

Christian Leigh

Chartered Town Planner

Leigh & Glennie Ltd 6 All Souls Road, Ascot, Berkshire, SL5 9EA

www.christianleigh.co.uk

8 February 2021

Our ref: 1098

Planning Department
Bracknell Forest Council
Time Square
Market Street
Bracknell
RG12 1JD

Dear Sir/Madam

2 Toonagh, Winkfield Street, Winkfield, SL4 4SP

I enclose an application for a Certificate of Lawfulness of Existing Use to confirm the use of land as the lawful curtilage area for the above property, used for purposes incidental to the enjoyment of the dwellinghouse. The area is shown on the enclosed OS drawing TWS1, outlined in red. Enclosed is the additional supporting information:

- Historic mapping from 1870 to 1975 (including copy annotated to show curtilage)
- Historic aerial photographs from 2003 to 2018
- Statutory Declaration from Will Barroll Brown
- Recent photographs of the site

Historical map appraisal

The land the subject of this application is the private rear garden and front garden area to a 5-bedroom, single family dwellinghouse, known as 2 Toonagh. The enclosed historic mapping shows that the site was originally occupied in the mid 19th Century by a large dwelling known as Scroope Villa. The curtilage to that house extended to the south and then a triangular area of land extending eastwards.

In the late 19th Century that house was demolished and a replacement property known as Meadow Bank erected. The mapping shows the curtilage area remained the same; this submission includes the curtilage outlined in red for the historic mapping, as well as can be ascertained). In the early 1930s the mapping shows that a swimming pool was created in the southern portion of the curtilage, which itself remained the same. The mapping shows a separate house to the west of that swimming pool.

The mapping shows the general layout remained the same in the 1940s and 1960s, with the curtilage and the swimming pool area remaining the curtilage to Meadow Bank. The 1972 mapping shows that by that time Meadow Bank had been divided into three dwellings and renamed Toonagh. No. 2 Toonagh, in the



Directors:

Christian Leigh BSc(Hons) MPhil MRTPI

Jane Glennie BA(Hons) MA

middle, had an L-shaped curtilage. The swimming pool and triangular area to the east of that remained as residential curtilage but as part of the house to the west, then known as Clare House.

At some time post the mid-1970s the garden area to Clare House was transferred over to 2 Toonagh. Historic mapping does not appear post this date, but the later aerial photographs provide further evidence of this.

Historic aerial photograph appraisal

The enclosed aerial photographs have been annotated to show the area of land the subject of this application. This shows that since the earliest date for these photographs (October 2003) all the area of land to the rear of 2 Toonagh has clearly been part of the continuous rear garden area of the house, following its transfer from Clare House.

Statutory Declaration and recent photographs

The enclosed Declaration from Mr Barroll Brown explains the use of the garden area since living at the property. The enclosed photographs show that the rear garden is currently used for the purposes claimed, and covering the area enclosed by the red line in Plan TWS1.

Note on planning history

It is known that an application for a Certificate of Lawfulness was made in 2015 for the erection of a shed to the rear of 2 Toonagh (ref. 15/00520/CLPUD). This was withdrawn as, notes on file state, it was considered the shed would have been on land outside residential curtilage.

That application was therefore not one which was seeking to establish the lawful curtilage of 2 Toonagh: it was for a shed, and was evidently made on the presumption that all parties considered the land to be curtilage, but when the local planning authority assessed the case they were of a different view. Thus, as an application for a shed, no substantive evidence had been presented regarding the lawful curtilage area of 2 Toonagh.

Paragraph 005 of the PPG: Lawful Development Certificates states that

'An application needs to describe precisely what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.'

This current application therefore, unlike the previous application for a shed, describes precisely what is being applied for, ie the area of residential curtilage for 2 Toonagh. It is accompanied by precise information to justify this. Furthermore, as noted in paragraph 005, further applications can be made at a site should more information be produced.

Summary

The area of land the subject of this application has been used as a residential curtilage since the 19th Century, and during all that time used for purposes incidental to the enjoyment of the dwellinghouse on the site. At first the land was part of the dwellinghouse of Scroope Villa and then part of the replacement house of Meadow Bank. When that property was divided into three houses the area of land was shared between 2 Toonagh and Clare House, remaining

as residential curtilage to those houses. Part of that garden to Clare House reverted back to 2 Toonagh sometime in the late 20th Century, with aerial photographs showing conclusively that has been the case since at least 2003. This is well in excess of the required period of 10 years.

The question of whether land is considered to be within the curtilage of a building is a question of fact and degree (*Burford v SSCLG & Test Valley BC* [2017]). It was established in *Sinclair-Lockhart's Trustees v Central Land Board* [1950] that:

'The ground used for the comfortable enjoyment of a house or other building may be regarded as being within the curtilage of the house or building and...an integral part of the same even though it has not been marked off in any way...It is enough that it serves the purpose of the house or building in some necessary or reasonably useful way.'

Further, in *McAlpine v SSE* [1995] it was held that, for land to fall within the curtilage of a building, it must be intimately associated with the building. In determining this, regard should also be paid to i) the physical layout of the building and the land in the curtilage, ii) the ownership (past and present) and iii) the use of that land (both past and present) (*HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983]).

The evidence accompanying this submission satisfies these tests. The historic mapping and aerial photographs demonstrate that the land the subject of this application has always been an integral part of whatever dwellinghouse has been on the site – first Scroope Villa, then Meadow Bank, and now the 5-bedroom family house of 2 Toonagh – it has been owned by those houses, and it has served those houses for purposes incidental to the house in a necessary and reasonable way: The Statutory Declaration from the current owner of 2 Toonagh confirms this is still the case. The red line on TWS1 thus shows the lawful curtilage area for the property, which is used for purposes incidental to the enjoyment of the dwellinghouse.

Paragraph 006 of the PPG states that in determining applications for a Certificate of Lawfulness:

'In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.'

This application has demonstrated the version of events put forward by the applicant is probable, with the applicant's evidence precise and unambiguous. We therefore look forward to receiving a Certificate on the terms sought.

Yours faithfully,



Christian Leigh