

WOODFOLD PARK FARM, WOODFOLD PARK, MELLOR BB2 7QA

OPINION

Introduction

1. I am asked to advise Mr Shokat Dalal in respect to Woodfold Park Farm, Woodfold Park, Mellor BB2 7QA ('the Site'). The Site falls within the jurisdiction of Ribble Valley Borough Council ('the Council').
2. On 9 August 2023, the Council refused an application¹ for a certificate of lawfulness² in respect to the Site for the following description of development ('the CLOPUD Decision'):

Certificate of Lawfulness for proposed erection of rear and side extensions to the dwellinghouse and construction of separate building incidental to the enjoyment of the dwellinghouse.

3. The Council's reason for refusal was as follows:

The existing dwellinghouse does not have a lawfully established domestic curtilage, the proposed extensions and detached building would extend beyond the existing dwelling footprint, therefore the proposed extensions to the dwellinghouse and the detached building would not sit within the dwelling's curtilage and the Town and Country Planning (General Permitted Development) Order 2015 (as amended) Schedule 2, Part 1, Class A and Class E does not apply.

¹ LPA Reference: 3/2023/0436

² Pursuant to s.192 of the Town and Country Planning Act 1990

4. Mr Dalal is in the process of submitting a revised application for a lawful development certificate in respect to the Site. This solely seeks to confirm that Mr Dalal's property can be extended to the rear pursuant to Class A of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 ('GPDO'). I am asked to advise in respect to this proposed revised application.

Law

5. Class A of the GPDO allows for the 'enlargement, improvement or other alteration of a dwellinghouse'.
6. A restriction on this permitted development right applies which is relevant to the curtilage of the dwelling, through paragraph A.1(b) of Class A, which says as follows:

(b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

7. In layman's terms, this essentially means that the works of enlargement cannot extend the dwelling beyond 50% of the dwelling's existing curtilage. Accordingly, it imposes a restriction on the extent to which a dwelling can be enlarged, by reference to the dwelling's 'curtilage'.
8. There is no all-encompassing, authoritative definition of the term curtilage. The application of the term derives from the conveyancing of property where it was and remains very much a term of art.
9. Generally, to fall within the curtilage of a building, 'it is enough that land serves the purpose of a building in some reasonably useful way', even though

it need not be marked off or enclosed in any way – per **Sinclair-Lockhart's Trustees v Central Land Board** [1950] 1 P&CR 195.

10. However, other considerations, such as past and present relationships of ownership and function, must be taken into account. Interpretation of the word curtilage is not a matter of law and should be based upon the ordinary meaning of words according to **Brutus and Cozens** [1973] AC854. It is, therefore, a matter of fact and degree.

11. In the absence of any statutory or authoritative definition, it was held in **Dyer v Dorset CC** [1988] 3 WLR 213 that the term bears its restricted and established meaning connoting a small area forming part and parcel with the house or building which it contained or to which it was attached. The Oxford English Dictionary definition was endorsed as adequate for most present day purposes, namely:

"A small court, yard, garth, or piece of ground attached to a dwellinghouse, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwellinghouse and its outbuildings."

12. The relevant authorities were reviewed in **McAlpine v SSE** [1995] JPL B43 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.

13. However, in **Skerrits of Nottingham Ltd v SSETR (No 1)** [2000] EWCA Civ 60, the Court of Appeal found the concept of smallness so relative, in the context

of the curtilage of a substantial listed building, as to be almost meaningless and unhelpful as a criterion.³

14. The concept of the “curtilage” for the purposes of the GPDO was reviewed by the High Court in *Burford v SSCLG* [2017] J.P.L. 1300 at [32]–[37] per Supperstone J. The judge summarised the relevant factors for determining the curtilage as: (1) the physical layout of the building and the structure; (2) their ownership, past and present; (3) their use or function, past and present. The application of those factors to a given set of facts is a matter of planning judgment for the decision taker, to be impugned only on Wednesbury grounds.
15. In *R.(oao Gore) v Secretary of State for Communities and Local Government* [2009] JPL 931, the Court confirmed that, although it would be relatively unusual, it is possible for a dwellinghouse to have no surrounding residential curtilage at all.

