificate is to be determined against the Schedule 2 of

the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

SMD/2021/0164: Full householder planning application for rear extensions to the dwelling. This is a concurrent application and the decision is still pending.

CONSULTATIONS

N/A

OFFICER COMMENTS

The applicant is attempting to gain a certificate of lawfulness for the new outbuilding which would confirm that it they can be built and provided without needing planning permission (i.e would be “permitted development”). The lawfulness of the development (and whether or not this can be deemed to be “permitted development” which does not need planning permission) would be determined against Schedule 2, Part 1 (“Development within the curtilage of a dwellinghouse”) Class E (“buildings incidental to the enjoyment of the dwellinghouse) of Schedule 2 of the General Permitted Development Order (2015) (GPDO) (as amended).

I am satisfied that the outbuilding conforms with the particular criteria/tests in Part 1 Class E in terms of the dimensions and siting of the outbuilding. There was a concern over the size and design of the original building applied for which was akin to the size and design of a dwelling and therefore was not deemed to be a building that would have been entirely “ancillary” to the main dwelling which is a modest sized 3-bed dwelling. The amended size is appropriate in relation to the dwelling and I am satisfied the triple garage form of the outbuilding could only realistically be used for purposes incidental to the enjoyment of the domestic use of the dwelling, in this case for the garaging of vehicles (there were at least three cars on the site at the time of my visit) or domestic storage purposes. The number of windows has also been significantly reduced and it is reasonable to expect some form of natural light provision even for an outbuilding (for example for finding items stored or for helping with repairs to vehicles).

The other main concern with the original plans was the location of the outbuilding in place of an agricultural building. This part of the property is not deemed to be within the “residential curtilage” of the property as the southern half is taken up by agricultural buildings and is not used for domestic purposes. The buildings are also located next to fields within the property.

It was questioned whether or not the current siting in the final amended plans was within the residential curtilage, required for Part 1 Class E permitted development in the GPDO. Historical maps between the late 19th century and the late 1930s showed the grass garden area to the other side of the yard and driveway from the house to be within a different plot of land and that the curtilage appeared to be tightly drawn around the dwelling.

A legal opinion was sought from the Council’s Legal Team. The solicitor considered that as the grass area had appeared to be used as a garden (from photographic evidence going back to 2006) and was close to the dwelling, separated only by a driveway and no physical enclosure works, it was considered that these points would be in favour of this part of the site being deemed to be residential curtilage. The solicitor informed of a recent appeal case decision (made on 28.1.21) involving an outbuilding on another site in the District (Highfield House, Longsdon ref SMD 2020 0109) where the meaning of “residential curtilage” was

discussed. The case involves an outbuilding of similar size which is also placed a similar distance away to the rear of a dwelling and where there is no identifiable physical boundary between the dwelling and the piece of land where the outbuilding was proposed to be located. The appeal was allowed and the following points of relevance to this particular case at Moss House Farm were made:

“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 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.

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.

The relevant authorities were reviewed in “McAlpine” 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.

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 is 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.”

The decision letter also made reference to historical maps which showed the proposed outbuilding at Highfield House was in an area physically separated from the part of the site where the dwelling was located i.e. within a different plot of land.

There are therefore significant similarities between the current application case and the appeal case at Highfield House i.e. it appeared the site was historically detached from the residential part of the property, there is no current physical separation between the two parts of the site, the site has been used as a garden for the purposes incidental to the enjoyment of the dwelling for at least approx. 15 years and the proposed siting is no further than the proposed Highfield House outbuilding in relation to Highfield House. Furthermore, regarding purposes ancillary to the residential use of the site, the Highfield House outbuilding also comprised storage space and was of a similar form, size and height.

I therefore consider that on the basis of the above appeal case, where definition of curtilage was tested and also the scale and form of the building and whether it could be construed to be a building incidental to the enjoyment of the dwelling and on the basis that the use of the land on the date of the application was the normal determining factor for curtilage use and not historical use and that there are no parameters of scale for determining if an outbuilding is used in connection with the residential use of the house (and not as a separate unit of accommodation), the proposed amended outbuilding in the amended location to the rear of the dwelling, is lawful within the terms of Part 1 Class E of the GPDO.

CONCLUSION / PLANNING BALANCE

The proposed works would comply with Part 1 Class E of Schedule 2 of the GPDO and therefore a full application for planning permission is not required for the proposed outbuilding. The works can therefore be deemed to be permitted development and a Certificate of Lawfulness can therefore be granted for the proposal.

OFFICER RECOMMENDATION : APPROVE GRANT OF CERTIFICATE

Case Officer: Chris Johnston

Recommendation Date: 17.9.21

X *B.S. Haywood*

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council