

Appeal Decisions

Site visit made on 1 August 2024

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 08 October 2024

Appeal A Ref: APP/W1525/X/24/3336725

The Oaks, Wantz Road, Margaretting CM4 0EP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (hereinafter "the 1990 Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr S Ozer against the decision of Chelmsford City Council.
- The application ref 23/01839/CLOPUD, dated 15 November 2023, was refused by notice dated 2 January 2024.
- The application was made under section 192(1)(a) of the 1990 Act.
- The use for which a LDC is sought is the positioning of 3 no. containers (domestic storage).

Summary of Decision: The appeal is allowed and attached to this decision is a certificate of lawful use or development.

Appeal B Ref: APP/W1525/W/23/3334098

The Oaks, Wantz Road, Margaretting CM4 0EP

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Mr Selahattin Ozer against the decision of Chelmsford City Council. The application Ref is 23/01528/FUL.
- The development proposed in the application form is retrospective application for existing entrance gate.

Summary of Decision: The appeal is allowed subject to a condition.

Appeal C Ref: APP/W1525/W/24/3338623

The Oaks Wantz Road, Margaretting, Ingatestone, CM4 0EP

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
- The appeal is made by Mr S Ozer against the decision of Chelmsford City Council. The application Ref is 23/01844/FUL.
- The development proposed in the application is change of use from a stable building to a residential dwelling¹.

Summary of Decision: The appeal is dismissed.

¹ The appellant describes the proposal as "Change of use from a stable building to a residential dwelling falling within class C3. Alterations to the driveway and parking area". I have adopted the one given on the application form.

Appeal A

1. The appeal site has a complicated planning history, which I do not need to set out here. The site, overall, is 0.55 hectares. The Oaks is a detached dwelling located in a spacious plot. The proposed containers, which are already situated on land to the southeast of the dwellinghouse, are positioned opposite the stable building. The appellant intends to relocate them closer to the dwellinghouse. Drawing number 05A shows the proposed location. The nub of the appellant's argument is that the proposed development does not require express planning permission. The Council considers that, at the date of the LDC application, express permission would have been necessary because the proposal would amount to a change in the use of the land². Essentially, it considers the containers are not buildings and represent a temporary use of the land. For the following reasons, I disagree.
2. The concepts of the "curtilage" and "planning unit" are distinct and separate; they should not be confused. The planning unit is a concept evolved as a means of determining the most appropriate physical area against which to assess the materiality of the change in the use of the land. My starting point is the leading authority on the planning unit - *Burdle*³. The test starts with the unit of occupation and turns on the concept of physical and functional separation. The Court suggested three broad tests for determining the appropriate planning unit. The assessment is a matter of fact and degree, and as a useful working rule, it should be assumed that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally.
3. The land is enclosed by physical barriers or established vegetation. It is in primary residential use but there is a stable building separate to the dwelling. It was used in connection with the keeping of horses for recreational purposes, but the evidence shows that use is functionally linked to the occupation of The Oaks, because of the low-key scale of the activity. In my judgment, the appeal site forms a single planning unit in residential use. The positioning of the 3 containers would not result in the creation of a separate planning unit as there would be no change in the definable character of the appeal site.
4. Case law⁴ states that the appropriate criteria for determining whether a structure constitutes a building are size, permanence, and physical attachment. None of these factors are necessarily decisive and greater weight may be given to one factor over another in reaching a decision. It is ultimately a matter of planning judgment.
5. The containers do not, or would not, have a fleeting character – they would be positioned on the land shown in drawing 05A for a significant length of time. They would appear as permanent features. Indeed, the containers are already in-situ,

² The 1990 Act includes in the definition of the word "development" the carrying out of building or other operations on land or making of a material change in the use of a building or other land. Subsection (1A) defines "building operations" and s336(1) defines "building".

³ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

⁴ *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385 & *Skerritts of Nottingham Ltd v SSTER* (No 2) [2000] 2 PLR 102.

and it did not appear to me they have been moved around the land. Given the scale and nature of the containers, they would be permanently located and are unlikely to be moved around: the latter would, evidently, require some kind of plant or machinery to facilitate the removal and relocation of the containers. In addition, whilst there would be no foundations, the design and makeup clearly indicate the containers would be affixed in position through their own weight. I find that the containers fall within the definition of a “building” for planning purposes.

