



Appeal Decisions

Inquiry Held on 10 and 11 January 2023

Site visit made on 11 January 2023

by Mrs H M Higenbottam BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date:

Appeal A: APP/Z1510/C/21/3278305

43 Colne Road, Coggeshall, Essex CO6 1TD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Paul Cross against an enforcement notice issued by Braintree District Council.
 - The enforcement notice was issued on 1 July 2021.
 - The breach of planning control as alleged in the notice is 'Without planning permission:
 1. The erection of an outbuilding in the approximate position marked with an 'A' on the attached plan
 2. The execution of works to form a vehicular access in the deceleration lane of a classified road, namely the A120, onto land to the rear of 43 Colne Road Coggeshall, in the approximate position marked with a 'B' on the attached plan consisting of the removal of a section of hedge, the laying of hardstanding and the erection of a metal gate.'
 - The requirements of the notice are:
 1. Completely demolish the outbuilding from the approximate position identified with an 'A' on the attached plan and remove all resultant materials to an authorised place of disposal.
 2. Remove the metal gate from the approximate position identified with 'B' on the attached plan.
 3. Upon completion of step 2, close up the access by replacing the hedging with a double staggered row of hawthorn and field maple at a spacing of 5 plants to a metre. Each plant to be 60-90cm in height and protected with a spiral guard.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Appeal B: APP/Z1510/X/21/3278193

43 Colne Road, Coggeshall, Essex CO6 1TD

- 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 Paul and Mrs Jane Cross against the decision of Braintree District Council.
 - The application Ref 20/02142/ELD, dated 15 December 2020, was refused by notice dated 21 May 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is residential garden of 43 Colne Road.
-

Appeal C: APP/Z1510/X/21/3278210
43 Colne Road, Coggeshall, Essex CO6 1TD

- 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 Paul and Mrs Jane Cross against the decision of Braintree District Council.
 - The application Ref 20/02144/PLD, dated 15 December 2020, was refused by notice dated 21 May 2021.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is erection of workshop.
-

Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by the deletion at paragraph 3.2 of the words:

'The execution of works to form a vehicular access in the deceleration lane of a classified road, namely the A120, onto land to the rear of 43 Colne Road Coggeshall, in the approximate position marked with a 'B' on the attached plan consisting of the removal of a section of hedge, the laying of hardstanding and the erection of a metal gate.'

And the substitution thereto of the words:

'The creation of a widened access to land to the rear of 43 Colne Road Coggeshall in the approximate position marked with a 'B' on the attached plan consisting of the widening of the metal gate by 1.37m'

And the enforcement notice be varied by the deletion of paragraphs 5.2 and 5.3 and the substitution of the words:

'2.Reduce the width of the metal gate from 4.73m to 3.36m, measured from gatepost to gatepost;

3.Upon completion of Step 2, stop up the gap created by the reduction in width of the gate with a double staggered row of hawthorn and field maple at a spacing of 5 plants to a metre. Each plant to be 60-90cm in height and protected with a spiral guard.'

2. Subject to the corrections and variations to the notice the appeal is allowed insofar as it relates to the erection of an outbuilding and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of an outbuilding in the approximate position marked with an 'A' on the plan attached to the enforcement notice subject to the following condition:

'1. The outbuilding hereby permitted shall not be occupied at any time other than for purposes incidental or ancillary to the residential use of the dwelling known as 43 Colne Road.

The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the widened access, and planning permission is refused in respect of the creation of a widened access to land to the rear of 43 Colne Road Coggeshall in the approximate position marked with a 'B' on the plan attached to the enforcement notice consisting of a widening of the metal gate by 1.37m, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Appeal C

4. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Procedural Matters

5. In the light of discussions throughout the Inquiry it became apparent that a revised plan to demonstrate that the workshop the subject of Appeal C was proposed to be sited 2m from the boundary was necessary. The Inquiry was adjourned on 11 January 2023 to allow for the submission of the revised plan. A revised existing site plan reference 002 with the proposed workshop building sited 2m from the northern boundary was submitted, and is attached to this decision as Plan B. This plan was submitted after agreement with the Council. Appeal C is therefore determined on the basis of the location of the workshop shown on Plan B attached to this decision. All other plans on which the application was determined remain unchanged. The Inquiry was closed in writing on 6 June 2023.
6. All oral evidence at the Inquiry was under oath or affirmation.

