



Appeal Decision

Hearing held on 11 September 2012

Site visit made on the same day.

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2012

Appeal Ref: APP/C1950/X/12/2177638

45 Kentish Lane, Brookman's Park, Hatfield AL9 6NG

- 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 by Mr M Vignali against the decision of Welwyn Hatfield Borough Council.
- The application ref. S6/2012/0348/LUP dated 15 February 2012, was refused by notice dated 16 April 2012.
- 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 construction of a detached garage.

Summary of decision: the appeal is dismissed.

Preliminary matters

1. For the avoidance of doubt, I should explain that in the context of an appeal under Section 195 of the Act, which relates to an application for a lawful development certificate, the planning merits of the existing use or operations are not relevant. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
2. I consider that the main issue in this determination is whether the Council's decision to refuse the grant of a lawful development certificate was well-founded. In that regard the principle question is whether the proposed development would be permitted under the provisions of Class E, Part 1 of Schedule 2 to the GPDO¹. This class includes the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Reasons

3. The appeal property lies on the north-western side of Kentish Lane. There is a substantial house set about 25 metres from the frontage behind a front garden, with a U-shaped gravel drive, lawn and flower beds. The house has an integral garage on its north-eastern flank. Behind the house is a garden area, also about 25 metres deep, where there is a detached garage some 9 metres from the back wall of the house, and about 5 metres from the assumed south-

¹ The Town and Country Planning (General Permitted Development) Order 1995 as amended.

western plot boundary². The overall size of the house plot and immediate garden – which I refer to as the *principal plot* for the purposes of this decision – is about 23 metres wide by 60 metres deep.

4. The appeal site also includes a piece of land beyond the immediate principal plot, about 60 metres wide by 95 metres deep. This forms part of the land bought by the appellant in 2009. I have referred to this piece as the *back land* for the purposes of this decision. There is a timber stables building on this part of the land, built following grant of planning permission in 2006³.
5. The appellant also owns the piece of land fronting onto Kentish Lane immediately to the south-west of the house and to the north-west of the back land. On the frontage this has a road access, with a timber gate. This piece does not form part of the appeal site.
6. The proposed development would comprise a substantial garage building, about 11 metres wide by 7.8 metres deep, occupying the entire footprint of the existing stables building, but extending by about 4 metres to the front of it. The new building would have an area of hardstanding/turning area to its front, very roughly 11 metres square. There would be a new drive, about 55 metres long and 3 metres wide running from the U-shaped drive, past the south-western side of the detached garage to the new hardstanding/turning area.
7. Regarding whether the back land is part of the residential curtilage, this is largely a matter of its degree of association with the house. There are mature conifers across the end of what is obviously a carefully cultivated back garden, with its lawn, and beds planted with flowers and shrubs. Behind the trees is a row of some 5 concrete posts – originally probably fence posts. There is an opening roughly in the centre of the row of trees, which gives access to the back land. It appears to me that the posts and trees form a distinct boundary, and physically mark off the immediate garden of the house from the land to its rear.
8. The land beyond the garden is uneven and somewhat undulating. Indeed there is a quite steep dip in one part, a little to the north and west of the stables, and there is a patch of bracken. There are a considerable number of mature trees on and around this part of the site, including oak and birch. The grass has been mown over most of the area – excluding the dip, as well as an area clearly used for bonfires. Although I realise that horses are not kept there, this area appears very much as an open field such as might be used for grazing, rather than as an area of cultivated garden. As a result the two areas are of distinctly different character, and I consider the back land to be more akin to the piece of open land owned by the appellant immediately to the south-east of the house, with which it is effectively continuous.
9. Although a domestic curtilage of the size claimed for the appellant would not be uncommon, particularly in a semi-rural area such as this, the back land cannot be described as having an intimate connection with the house, or reasonably regarded as attached to the house, or as a part of the domestic ground that goes with it.

² This dimension is as scaled from application drawing no. 11015/12 - 'Site plan as existing, with features and levels'. The south-western boundary is taken to be the line connecting the fence along the south-western side of the front garden, and the line of 4 concrete posts along the same side of the back garden at its north-western end.

³ Decision notice ref. S6/2006/0641/FP, dated 11 July 2006, for the replacement of an existing small stable block, tack room and hay barn.

