



# Appeal Decision

Site visit made on 26 July 2010

by **Ian Currie BA MPhil MRICS MRTPI**

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

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**Decision date:**  
**15 September 2010**

## Appeal Ref: APP/G5180/X/09/2118423

### 64 Great Thrift, Petts Wood, Orpington, Kent, BR5 1NG

- 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 Dale Christilaw against the decision of the Council of the London Borough of Bromley.
- The application (Ref:- DC/09/02574/PLUD), dated 16 September 2009, was refused by notice dated 17 November 2009.
- 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 single storey building at rear for use as triple garage and store.

### Decision

1. I dismiss the appeal.

### Application for costs

2. An application for costs was made on behalf of Mr Dale Christilaw against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

### Main Issue

3. I consider that the main issue in this appeal is whether the local planning authority's refusal to grant a certificate of lawful use or development, in respect of a proposed single-storey building to the rear of the dwelling, for use as a triple garage and store, was well-founded.

### Reasons

4. Article 3(1) of the Town & Country Planning (General Permitted Development) Order 1995 grants planning permission for the classes of development described as permitted development in its Schedule 2, subject to various exceptions that are not relevant to this decision.
5. In Schedule 2, revised Part 1, applicable to England only<sup>1</sup>, 'Development within the Curtilage of a Dwellinghouse', sets out at Class E the following:-  
*"E. The Provision within the curtilage of the dwellinghouse of:-*  
(a) *any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or*

<sup>1</sup> The Schedule to the Town & Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008

- the maintenance, improvement or other alteration of such a building or enclosure; or*
- (b) *a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.”*

6. There are then set out, under paragraphs E1, E2 and E3 of Part 1 of Schedule 2, various limitations on the forms of development within the curtilage of a dwellinghouse that can be described as permitted development. Before examining any of those, it is first necessary to determine whether the development falls within the general compass of Class E as set out in full in the preceding paragraph of my decision. Clearly, sub-division (b), the provision of a container used for the storage of fuel for domestic heating purposes, does not apply. However, looking at sub-division (a), I can see no good reason why the erection of a single-storey structure, to be used as a triple garage and store, cannot be regarded as a building required for a purpose incidental to the enjoyment of the dwellinghouse at 64 Great Thrift as such.
7. Nevertheless, such a proposition has to be based on whether the land, upon which the proposed building was to be erected, fell within the curtilage of the dwellinghouse at 64 Great Thrift at the time that the application for the lawful development certificate, the request for confirmation of proposed lawfulness, was made. For the avoidance of doubt, this is neither the date that the appeal was lodged nor the time of my inspection of the site but 16 September 2009. If I reach the conclusion that the site of the proposed development did not, on 16 September 2009, fall within the curtilage of 64 Great Thrift, then I have no conclusion to reach other than to find the Council's decision, to refuse the lawful development certificate, to be well-founded.
8. The land in question was undoubtedly within the curtilage of 66 Great Thrift at the time when Great Thrift, Silverdale Road and the surrounding area in general was laid out as a suburban housing estate between the two World Wars. It remained as such until various unsuccessful attempts were made to obtain planning permission for this rear garden land, fronting on to Silverdale Road to be developed, as a dwellinghouse. According to the local planning authority's representations, which are not contested by the appellant, the land in question could not have formed part of the curtilage of any dwellinghouse for several years, having been severed from number 66 some time ago. Photographs of the site of the proposed building taken on 17 October 2009, attached to Mr Richard Buxton's letter dated 21 January 2010, show an area of land entirely fenced off and separated from the original rear garden of 64 Great Thrift.
9. This photographic evidence postdates the crucial date for determining the lawfulness of the proposed development. In my professional judgement as a Chartered Surveyor, this fenced-off land, physically demarcated by a sturdy physical structure separating it from the original rear garden of 64 Great Thrift, could not be construed as falling inside the curtilage of the latter property at the time that the application for the certificate of proposed lawfulness was made. Even if the appellant owned all of the relevant land at the time, the clear-cut division between the land to the rear of 66 Great Thrift and the original rear garden of number 64 meant that that the site of the proposed triple garage and store could not be said to have been within the curtilage of the dwellinghouse on the relevant date. Therefore, the local planning

authority's refusal of lawful development certificate was well-founded and the appeal fails.

**Conclusions**

10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development, in respect of a proposed single-storey building to the rear of the dwelling for use as a triple garage and store, on land to the rear of 64 Great Thrift, Petts Wood, Orpington, Kent was well-founded and that the appeal should fail. Accordingly, I shall exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Ian Currie*

Inspector