Application for costs

7. At the Inquiry an application for costs was made by Braintree District Council against Mr Paul Cross in relation to Appeal A. This application is the subject of a separate Decision.

Preliminary Matters

8. Appeal A was originally made on grounds (a), (b), (c), (d), (f) and (g). Ground (b) was withdrawn prior to the start of the Inquiry. In addition, following discussions between the parties, the appellants confirmed that the grounds of appeal being pursued are:

Ground (a) in relation to the outbuilding only.

Ground (c) subject to corrections to the allegation discussed at the Inquiry this ground was withdrawn. I will deal with this below.

Ground (d) is withdrawn contingent on three matters:

1. That the breach in the enforcement notice at paragraph 3(2) is corrected to widening of the access and the gate, rather than creation/formation of the access and gate;

2. That the decision on Appeal A records the Council's position that they accept the original and narrower gate and access is lawful; and
3. That the requirements are varied to reflect the correction to the allegation.

Ground (f) remains in relation to requirements 5(2) and 5(3) being varied to require narrowing of the gate to its previous width and the planting/hedgerows only where the gate has been narrowed.

Ground (g) the appellant is seeking a compliance period of 6 months in relation to the outbuilding.

9. Appeal B is in relation to the refusal of an LDC (existing) application for the use of the land as residential garden to No 43.
10. Appeal C is in relation to the refusal of an LDC (proposed) for a workshop building and does not relate to the outbuilding the subject of Appeal A.
11. Appeal A was originally made in the name of Mr John Cross. It was later confirmed that Appeal A should be in the name Mr Paul Cross and that the 'John' was an administrative error. I am satisfied that this was a typographical error and I have recorded the correct appellant in the banner heading for Appeal A.

The Notice

12. Following the oral evidence given by the appellant and his daughter at the Inquiry and further discussion between the parties it was agreed that the breach of planning control that has taken place is not the creation of a new access, but rather the creation of a widened access through the erection of a widened gate. At the site visit the gate was measured and its total width was 4.73m with the extension part to the gate (clearly seen on site) measuring 1.37m. The original gate was therefore 3.36m wide.
13. The Council acknowledged, through the agreement of the above correction to the allegation, that a vehicle access had existed for many years at the appeal site in the position marked 'B' on the plan attached to the Notice. I accept that a vehicle access with a gate of 3.36m wide had existed in the location marked B on the plan attached to the Notice for many years. The widening of the gate occurred in 2019 and the corrected allegation identifies the breach of planning control as the widening of the historic access at this location.
14. In the light of the evidence and agreement between the parties there would be no injustice or prejudice resulting from corrections to the allegation in the Notice. I will deal with Appeal A on the basis of these corrections.

Appeal B

15. The main issue is whether the Council's refusal to grant a LDC of existing use or development was well founded. Section 191(4) of the Town and Country Planning Act 1990 as amended (the Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect. In any other case they shall refuse

the application. The planning merits of the development are not relevant in this appeal and the test is the balance of probabilities.