10. Although the grass is mown, this alone does not make it a part of the garden area, nor does its use for activities such as football give it any particularly strong association with the house – such things could be done on any piece of nearby open land. I could see that the stables building is now used mainly for storage, but that appears to be largely a matter of convenience, since I saw that the other garages are also used for storage and could reasonably accommodate more items. Although it is of a size that could conceivably be curtilage land, I do not consider it has any ancillary function to the house, or that it has at some time become an extended part of the garden.
11. The Land Registry Title⁴ shows that the principal plot and the back land have been in the same ownership since at least 1927. However, the fact of ownership of two contiguous pieces of land does not establish any functional link between them, or any intimate connection.
12. I note that in the officers' 2006 delegated report on the proposed replacement stable block it is stated that the area for the replacement stables is just beyond the curtilage of the garden. This indicates a consistent view of the Council that the back land is not within the curtilage of the house. Although the appellant's agent maintains that the replacement stables may have been permitted development, not requiring planning permission, he put forward no substantial evidence to support this point. It appears to me just as likely – or even more likely – that the parties considered planning permission to be required because the back land was outside the domestic curtilage.
13. Overall, I consider that as a matter of fact and degree the back land has little to associate it with the house in terms of its character, or in terms of its function, and that it does not serve the purposes of the house in any particularly or reasonably necessary way.
14. Regarding the proposed garage, it would be a building of some size – the equivalent of two large double garages – and it was agreed it could comfortably accommodate 4 cars. The Council accept that a building of this size would not be an uncommon feature within a residential curtilage. However, it would be about 52 or 53 metres from the house at its closest, and somewhat further from the front door. I concur with the Council's view that the new garage would be somewhat remote, and isolated from the house.
15. Furthermore, there are already 2 garages on the principal plot. A LDC granted in 2012⁵ includes proposals to convert the integral garage into part of the living accommodation, and the detached garage into a pool bar to serve a proposed swimming pool. Although the existing garages are of narrow dimensions, unsuitable for the appellant's present vehicle(s), it would be the appellant's own choice to leave the principal plot with no garage accommodation, without any apparent consideration given to the possibility of re-building, altering or extending one or both the existing garages.
16. In view of the isolated nature of the proposed garage, and the existence of 2 garages on the principal plot, the proposed 4-car garage cannot be regarded as reasonably required for a purpose incidental to the enjoyment of the dwelling house as such.

⁴ Title no. HD21176.

⁵ Decision notice ref. S6/2012/0338/LU, dated 20 April 2012.

17. It is argued that this case is similar to a 2012 enforcement appeal in the Borough of Guildford⁶. While that case is concerned with domestic curtilage, and uses incidental to the enjoyment of the dwelling house, it principally turns on the time for which the land was used as a domestic garden for which there appears to have been substantial evidence - and the use of the barn in question as a stables. This is distinctly different from the case before me. While I accept that a garage may well be an incidental use, I find that not to be the case here.
18. Given my findings concerning the extent of the residential curtilage, and the relationship of the proposed garage to the house, the proposal would not benefit from the provisions of Class E, Part 1 of Schedule 2 to the GPDO. I conclude that the Council's decision to refuse the application for an LDC was well founded
19. For the reasons given above and having regard to all other matters raised, I am satisfied that the Council's refusal to grant a LDC in respect of the construction of a detached garage on land at 45 Kentish Lane, Brookman's Park, Hatfield AL9 6NG, was well-founded and that the appeal should not succeed. Accordingly, I shall exercise the powers transferred to me under Section 195(3) of the 1990 Act as amended.

Formal decision

20. The appeal is dismissed.

Stephen Brown

INSPECTOR

⁶ Appeal decision ref. APP/Y3615/C/2161968, dated 5 March 2012.

APPEARANCES

FOR THE APPELLANT:

Graham Fisher BSc(Hons) MA MRTPI Phil Nicholas	Planning Consultant, Principal of GF Planning Ltd. Design Consultant Building Design Consultants.
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FOR THE LOCAL PLANNING AUTHORITY:

Jackie Phillips	Assistant Planning Officer Welwyn Hatfield Borough Council.
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1 Attendance list.