



Appeal Decision

Site visit made on 24 April 2025

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 APRIL 2025

Appeal Ref: APP/H1033/X/24/3343762

40 Hawthorn House, Hawthorn Drive, Glossop, Derbyshire, SK13 7EE

- 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 Stuart Clephan against the decision of High Peak Borough Council.
 - The application ref HPK/2023/0559, dated 20 December 2023, was refused by notice dated 14 February 2024.
 - The application was made under section 192(1)(a) 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 proposed erection of a detached outbuilding within the residential curtilage (side garden area) to be used for a purpose that is incidental to the enjoyment of the dwellinghouse (domestic storage).
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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 found to be lawful.

Main Issue

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed detached outbuilding are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether it has been demonstrated that the proposed detached outbuilding would be permitted development taking into account the provisions and restrictions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). In particular, it relates to whether the proposed outbuilding would fall within the curtilage of the dwellinghouse known as 40 Hawthorn House, Hawthorn Drive, Glossop, Derbyshire, SK13 7EE.

Reasons

4. The proposed detached outbuilding, referred to as a 'garage' on submitted drawing No. DR1a dated 16 December 2022, would be positioned between the side/gable elevation of the dwellinghouse and the pavement on Hawthorn Drive. Number 40 Hawthorn House is a detached dwellinghouse on a corner plot.
5. The evidence demonstrates that permitted development rights have not been removed from the appeal dwellinghouse. Based on the submitted drawings, the proposed garage would comply with the permitted development height, area and

other restrictions imposed in E.1 (a) to (k) of Class E of Part 1 of Schedule 2 of the Order. This is not a matter in dispute between the main parties. However, for the proposed garage to be permitted development, it must also fall within the curtilage of a dwellinghouse.

6. Curtilage is not defined in the Order. Moreover, there is no statutory definition of curtilage. It does not relate to the use of the land. The Permitted Development Rights for Householders Technical Guidance 2019 refers to it 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'*. Overall, curtilage is land intimately associated with a building such that it forms part and parcel of that building.
7. In the case of *Adrian Burford V SSCLG and Test Valley BC* (2017) EWHC 1493 (admin) the judge identified curtilage as being *'(i) the physical layout of the listed building and structure; (ii) their ownership past and present; (iii) their use or function past or present'*. Such a judgment goes on to say that whether something falls within a curtilage is a question of fact and degree for the decision maker.
8. The main parties have drawn my attention to the consideration of an appeal made under section 78 of the Act for the erection of an outbuilding on the same land. That appeal was dismissed¹, and the Inspector commented that the proposed outbuilding would be positioned in the *'side garden'*. This comment does not mean that the land falls within the curtilage of 40 Hawthorn House. Indeed, it is possible to have a garden that falls outside a curtilage. It is necessary that I consider whether the land falls within the curtilage of 40 Hawthorn House based on case law, submitted evidence, and, as a matter of fact and degree.
9. The evidence is that the land has always been owned by the appellant and has been maintained as such since the property was built and sold by the developer, Taylor Wimpey. It is enclosed from the pavement by laurel hedging. This land extends, without interruption, to the front of the property which is being used as a front garden and driveway. The photographic evidence indicates a well maintained and mowed area of garden land to the front and side of the property, partly enclosed by boundary landscaping. While the side garden may not be very large, size in itself is not a determining factor. I find that the front and side garden areas are contiguous and have an intimate visual and garden function association with the dwellinghouse.
10. In my judgement, it does not matter that the side garden may not be used for regular day to day activities like, for example, relaxing or drying washing. Indeed, it is not uncommon for such activities to not occur in front or side gardens. In this regard, I do not see why the side garden should be treated any differently from the front garden, the latter of which has an intimate association with the dwellinghouse and is also within the curtilage of the dwellinghouse.
11. The Council contends that the appeal land forms part of the wider landscaping/open space associated with the estate of houses and hence that it does not form part of the curtilage of the dwellinghouse. While the evidence shows

¹ Appeal reference APP/H1033/W/22/3313439 dated 22 November 2023

that other land was approved as being separately landscaped open space within the estate, and is being managed by the developer/management company, the evidence does not indicate that the appeal land was designated to be used as an unrelated and separate piece of land. It is noteworthy that the approved landscaping scheme states on page 8 that ornamental hedgerow planting will be used to define the extents of residential plots, and to provide screening between private gardens and public access road. The evidence is that the laurel hedge was planted by the developer, and, in my judgement, it partly defines the extent of the residential curtilage of 40 Hawthorn House.

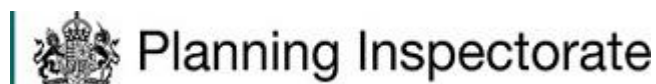
12. The Council comments that *'the giveaway characteristic of this site with regards to its inclusion or otherwise within the domestic curtilage is that the land in question is not connected to the rear curtilage by an entrance door'*. I accept that an entrance door to the rear garden would provide some additional assistance in terms of reaching a conclusion about the land's intimate functional/physical relationship with the rear garden area. However, this comment fails to address the fact that the land has a contiguous and functional relationship with the front garden area, the latter of which is part of the curtilage of the dwellinghouse.
13. For the above reasons, and, as a matter of fact and degree, I therefore conclude that the proposed garage would be positioned on land which has an intimate association with the dwellinghouse. The land is part and parcel of the dwellinghouse. Consequently, the proposed development complies with all the limitations and conditions to be permitted development under Class E of Part 1 of Schedule 2 of the Order. Hence, the proposed garage can be erected without the need to submit a planning application.

Conclusion

14. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for the proposed erection of a detached outbuilding within the residential curtilage (side garden area) to be used for a purpose that is incidental to the enjoyment of the dwellinghouse (domestic storage) is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

D Hartley

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 20 December 2023 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and as shown in the drawings within the Plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development falls within the curtilage of No. 40 Hawthorn House, Hawthorn Drive, Glossop, Derbyshire, SK 13 7EE and is permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

D Hartley

Inspector

Date: **25 APRIL 2025**

Reference: APP/H1033/X/24/3343762

First Schedule

Proposed erection of a detached outbuilding within the residential curtilage (side garden area) to be used for a purpose that is incidental to the enjoyment of the dwellinghouse (domestic storage).

Second Schedule

Land at 40 Hawthorn House, Hawthorn Drive, Glossop, Derbyshire, SK13 7EE

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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 effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 25 APRIL 2025

by D Hartley BA Hons MTP MBA MRTPI

Land at: 40 Hawthorn House, Hawthorn Drive, Glossop, SK13 7EE

Reference: APP/H1033/X/24/3343762

Scale: Not to Scale

