



Appeal Decision

Site visit made on 6 September 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2023

Appeal Ref: APP/H1033/X/22/3312138

Thorncroft, Lower Hague, New Mills SK22 3AP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs K Povah against the decision of High Peak Borough Council.
 - The application ref HPK/2021/0058, dated 16 April 2021, was refused by notice dated 13 August 2021.
 - 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 the removal of an existing outbuilding and the erection of a new outbuilding comprising a motorbike store, garden store and workshop, and the creation of additional hardstanding in the form of permeable gravel which will serve as access to the new outbuilding.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a certificate was well founded. This turns on whether, at the time of the application, the site of the proposed development fell within the curtilage of the dwellinghouse 'Thorncroft'.

Reasons

3. Part 1 of Schedule 2 of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) permits certain forms of "Development within the curtilage of a dwellinghouse". Part 1 includes Classes E and F, which respectively provide for buildings and hard surfaces incidental to the enjoyment of a dwellinghouse. These classes are subject to various limitations and conditions, but compliance with them is not the point at issue in this case. Rather, the question is whether the development would fulfil the more fundamental requirement of being "within the curtilage of a dwellinghouse".
4. The question of curtilage has been considered extensively by the courts¹. From this it is clear that the question of determining the extent of the curtilage is a matter of fact and degree. For land to fall within the curtilage of a building, it

¹ See *Dyer v Dorset CC* [1989] 1 QB 346; *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions* [2001] QB 59; *Lowe v Secretary of State* [2003] EWHC 537 (Admin); *Methuen-Campbell v Walters* [1979] 1 QB 525

- must be intimately associated with the building such that it forms part and parcel of it. However, curtilage does not need to be confined to a small area.
5. The Government's *Permitted development rights for householders - Technical Guidance* is designed to assist in the interpretation of domestic permitted development rights. It states 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".
 6. I have also been referred to the Oxford English Dictionary definition of curtilage, which defines it as "an area of land attached to a house and forming one enclosure with it". Both parties make reference to boundary features such as walls and fencing at the appeal property. While these are not determinative in their own right in relation to the question of curtilage, they may be relevant as part of an overall assessment.
 7. The appeal site includes "Thorncroft", a late 20th Century house, and adjoining land. The whole of the site is within common ownership, but different parts of it vary in terms of their appearance and how they relate to the dwelling. The appellants have provided a plan which is said to show the extent of the curtilage of the dwellinghouse. This excludes much of the land within the red line defining the appeal site but includes the area on which the proposed building and hardstanding would be sited.
 8. The area immediately around the dwellinghouse is a hard-surfaced driveway and parking area, behind which is a lawn. These areas quite obviously relate to the dwelling, both in terms of their use and their physical relationship to it, and are intimately associated with it. A further area to the eastern side of the property is grassed and laid out as a garden/orchard.
 9. The proposed building would be sited on land further still to the east. It includes the site of a former stable building (the "outbuilding" referred to by the appellants), which would be removed to allow the new building to be constructed. The area in front of the existing building is surfaced with concrete and enclosed with fencing, and this area would also be occupied by the new building. The building is reached from the access serving the dwelling, via a grassed area, on which the proposed hardstanding would be formed. When I saw the site, the current building appeared to be used for domestic storage, and I understand it has been used as such since the current owners acquired the property in 2013. The surfaced area in front of it contained plants, chairs and a table and play equipment, reinforcing the impression of domestic use.
 10. The proposed building would also extend onto a grassed area of land to the east of the existing building, further still from the dwelling. This grassed area is part of a much larger field which extends to the south of the former stable building and accounts for a large proportion of the appeal site. The field is fenced off from the remainder of the site. Although accessed from the drive serving Thorncroft, the location of the field, its character and boundary treatment lead me to conclude that it is not intimately associated with the dwellinghouse.
 11. The field contains a levelled and surfaced area, with seating and an ornate gazebo. This does not feature in an aerial photograph dated April 2021 provided by the appellants, and so was not likely to have been in place when

the LDC application was made on 16 April 2021. But in any event, while it is domestic in character, this seating area only accounts for a small proportion of this part of the appeal site and does not alter its prevailing character, which is that of a grassed field. The appellants refer to the upper part of the field, where the gazebo is located, as a lawn, but it did not have the managed appearance of a lawn when I viewed it. With the single exception of March 2022 (after the LDC application was made), the historic aerial photographs do not show this area managed any differently to the rest of the field.

12. The apparent domestic use of the area containing the former stable building indicates a link with the dwelling. That link is reinforced by ownership and the shared access. However, it is an area which is distinct in physical terms, being some distance from the dwelling and reached via a fairly narrow strip of grass. It is also fenced/gated off from the remainder of the site, which reinforces the separateness of this area of land. In my judgement, and as a matter of fact and degree, this part of the site is not part and parcel with the dwelling.
13. Nor do I regard the strip of grass leading up to it as part and parcel of the dwelling; its primary purpose appears to be to provide access to the former stable and it is gated off from and different in character to the surfaced driveway serving the dwelling. Consequently, it has a stronger connection with the former stable building than with the dwelling and is not intimately associated with the dwelling.
14. As to the field, while I am told it is used for amenity purposes, play and parties, that does not alter my view that it is not intimately associated with the dwelling such as to form part and parcel with it. The fact that the site of the proposed development might be used and enjoyed in connection with the occupation of the dwelling does not, of itself, make it part of the curtilage of that property; a broader assessment is needed.
15. Drawing these threads together, I conclude that no part of the site of the proposed development is intimately associated with the dwelling Thorncroft such that it forms part and parcel with it. Accordingly, the proposed building and hardstanding would not be sited within the curtilage of the dwellinghouse. It follows that it cannot be development permitted under Classes E and F and would not have been lawful when the application was made.

Conclusion

16. 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 removal of an existing outbuilding and the erection of a new outbuilding comprising a motorbike store, garden store and workshop, and the creation of additional hardstanding in the form of permeable gravel which will serve as access to the new outbuilding" 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 and dismiss the appeal.

Peter Willows

INSPECTOR