



Appeal Decision

Site visit made on 17 September 2001

by **R O Evans BA(Hons) Solicitor**

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

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Date

11 OCT 2001, 1 OCT 2001

Appeal Ref: APP/Q5300/X/01/1062324
143 Ordnance Road, Enfield, Middlesex, EN3 6AE.

- 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 lawful development certificate (LDC).
- The appeal is made by Mr N Brade against the decision of London Borough of Enfield.
- The application (Ref. LDC/00/0300), dated 30 October 2000, was refused by the Council by notice dated 15 January 2001.
- The application was made under section 192(1)(b) of the 1990 Act as amended.
- The development for which a Certificate of Lawfulness is sought is loft conversion of L shaped roof into L shaped rear facing dormer loft, including raising of lower part of L shaped roof party wall, to contain 2 x bedrooms, 1 x bathroom and boiler room.

Summary of Decision: The appeal is allowed and a Certificate of Lawfulness is issued, in the terms set out in the Formal Decision below.

Preliminary Matters

1. The appeal property is a 2 storey, brick built semi-detached house on the southern side of Ordnance Road. In common with the adjoining house at No145, it has a back addition. The proposal includes the raising in height of the party wall to this addition by some 0.5m. The Council's only reason for refusal of the certificate is based on their belief that the extension to the party wall would not fall within Class B of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) by reason of part of it being outside the curtilage of the dwellinghouse.
2. There is no dispute that the party wall straddles the boundary between the 2 properties. The submitted plans show the upward extension of it to be of the same width, so that it too would straddle the boundary. The Appellant now argues however that his proposal is made only in relation to that part of the structure within his property, with his neighbour able to exercise similar permitted development rights in relation to the adjoining property. It is thus necessary for me to determine, as a preliminary issue, the nature and extent of the proposal before me.
3. The plans do not show the precise method of construction intended of the additional courses. Following the present pattern, however, and given the nature of the structure, it is reasonable to expect that some bricks would be set parallel to and others at right angles across the boundary. Even if that were not so, courses set either side of the boundary would most probably need to be bonded in some way, and capped as shown on the submitted plans. The wall can therefore only sensibly be regarded as a single structure, and the adding of extra courses to it as a single operation or development.

4. It follows that, even if there were applications from both owners, each would amount to a separate scheme involving the same development, not as 2 schemes with each affecting only their own property. The fact that the adjoining owner may have given permission to the Appellant to carry out the development, whether pursuant to The Party Wall Act or otherwise, does not alter the position for planning purposes, any more than does the grant of approval under the relevant Building Regulations.

Main Issue

5. Part 1 of Schedule 2 to the GPDO carries the heading "Development within the curtilage of a dwellinghouse". For permission to be granted by its provisions therefore, the development must be within that curtilage. In the light also of my conclusion on the preliminary issue, the main issue is thus whether the extension of the party wall would meet that description, despite the fact that it would straddle the boundary.

Inspector's Reasons

6. As the Council point out, there is no statutory definition of the term "curtilage", but it has been considered by the courts on a number of occasions. It was said in *Methuen-Campbell v. Walters* [1979] 1 QB 525 (CA) that for one piece of land or building to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter. In *Dyer v. Dorset County Council* [1988] 3 W.L.R. 213, the Court of Appeal held the term to carry its restricted and established meaning connoting a small area forming part or parcel with the house or building which it contained or to which it was attached. The definition in the Oxford English Dictionary was said to be "adequate for most present day purposes". This describes it as "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".
7. In *Attorney-General ex. rel. Sutcliffe, Rouse and Hughes v. Calderdale Borough Council* [1983] JPL, the Court of Appeal accepted that three factors had to be taken into account in determining what constituted the curtilage, namely: (1) the physical layout of the building and structure; (2) their ownership, past and present; and (3) their use and function, past and present. In a later case, *McAlpine v. Secretary of State for the Environment* [1995] JPL B43, the High Court identified three relevant characteristics of a curtilage. First, it was confined to a small area about a building; second, an intimate association with land which was undoubtedly within the curtilage was required in order to make the land under consideration part and parcel of that undoubted curtilage land; and third, it was not necessary for there to be physical enclosure of that land which was within the curtilage, but the land in question at least needed to be regarded in law as part of one enclosure with the house.
8. The Council's case is dependent on the proposition that land beyond the ownership boundary is necessarily outside the curtilage, but they cite no authority in support of this. It is hard however to imagine a structure, and thus the land on which it stands, having a more intimate association with the dwellinghouse than one of the walls which not only contains and encloses it but is part of its very fabric. The wall stands partly on land immediately next to other land which undoubtedly forms part of the curtilage and in truth it forms part and parcel of the building. The dwellinghouse simply could not function as such without it,

whatever the ownership position. Remove it and in all probability, the remainder of the back addition would collapse.

9. A conclusion that the wall falls within the curtilage of No 143 would almost inevitably mean that the 2 adjoining curtilages overlap each other. I can see no reason why that should not be so however, as similar considerations would arise and because such a small area would be involved, extending only to the far side of the wall in each instance. That would not by itself imply any rights of access or to carry out works to the wall without the adjoining owner's consent. The existence of legislation such as The Party Wall Act is an acknowledgement of the needs and rights of adjoining occupiers as well as a means of securing and protecting them. It is thus a further indication and indeed statutory recognition of the "intimate association" referred to above. Moreover, although very different facts were involved, it was held in the *Sutcliffe* case, above, that one building and its curtilage may fall within the curtilage of another building. Taking account of the above authorities and the particular circumstances in this case, ownership in my view is but one factor to be considered, and does not determine the matter exclusively.

Conclusion

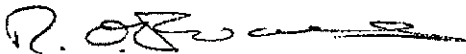
10. In terms of its functional relationship to the building and the area it occupies, I conclude that the party wall falls within the curtilage of the dwellinghouse for the purposes of the GPDO, even if that might not be so, for example, in conveyancing terms. It follows that to extend it in the manner specified would fall within the GPDO provisions. I have considered all other matters raised, but in the absence of any other objection, none serves to overturn this conclusion and the appeal should thus be allowed.

Formal Decision

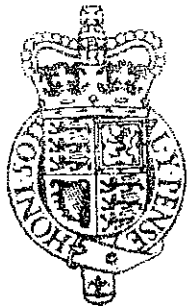
11. In exercise of the powers transferred to me, I allow the appeal and I attach to this decision a Certificate of Lawfulness describing the proposed operation which I consider to be lawful.

Information

12. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.



R O Evans



Lawful Development Certificate

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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT
PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 30 October 2000 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and boldly edged in black on 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:

They constitute development falling within the provisions of Part 1 of Schedule 2 to the Town and Country Planning (general Permitted Development) Order 1995.

Signed

R O Evans
Inspector

Date 11 OCT 2001

Reference: APP/Q5300/X/01/1062324

First Schedule

Loft conversion of L shaped roof into L shaped rear facing dormer loft, including raising of lower part of L shaped roof party wall, to contain 2 x bedrooms, 1 x bathroom and boiler room, in accordance with the plans submitted to the local planning authority under application No LDC/00/0300.

Second Schedule

Land at 143 Ordnance Road, Enfield, Middlesex, EN3 6AE.

IMPORTANT NOTES – SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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.
4. 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.

