

Our Ref: 15258/CJ/gm
Your Ref: 2018/0512/P
Email: cjones@firstplan.co.uk
Date: 21 May 2018

Tony Young
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5 Pancras Square
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Dear Tony,

LAWFUL DEVELOPMENT CERTIFICATE – 4A LINFIELD GARDENS, NW3 6PU

Thank you for meeting with us on site last week. Your time was appreciated.

As agreed, we thought it would be useful to put in writing our comments regarding the status of the rear part of the domestic garden at no. 4a Lindfield Gardens, which was recently subject to an application for a Lawful Development Certificate (ref: 2018/0512/P) for a garden building, which was withdrawn in March this year.

As we discussed on site, the rear part of the site previously formed part of the garden of no. 4 Lindfield Gardens, but is now part of the domestic garden of no. 4a and has been for some time. As was agreed, the amalgamation of residential garden land does not comprise 'development' for the purposes of Section 55 of the 'Town and Country Planning Act 1990' for which planning permission would be required. As such, this is not subject either to the 4-year rule or to the 10-year rule.

Notwithstanding this, I do believe it is important to note that the amalgamation of the garden took place 10 years ago and that the current layout is long established as a single 'planning unit'. This also highlights that it's clear the intention of the garden extension by the applicant has not simply been to achieve a larger outbuilding under permitted development rights.

The principal consideration for the Council, based on my understanding, is whether the area in question comprises part of the 'curtilage' of no. 4a Lindfield Gardens for which permitted development rights under 'Class E, Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015', would apply.

Whilst no statutory definition is available for the term 'curtilage', the relevant caselaw (*Sinclair-Lockhart's Trustees v Central Land Board (1950) 1 P. & C.R. 19*) has provided the following clarification:

"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." (Our underlinings)

Guidance provided within the 'Permitted development rights for householders – Technical Guidance' (2017) prepared by the Department for Communities and Local Government (DCLG), which is a useful reference tool for applicants and Local Planning Authorities, provides further clarification:

“Curtilage is 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”. (Our underlining)

Whether the land in question comprises the domestic curtilage of no. 4a Lindfield Gardens is a matter of fact and degree, based on the factual situation existing at the present time. What is well established from planning caselaw is that a domestic curtilage includes the grounds around a house which include formal gardens – mown lawns and herbaceous borders, areas with children’s play equipment, and also kitchen gardens or a vegetable patch, provided that there is no significant physical separation of any such area from the rest of the curtilage (i.e. by any intervening uncultivated ground).

Caselaw has therefore developed two principal tests. The first being whether the ground around the house is used for the comfortable enjoyment of the house. The second being whether the ground is not physically separated or marked off from the house. I will consider these in turn.

In considering the first test, as was evident at your site inspection, over the last 10 years this area of the garden has been used as a vegetable garden with two large growing beds with wooden borders and a central grass pathway between the beds. After a number of years, trees on the adjoining land cast shade over the vegetable garden, which was compromised. Since then the area of the garden has been used principally as play space by the applicant’s children. You will have noticed a fire crucible in the area in question, which is regularly used to toast bread and marshmallows by the applicant’s children. You will have also noted the remnants of a garden storage shed, which was very recently demolished as it had come to the end of its useful life. It is therefore clear that this part of the garden is used for the comfortable enjoyment of the dwelling in a useful way, as play space and previously as a vegetable garden.

In respect of the second test, the area in question very much forms part of a single, broadly ‘L’ shaped garden. The garden is naturally terraced creating informal sub-areas, but which all fall within the domestic curtilage of the property with no physical separation beyond natural steps. Immediately to the rear of the house is a stepped patio area which leads onto a formal lawn garden. To the rear of this is an outbuilding (to be replaced by the proposed outbuilding) which is currently used as a home office. To the rear of this is the children’s play space, which is comprised of the area to the rear (currently occupied by a trampoline) and the subject-area to the side of this. It’s clear that the whole of this modestly sized plot, forms a single linked garden with no physical separation or enclosure, or any intervening non-garden land between the subject-area and the property.

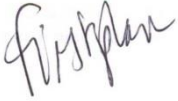
Whilst it may be common for plots with ‘large grounds’ to have land which falls outside of the defined curtilage, this is not considered to be the case here as the land is clearly attached to the house (physically and functionally) and serves the purpose of the house in some useful and intimate way.

In addition to the above, it is also important to note that a curtilage of a dwelling is not fixed for all time; its physical extent is readily capable of changing at any time. The relevant caselaw (*Sumption v Greenwich LBC [2007] EWHC 2776 (Admin)*) established that land can very easily be incorporated in the curtilage and the assessment should be based on the situation at the present time.

In the light of the above, I trust that this note is useful for you in establishing that the land in question forms part of the planning unit at no. 4a Lindfield Gardens and is within the domestic curtilage of the property. Accordingly, permitted development rights in respect of a garden outbuilding under Class E should apply.

Should you have any questions at all or wish to discuss further, please don't hesitate to contact me.

Yours sincerely



CHRIS JONES

Associate

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Daniel Leon