



Appeal Decision

Site visit made on 27 May 2020

by Simon Hand MA

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

Decision date: 04 June 2020

Appeal Ref: APP/B9506/X/19/3241242

Everleigh, Thorney Hill, Bransgore, Christchurch, BH23 8DZ

- 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 made by Mr Michael Finlay against the decision of New Forest National Park Authority.
 - The application Ref 19/00700, dated 29 August 2019, was refused by notice dated 6 November 2019.
 - 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 proposed outbuilding in accordance with the plans submitted as part of application 19/00700.
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Decision

1. The appeal is dismissed.

Background to the Appeal

2. The appeal concerns an application for an LDC to ascertain whether a proposed building housing a swimming pool and other associated uses would be lawful by virtue of it being permitted development. The Council's sole objection is that it is not within the curtilage of the dwelling at Everleigh. The proposed building would fall within Class E of Schedule 2 to Part 1 of the General Permitted Development (England) Order 2015 only if it were within the curtilage of a dwellinghouse. Everleigh stands on the corner of School Road and Forest Road and has a modest area around it of what is undoubtedly curtilage, bounded by a wall. The rest of the site is on lower ground and comprises a much larger area of grass, with, at the time the application was made, a large pole barn and various smaller structures. It is the status of this area that is in dispute.
3. Curtilage can be an elusive concept, and there have been many judicial pronouncements on it over the years but it remains that the definition of a curtilage is a matter of fact and degree that should be made on a case by case basis. However, the courts have held that curtilage need not be small, as size is related to the building to which it is attached and its context; 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, physical enclosure is not necessary. In particular the Appellant

quotes from Sinclair Lockhart's Trustees¹ that: "*The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way*". Although this is an old case it is still good law and provides a useful summary of the key issues in this case.

Reasons

4. The past history of the site is important, not least because the appellant and current owner only recently purchased the property from an elderly resident and so does not have first-hand knowledge of how the land was used.
5. In 1973, the site was clearly a farmyard, with the site of a demolished farmhouse and various agricultural buildings still standing. A planning application was made for a new dwelling, which is now 'Everleigh'. The red line on the plan shows the whole site (the current dwelling and the disputed larger garden area) and the application described it as the site of Everleigh farmhouse. The application plan shows the access to be taken off Forest Road (although whether this was ever implemented is in dispute) and various existing buildings are shown to the south of the dwelling (in the disputed garden), one labelled 'cowshed'. I have no doubt this was, at that time, a farmyard. However, the land all around seems to have been redeveloped as a housing estate. The plans show 'Plot 1' on School Road, which is now part of that estate. The lack of a blue line on the plans may indicate the rest of the farmland had been sold off for development.
6. Whatever the existing use may have been in 1973, the application was clearly for a dwelling, it is not described as a replacement farmhouse and it doesn't seem the farm was in active use. It is a matter of fact that the red line describes the planning unit, and there is no reason to consider that was a mistake at the time. Therefore it is reasonable to assume that the whole site was granted planning permission for residential use, including the area containing the cow shed and the later pole barn. However, the planning unit and the lawful use of the land do not necessarily indicate the extent of curtilage. As I note above that is a matter of fact and degree, depending partly on what actual use that is made of the land.
7. The next information on the use of the site comes from 1987 when an application was made to build 4 houses on the disputed garden land. This would have left just the walled garden area around Everleigh as curtilage. The site is described as "farm yard". Interestingly the same cowshed and other buildings are shown, as were on the 1973 site plan. They are labelled 'ex outbuildings demolished'. Which I take to mean they are existing and will be demolished. The application form describes them as 'redundant farm buildings'. The pole barn is not shown so presumably did not exist at that date. The strong implication here is that the land is, or was when it was last used, a farm yard.
8. The oldest photographic imagery dates to 2000 and is an aerial view showing the cow shed and another smaller building in front of it as well as the pole barn, which it would seem therefore was constructed between 1987 and 2000.

¹ Sinclair Lockhart's Trustees v Central Land Board [1950] 1 P&CR 195

The access off School Road seems to serve the cow shed and pole barn and also a further building in the south-west corner of the land which seems to be a car port and associated sheds. These structures are all in place in a 'streetview' image from 2008 and also in 2011, when chickens are roaming the disputed area. Close-ups of the pole barn from 2009 and 2011 show it being used for storage of a variety of building materials such as a cement mixer, coils of plastic ducting, ladders, buckets a large 4 wheel trailer and various unidentifiable objects. I am not sure I agree with the Council that they are clearly agricultural, but they do not appear to be domestic.

9. The latest aerial image is 2018 by which time the cow shed and smaller brick building have gone to be replaced by a small concrete block building, whose use is not mentioned. The property was put up for sale in 2019 and the marketing photographs show the lower disputed land as mown lawn with a garden shed and what the appellant says are garden items, but they could, it seems to me, be anything. The wider photograph in the sales brochure shows the pole barn containing miscellaneous junk, the same trailer and a tractor. Some rusty equipment seems to be piled up by the car port and there is a large area of disused hardstanding in the south-west corner.
10. The appellant argues that the car port was used to store the owner's car, and the access from Forest Road was never implemented. Various photographs from over the years, however, clearly show a metal gate providing access to a parking area next to the house off Forest Road. Cars are shown pulled up by the gate on the verge, creating an area of bare earth through use. The 2019 sales photographs show a car parked next to the house on the Forest Road parking area and this is described in the sales particulars as off-road parking. Although this access and parking never seems to have been legally established (there is some issue about lawful access across the verge), this does not seem to have stopped the occupiers of the property from using it over the years and advertising it as such. It is right next to the house and much more convenient than the car port in the lower garden.
11. In all the photographs, as far as anything can be seen, the walled garden seems to be clearly used domestically, with a vegetable plot and sitting out area, flower beds and so on. The use of the rest of the land is much less obviously domestic. It does not seem to me the pole barn was used for domestic purposes, but definitely has building materials in 2009 and 2011 and agricultural equipment in 2019. There is also the rusting equipment in 2019. The appellant says the previous owner was an old lady in her 90s, so it is difficult to imagine what use she would have had for a tractor or the building materials? Possibly the lower land was used by someone else with her agreement, but this is speculation, what is clear is that it does not seem to have been used domestically.
12. The only indication of domestic use is the possible garden shed in one corner and the concrete block 'domestic outbuilding' although I have no actual evidence as to what this was used for. Otherwise the 2019 photographs suggest it was a bit of a dumping ground. I do not think the estate agent's description of it as a garden is conclusive and the fact that the wall may also serve as a retaining wall due to the change in levels is really neither here nor there.

13. Bringing all this together. It would seem there was a material change of use in 1973 to residential use for the whole site, but the curtilage was established within the walled garden area. Whether the residential use has since been lost be later changes of use I cannot say, but there seems to have been little or no domestic use of the lower garden over the years. What use there does seem to have been was a low key storage or agricultural use. There is nothing to suggest it was ever incorporated into the curtilage of Everleigh. It does not seem to have served the purpose of Everleigh in some necessary or useful way. Therefore I consider the Council were correct to refuse the LDC as applied for and I shall dismiss the appeal.
14. I should note that on my site visit, the situation had changed considerably. The pole barn, car port and associated buildings had all been removed, new fencing erected and the whole area seemed to be in the process of being turned into usable garden space. Curtilage, of course, can change over time and is not limited to land that is lawfully residential. If the question was asked today as to the extent of the curtilage at Everleigh the answer might be different. But the question posed in this appeal is whether the land on 29 August 2019 was within the curtilage of Everleigh and the answer to that, must, on the balance of probabilities, be no.

Simon Hand

Inspector