Discussion

16. The Council formed the view that the CLOPUD could not be granted on the basis that the dwellinghouse does not have a domestic curtilage. However, the Council proceeded to apply the criteria within Class A of the GPDO in any event and found that certain requirements were not met.
17. The new application has sought to overcome this by redesigning the scheme. Indeed, I note that the application no longer includes a balcony, which was a point of concern for the Council.

³ See also *Lowe v FSS & Tendring DC* [2003] EWHC 537 (Admin)

18. However, the remaining contention with the Council, which could not be designed around, concerns the extent of the curtilage around the dwellinghouse.
19. As discussed under the section concerning the law above, there is no strict definition of a curtilage. Moreover, the extent of the curtilage is an inherently site-specific matter of planning judgment, to be determined as a matter of fact and degree. However, whilst there is undoubtedly scope for debate, my own view is that the area to be developed to the immediate rear of the property (ie. what is proposed) would inevitably fall within the curtilage of the dwellinghouse.
20. The Council's position appears to be that as this curtilage is not 'established' in any sense, it cannot be relied upon. However, a curtilage is rarely established. The Council appear to contend that this dwelling has no curtilage at all.
21. Whilst these are matters of planning judgement, rather than law, given what I have been shown of the Site, I can see no good reason to conclude that the rear garden/courtyard would not, at the very least, form part of the curtilage of the dwellinghouse. Indeed, the Council do not identify a good reason in the officer report in my view as to why the property has no curtilage. Whilst I note that in Gore the Court confirmed that a dwellinghouse can theoretically have no curtilage, this was considered to be unusual. I see nothing here that would justify such a conclusion on the current facts.
22. Where the curtilage extends to is a matter for debate, but in my view the dwellinghouse must have some form of curtilage and, in my view, that must extend to comfortably being beyond where the development was proposed immediately to the rear (i.e. the PD right must apply here).
23. Alongside the application is a plan showing the curtilage as envisaged by Mr Dalal's planning consultant. For the avoidance of doubt, the application does

not turn on whether this curtilage plan is correct. Indeed, it is no requirement for a Class A that it be accompanied by an accurate 'curtilage' plan. This plan simply indicates where it is contended the curtilage lies. It would be open to the Council to agree with this plan. Alternatively, the Council might take the view that the whilst the curtilage does not extend that far, it is still sufficiently large that the development that is proposed through the CLOPUD is still comfortably below the 50% threshold within Class A.

24. Considering the 3 criteria which often assist with determining the extent of the curtilage:

i. Physical layout of the building and structure

The governing planning permission⁴ for the Site depicts the 'courtyard' area to the rear of the property as being the garden area in the approved plan⁵. This rear area is described as the 'yard' in the proposed ground floor plan. The area ostensibly appears to be the rear garden of the property. This is similarly how this area appears in the aerial images from Google. Indeed, the area appears to be laid out as a grand garden area, which appears domestic in nature considering the scale of the property. There is nothing in the images or material before me to suggest that this area is anything other than a rear garden associated with the property.

ii. Ownership, past and present

I have seen a draft statutory declaration⁶ from Mr Dalal which confirms that the area shown through the curtilage plan have all been in common ownership both in his ownership and this is his understanding of the previous use.

⁴ LPA Reference: 3/2007/0252

⁵ Produced by Cassidy Ashton

⁶ Albeit I understand it is in the process of being signed and I proceed on the basis that it will be signed with the substance of its contents being unchanged

iii. Use or function, past and present

The draft statutory declaration confirms that the curtilage plan area has had the same use, namely a residential home. Thus, the use of the Site appears to have remained constant based on the evidence available to me.

25. It follows, therefore, that on the available evidence I have no reason to dispute the curtilage plan. However, even were one to dispute the extent of the curtilage based on this plan, I struggle to conceive of a good reason why the curtilage would not extend out such that the proposed extension would exceed the threshold within Class A.

I advise accordingly.



Kings Chambers