16. For ease of reference the land the subject of the appeal has been identified in Inquiry Document 3 as the western part of the land, the middle part of the land and the eastern part of the land. The Council accepts that the eastern and middle parts of the land may lawfully be used for residential purposes. The only matter outstanding is therefore whether the use of the western part of the land for residential use ancillary to the dwelling known as 43 Colne Road is lawful through the passage of time.
17. The appellants have lived together at No 43 since 2014. Prior to that the property had been occupied by family members. In the appellants' view the whole of the appeal site has been used as one land holding associated with the residential use of No 43 from at least 1987. Oral evidence from Mr Cross and his daughter detailed the use of the land, including the western part of the land for domestic activities.
18. The historic Ordnance Survey plan dating from 1968 demonstrates that the middle and western parts of the land were originally within a large field to the south and west of No 43. Mr Cross gave evidence that prior to the construction of the bypass the garden of No 43 was limited to the eastern part of the appeal site. The middle and western parts of the appeal site were part of a paddock that was used for the grazing and stabling of horses. Mr Cross confirmed at this time the middle and western parts were not within the garden or in use for residential purposes. Mrs Cross kept her horse on the middle and western parts and other land. She sold her horse to buy furniture for her house in 1978.
19. The land is demarcated on its boundaries to the south western and north western edges by trees/vegetation and by a road to the east (part of Colne Road). In aerial photographs the whole of the land is seen as one plot with the house sited to the eastern end of the plot.
20. The A120 Coggeshall bypass was constructed in 1981-82. This road bisected the paddock, leaving only a small part of it to the north of the A120, to the west of the garden of No 43. At some point a Leylandii hedge was planted along part of the line between the western part of the land and the middle part of the land. In 2019 a wooden fence was erected along part of the line between the western part of the land and the middle part of the land and the Leylandii hedge was removed. Neither the hedge nor the fence extended the full width of the plot.
21. In my view, following the construction of the A120 Coggeshall bypass, which created the appeal site as an entity, how the land was used changed materially from a horse paddock to something else. I will now look at how that land was used on the western part of the appeal site following the construction of the bypass.
22. Both Mr Cross and his daughter gave evidence that the land to the western part was used as part of the amenity space as residential garden by those living at and visiting No 43 since at least 1987. It was not viewed as a separate area but part and parcel of the residential amenity land of No 43. Although the Council suggested the aerial photographs demonstrated the western part was not actively used up to 2018. I do not accept that on their

own aerial photographs demonstrate non-use. The oral evidence of actual use given by the appellant and his daughter supports and demonstrates an active use of the western part before 2018 and at least since 1987.

23. While there is a fence within the area of the middle part, this does not extend the full width or prevent free flow between the middle part and the western part of the land. The fence helps to demarcate the space between more formal garden and more functional garden spaces. Prior to the erection of the fence a line of *Leylandii* existed about two metres away from the fence position. The *Leylandii* did not extend the full width of the plot.
24. In my view, it is not unusual to have a large garden demarcated or defined to facilitate different areas within the garden utilised for different functional uses such as for a vegetable plot, formal garden, children's play area or a wilder area. The eastern part is well tended and planted with flowers and other plants in a more formal garden form, the middle part is more lawn but tended, the western part is wilder and the working area of the garden providing a functional area and allowing wildlife to flourish with bird boxes, wildflowers, unkempt planting/natural planting and trees as well as an area to prepare and store logs. After about 2003 there was less requirement for logs as central heating was installed at No 43. Prior to that heating of No 43 utilised logs as a fuel to heat the house. In my view, the log preparation and storage area are tightly tied to the residential use of the dwelling, particularly prior to the central heating being installed at No 43.
25. Chickens were kept to the west of the location of the fence and a pond existed in the western part of the site. Photographs of the area around the pond, referred to as the bear pit in evidence, demonstrate the use of this area by members of the family. While there were small tractors these were used to maintain the land and transporting logs/trees for fuel for the house. Mr Cross also enjoys working on tractors as part of his hobbies. Children played in the western part, and it was utilised as an extension to the more formal garden areas nearer the house. Bird boxes were erected, and a wildlife garden was created in the western part. Oral evidence states that a bonfire was regularly created for celebrations for fireworks night within the western part. Photographs of bonfires are provided to support the oral evidence. Moreover, photographs demonstrate the use of the western part for family gatherings and for children to play in and this was reinforced by oral evidence.
26. I am satisfied that prior to the bypass being created the western and middle areas, and areas now bisected by or part of the bypass, were used for keeping and grazing horses. Following the construction of the bypass there was a material change in the use of the land because of the separation of the land from other land to the south by the road. In my view, on the balance of probabilities, the middle and western parts of the land became part of the amenity or garden land associated with No 43 for use by the residents and their visitors and was ancillary and incidental to the occupation of No 43 as a dwellinghouse. That use began sometime after the bypass was constructed, and at least since 1987, and it continues today.
27. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the land as residential garden of 43 Colne Road was not well-founded and that the appeal should succeed. I will exercise the powers

transferred to me under section 195(2) of the 1990 Act as amended. To avoid any confusion I will use the plan submitted after the Inquiry identifying the location of the proposed workshop in Appeal C as the plan for this certificate.

Appeal C

28. The main issue is whether the Council's refusal to grant a LDC for a proposed use or development was well founded. Section 192 (2) of the Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect and in any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal and the test is the balance of probabilities.
29. This appeal relates to a proposed building and not the building which is the subject of Appeal A. As stated above amended plans have been submitted demonstrating the siting of the building would be more than 2m from the boundary. In the light of this the Council accept that the building would comply with paragraph E.1(e) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) in relation to height limits.
30. The proposed building on the amended plan would be sited more than 2m from the boundary. It would have a mono-pitch roof with a height of 2.5m on the northern elevation rising to 3m on the southern, front, elevation.
31. The outstanding areas of dispute are whether the building would be sited within the curtilage of No 43 and whether the building would be for a use incidental to the enjoyment of the occupiers of No 43. I will deal with each of these in turn.

Curtilage

32. Curtilage is not a use of land. Moreover, there is no all-encompassing, authoritative definition of the term 'curtilage'. It derives from conveyancing law where it was, and remains, a term of art. While the GPDO gives a definition of 'curtilage' for the purposes of Schedule 2 Part 3 Classes Q, R, P, PA and S it does not apply to development under Schedule 2 Part 1 Class E. Curtilage is defined in the Government Guidance entitled Permitted development rights for householders Technical Guidance September 2019 as:
- "*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.
33. There are three factors that are relevant in determining the 'curtilage' of a building. These are the physical layout of the building and other structures; their ownership past and present; their use or function, past and present.
34. Following construction of the bypass the middle and western parts were subsumed into the residential amenity land which went with the residential property, No 43. No 43 and other land has been in the ownership of the same family (the Leach/Cross family) since 1913. Mrs Cross lived in the property from 1957 to 1978 and then again from 2014 to the present day. She visited and stayed frequently in the property between 1978 and 2014. In 2014 the

ownership of the house, the eastern, middle and western parts of the land transferred of to the appellants.

35. The historic use of the middle and western parts was for grazing or keeping horses, however this changed following construction of the bypass and, from at least 1987, its use was residential and incidental to the use of No 43 as a dwellinghouse along with the eastern part. The middle and western parts, along with the eastern part form an intimate association with No 43.
36. In my view, the curtilage expanded to include the middle and western parts of the land from at least 1987, due to the separation of other land as a result of the bypass and its use becoming part of the residential amenity land associated with No 43. I therefore find on the facts that the curtilage of No 43, now extends to the land comprising the eastern part, the middle part and the western part. The whole of the land i.e. the eastern, middle and western parts are part and parcel with the occupation of No 43, within the same ownership and used for purposes incidental and ancillary to the occupation of the dwelling. The western part, on which the proposed building would be sited, I therefore find is within the curtilage of No 43.

Incidental to the enjoyment of the dwelling

37. The proposed use of the outbuilding is as a workshop/hobby room for storage of items such as fishing gear, toolboxes, saws and woodwork implements. Mr Cross is clearly someone who likes to make things and fix things. He has built toys and furniture, refurbished benches and gates for the garden, made bird boxes and wildlife conservation items for the garden, restored a vintage tractor and constructed an outdoor kitchen. He currently undertakes these activities regularly, often on a daily basis, in the current building the subject of Appeal A.
38. The size of the proposed building would accommodate all his tools, workspace and allow space for the tractor within it. In my view, the size of the building is commensurate with Mr Cross's hobby activities which are extensive, but not unreasonable, given his clear passion for those activities and his talents in the many activities he undertakes. It is clear that the activities undertaken by Mr Cross are for his hobby and are not a commercial activity, the items mended or produced are for his property or his immediate family such as toys for grandchildren.
39. The Council consider that the footprint of the building at 96 sq m is greater than the footprint of No 43 at 71 sq m. However, size alone cannot be determinative of whether a building is reasonably necessary for a purpose incidental to a dwelling. The appellant referred to a building for a swimming pool which is often of a significant footprint but which could be said to be reasonably necessary for a purpose incidental to a dwelling. On the facts available and having seen the way in which the existing building is laid out and the items and equipment it contains, the size of the proposed building is commensurate with the reasonable space needs of Mr Cross for the hobbies he clearly pursues and would be the purpose of the building. In my view, the size of the proposed building would accommodate Mr Cross' hobby activities and equipment and would not be of an unreasonable size.
40. As such, I find that the proposed building would be for purposes incidental to the enjoyment of the dwelling, No 43.

Conclusion on Appeal C

41. The proposed building would be within the curtilage of No 43 for purposes incidental to the enjoyment of the dwellinghouse and would meet all the limitations and conditions of Class E of Part 1 of Schedule 2 of the GPDO.
42. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a workshop was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal A on ground (a)

43. While the deemed application is for the whole of what is alleged (as corrected) the appellant does not seek planning permission for the widened access and the appellant has confirmed that he is pursuing the ground (a) appeal only in relation to the erection of the outbuilding.
44. As such, the main issue is the effect of the outbuilding on the character and appearance of the surrounding area.
45. The outbuilding subject to Appeal A is outside any defined development boundary. It is green coloured corrugated metal structure with a silver roller shutter door and a mono-pitch roof which has a maximum height of 3.5m. It is accepted that the outbuilding would not comply with the conditions and limitations of Class E of Part 1 of Schedule 2 of the GPDO particularly due to its mono-pitch roof and height.
46. In 2019 the appellants made an application for planning permission for the demolition of 4 no dilapidated timber shed buildings to be replaced with 1 no steel frame outbuilding. The application was refused, and an appeal was dismissed (reference APP/Z1510/D/20/3248467) (2020 Appeal). The Inspector in that case noted that the development that had been applied for had been carried out. The outbuilding the subject of the ground (a) appeal in Appeal A is the building the subject of the 2020 Appeal.
47. The 2020 Appeal was determined under policies of the now superseded Braintree Local Plan Review 2005. The Braintree District Publication Draft Local Plan 2017 has since been adopted and is called the Braintree Local Plan 2013-2033 (LP). There has been no substantive change in the relevant policies since the 2020 Appeal. The Inspector in the 2020 Appeal concluded that the development significantly harmed the character and appearance of the surrounding area. He found it was contrary to Policies RLP 17 and 90 of the Braintree Local Plan Review 2005.
48. At the time of the 2020 Appeal the Inspector found there was uncertainty about the lawful use of the land on which the building was sited and whether permitted development rights would be available for a building on the appeal site.
49. The design of the building includes the use of vertical metal sheeting, a mono-pitch cement fibre roof and silver metal roller shutter door. It is utilitarian in form and design and conspicuous in its immediate context. There is mature vegetation on the boundaries of the land which does help to screen it from public viewpoints, although it is visible in the gaps in the tree line along the

A120 and from residential properties in Colne Road. The outbuilding is substantial in size and is a dominant, stark building of metallic industrial appearance. This contrasts with the traditional building materials of No 43, the properties within the group of nearby neighbouring dwellings and is at odds with the appearance of the nearby predominantly glazed plant nursery building. Although I note that the outbuilding is not seen in the same view as the glazed plant nursery building and is somewhat separated from the residential properties along Colne Road. The outbuilding is therefore contrary to LP Policies SP7, LPP36 and LPP52 which require a high standard of urban design and architectural design, a high standard of layout, and development compatible with and subordinate in scale to the original dwelling. It is also contrary to Policy 14 of the Coggeshall Neighbourhood Plan 2019 to 2033 (CNP) which seeks good quality design.

50. In relation CNP Policy 6 it seeks the protection and enhancement of the natural environment. The appellant's management of the appeal site, particularly the western part with a wild area and more naturalistic management including multiple bird boxes complies with this policy. The outbuilding replaced multiple other smaller structures and does not detract from the use and management of the western part. I therefore consider the development complies with this policy.
51. I have concluded that the whole of the land, including the land in the western part, along with the middle and eastern parts has a lawful residential use (Appeal B) and is within the curtilage of No 43 (Appeal C). I have further concluded that the proposed building in Appeal C is permitted development under Class 1 of Schedule 2 of the GPDO.
52. As such, there is a clear fallback position which was not before the previous Inspector in the 2020 Appeal. In terms of its roof the existing building is 50cm higher on the southern elevation than the roof of the building proposed in Appeal C. The fallback building in Appeal C would have a very similar effect on the character and appearance of the surrounding area as the existing building. In my view, the fact that a building of the scale and size set out in Appeal C can be constructed under permitted development rights is a material consideration to which I attach significant weight in this ground (a) appeal.
53. The building the subject of Appeal C would be the same width and depth as the existing building. It would be slightly lower in height but would also have a mono-pitch roof. I note that a building with a dual pitch roof is permitted to have a height of 4m under Class E of Part 1 of Schedule 2 of the GPDO.
54. In my mind, the additional 50cm in height of the existing building compared with the proposed Appeal C building would be imperceptible from views towards the building from the A120, due to the distance of separation and the mature trees limiting views albeit not providing full cover. Furthermore, I consider the additional 50cm, and slightly different position of the existing building compared with the proposed Appeal C building would be negligible as the depth and width of the building and views of the mono-pitch roof sloping down towards the northern boundary would be similar in views from neighbouring residential properties. In addition, the views from the footpath along the northern boundary, through some vegetation on the boundary, would be of the rear wall and again would be similar to that of the proposed building.

55. I therefore find that the harm to the character and appearance of the area from the existing building when compared with what could be constructed under permitted development rights, as set out in Appeal C, would be so similar as to result in the same level of harm to the character and appearance of the surrounding area. I therefore conclude that while the existing building would be contrary to the development plan as a whole, due to the design of the building and its effect on the character and appearance of the area, a very similar building could be constructed under permitted development rights. The harm to the development plan is therefore outweighed by the material considerations of the demonstrable fallback which would have a similar effect on the character and appearance of the surrounding area.
56. I have considered the various planning conditions put forward by the Council were I to grant planning permission for the outbuilding. The Council accepted that it would not be reasonable or necessary to impose conditions relating to biodiversity management enhancement in the light of way in which the western part of the site is managed for wildlife by the appellant. In relation to landscaping, the site has mature and varied landscaping within the site and on the boundaries. Landscaping should enhance a development and not be utilised simply as a screen to development. Given the existing landscaping to the boundaries of the site and the limited space for additional landscaping to the north of the building I consider a requirement for further landscaping is not justified.
57. In relation to external lighting, the appeal outbuilding has no electricity supply. The appellant did not express any intention of installing lighting or how it would be powered. I accept a generator may be used, but that is more likely to be within the building. The installation of external lighting which fell within the definition of development would require planning permission and thus a condition would not be reasonable or necessary. While I accept there may be some type of lighting that may not fall within the definition of development it would be likely to be of such small effect that seeking to control it by the imposition of conditions would not be justified or reasonable.
58. A further condition to control the use of the building for the private and personal use of the occupiers of No 43 was proposed, along with a requirement that it shall not be sold, transferred, leased or otherwise disposed of as an independent unit without first obtaining planning permission was proposed. In the interests of clarity, I accept that a condition to limit the use of the building for a use which is incidental or ancillary to the residential use of No 43 would be appropriate and reasonable. While I am satisfied that the use is currently incidental it could also be utilised for a use ancillary to the primary residential use of No 43 and I see no planning justification why a condition restricting an ancillary use should be imposed. I have worded the condition accordingly. However, a planning condition cannot seek to control the ownership of land or buildings.
59. I raised the possibility of imposing a condition to require the recolouring of the door. However, whilst neither party raised any objection to such a condition being imposed, on consideration, I am not satisfied that it would be reasonable or necessary to impose such a condition in the light of the fallback building which could be built.

60. For the reasons given above I conclude that Appeal A on ground (a) should succeed in relation to the erection of the outbuilding only. Planning permission will therefore be granted for the outbuilding.

Appeal A on ground (f)

61. This ground of appeal is that the requirements of the notice are excessive and lesser steps would overcome the objections.

62. The Council has confirmed that the purpose of the enforcement notice is to remedy a breach of planning control.

63. In the light of the correction to the allegation so that the Notice no longer alleges the creation of an access but attacks only the widening of the access and the gate, the appellants have confirmed that the ground (f) relates only to paragraphs 5(2) and 5(3) of the requirements. As drafted these requirements exceed what is necessary to remedy the breach. I will therefore vary the requirements to narrow the gate to its previous width and planting of trees/hedgerows where the gate is required to be narrowed.

64. The ground (f) succeeds to this extent.

Appeal A on ground (g)

65. The appellants have clarified that the ground (g) is only in relation to the outbuilding. As I shall grant planning permission for the outbuilding the appeal on ground (g) does not therefore fall to be considered.

Appeal A Conclusion

66. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matters the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Ms G Fenton	Of Counsel instructed by Ian Coward
She called	
Mr Paul Cross	Appellant
Ms K Cross	Daughter of appellants
Mr Ian Coward	
BA (Hons) MA	

FOR THE LOCAL PLANNING AUTHORITY:

Mr Parker	Of Counsel, instructed by in house legal
He called	
Ms C Wallis BSc MSc	Senior Planner, Braintree District Council
MRTPI	
Mr M Norman HND	National Highways, on behalf of Braintree District Council

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Opening statement for Braintree District Council submitted by the Council
- 2 National Highways Appeal Statement by Mr M Norman submitted by the Council.
- 3 Plan subdividing areas of the site submitted by the Council
- 4 Closing statement for Braintree District Council submitted by the Council
- 5 Appellants closing submissions submitted by the appellant
- 6 Costs application on behalf of the Council submitted by the Council
- 7 Costs rebuttal on behalf of the appellants submitted by the appellants

DOCUMENTS SUBMITTED AFTER THE INQUIRY

- 1 Drwg No 002 updated to show outbuilding set 2m from northern boundary and emails between the parties submitted by the appellants

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 15 December 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The evidence demonstrated, that on the balance of probabilities, the use of the land outlined in red on Plan A attached to this certificate, has been in use as residential garden ancillary and incidental to the occupation of 43 Colne Road as a dwellinghouse for a continuous period of a least 10 years before 15 December 2020 and that use is lawful.

Signed

Hilda Higenbottam

Inspector

Date

Reference: APP/Z1510/X/21/3278193

First Schedule

Use of land as residential garden of 43 Colne Road

Second Schedule

Land at 43 Colne Road, Coggeshall, Essex CO6 1TD.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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.



Plan A

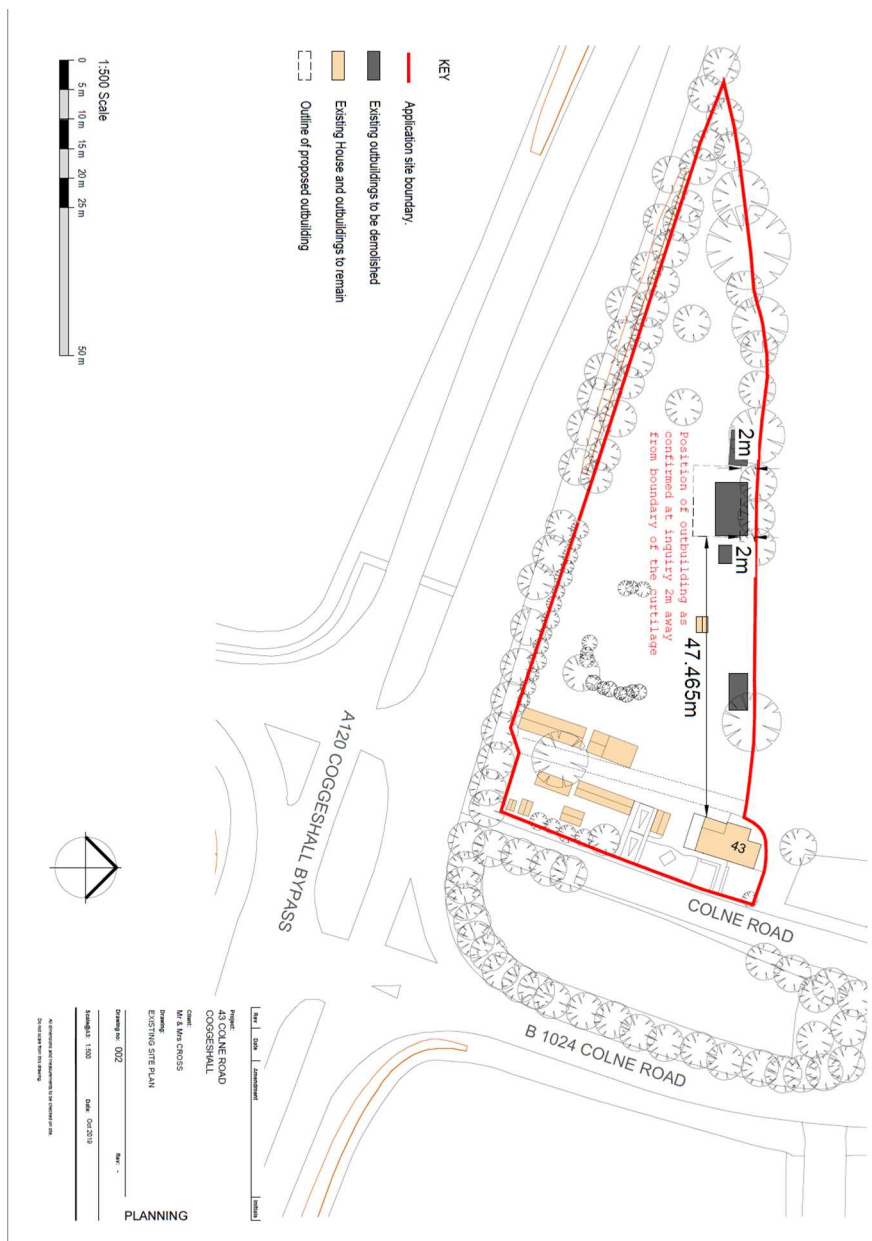
This is the plan referred to in the Lawful Development Certificate dated:

by Mrs H M Higenbottam BA (Hons) MRTPI

Land at: 43 Colne Road, Coggeshall, Essex CO6 1TD

Reference: APP/Z1510/X/21/3278193

Scale: nts



Lawful Development Certificate

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

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 15 December 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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:

The development described in the First Schedule is permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

Hilda Higenbottam

Inspector

Date

Reference: APP/Z1510/X/21/3278210

First Schedule

Erection of workshop

Second Schedule

Land at 43 Colne Road, Coggeshall, Essex CO6 1TD

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

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, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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.

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.

Plan B

This is the plan referred to in the Lawful Development Certificate dated:

by Mrs H M Higenbottom BA (Hons) MRTPI

Land at: 43 Colne Road, Coggeshall, Essex CO6 1TD

Reference: APP/Z1510/X/21/3278210

Scale: nts