6. Usually, shipping style containers, such as the ones proposed, arrive on a trailer, they are lifted and put into place by heavy plant and machinery or specialist equipment. As I have already said elsewhere, the proposed containers would appear as permanent features altering the physical characteristics of the appeal site. There is no evidence to suggest foundations would be constructed nor an engineering operation would be required to facilitate the relocation of the 3 containers. However, the nature of the work involved in moving the 3 containers to the proposed location suggests some kind of technical expertise is required. The work involved can be reasonably described as a building operation falling within the scope of s55(1) of the 1990 Act.
7. Express planning permission would be required for this development unless it is permitted development as set out in Class E to Schedule 2, Part 1 to the Town and Country Planning (General Permitted Development) Order 2015 as amended (“the GPDO”). This permits, subject to limitations and conditions, within the curtilage of the dwellinghouse any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such. There is no dispute that the limitations and conditions set out in Class E.1 to E.3 would be satisfied. The dispute focuses on curtilage and incidental use.
8. The appeal parties refer to case law and I will apply relevant principles established by the authorities instead of setting them out here in detail. Essentially, when assessing whether the land falls within curtilage, relevant matters to consider are the physical layout, ownership, and use or function of the building and land, past and present. There is no dispute The Oaks has always been in single ownership and in residential use and the claimed curtilage land has always been attached to the property.
9. The Council, however, explains that the parcel of land where the containers would be located is some distance away from the built form of the building. The containers would be located about 30 metres to the east of the dwelling. Previous aerial imagery appears to show a small curtilage to The Oaks because there was a fence about 12 m from the rear elevation and 7 m from its northwest elevation defining the curtilage. A block plan submitted with a planning application⁵ to retain a stable for stabling indicates the extent of the fenced area. However, curtilage to a building does not need to be confined to a small area. It is possible for the extent of curtilage to change over time. The crucial factor is whether the land in question is so intimately associated with the building that it forms part and parcel of the building.

⁵ Planning application 08/01979/FUL approved 23 January 2009.

10. There is precise evidence which suggests the area identified by the Council as the curtilage does not reflect the historic or current use of the whole land. The land upon which the containers would be cited forms part of the driveway to the main dwellinghouse. The area is used for growing vegetables and there is a greenhouse and wood store: it is used as a garden. The containers would also be positioned close to an existing swimming pool. The latter is in disrepair, but it is shown within the area considered as curtilage.
11. It is reasonable to conclude that the size of the original curtilage to The Oaks, as shown in exhibit G to the appellant's bundle of evidence, is proportionate to the needs and function of this moderately sized detached property. In comparison to the area where the existing stable and containers are currently located, the land upon which the 3 containers would be located does not form an expansive area. The size of the land and its useful function in relation to the dwellinghouse are proportionate to the size and function of the property. In terms of physical layout and function, there is a significant degree of connection with land that is undoubtedly curtilage.
12. Pulling all the above analysis together, I find that the association of the area illustrated in exhibit G is of such a close acquaintance and intimate level that the land upon which the containers would be sited form part and parcel of the dwelling. Consequently, taking a reasonable view, as a matter of fact and degree, at the date of the application the proposed 3 containers would have been positioned on land which falls within the curtilage to The Oaks.
13. The proposed 3 containers would be used to keep domestic goods. The containers would be used for storage purposes to meet the needs of occupiers of The Oaks. For example, store children's play equipment, books, and tools required for the maintenance of the property itself. These include a sit-on lawn mower and other hand-held tools like hedge cutters. The containers would be used to store bulky garden furniture, such as, tables, chairs, sun-loungers, parasols. The nature of the storage use can reasonably be described as an incidental use.
14. When assessing if a proposed outbuilding is required for an incidental purpose thus meet with the basic criteria in Class E to the GPDO, incidental to the enjoyment of the dwellinghouse does not rest on the mere whim of the occupier: a sense of reasonableness is needed. An outbuilding must be required for some incidental purpose to be permitted under Class E. The size of the building, including in comparison to the host dwelling, may be an important consideration, but size alone is not conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose.
15. The containers together measure 7.5m in width, 12.1m in length and 2.5m in height, providing 90 square metres of floor space and 226 cubic metres of volume. The concern is the combined floor space is greater than the ground floor of the property and comparable to that of a 3-bed bungalow. However, the 3 containers

would appear subordinate because the existing dwellinghouse has a 100sqm footprint and an internal floor area of 158 sqm. There is nothing to make less than credible the appellant's claim that the existing rooms within the dwelling are already occupied. There is no loft space which could be used for storage purposes. The existing garage is in a poor condition but is already used for car parking. The stable building has been permitted for stabling and while there are no horses on the land, it could be used in connection with the permitted use.

16. Drawing all the above threads together, I find that unambiguous, clear, and persuasive evidence has been submitted to substantiate the claim that the 3 containers, which would form an outbuilding, of the size and scale proposed is genuinely and reasonably required for the intended use. My assessment of the information presented indicates that, in all probability, the outbuilding would be required for purpose of domestic storage, and it would not be excessive. As a matter of fact and degree, a building of this size would be reasonably required for its intended purpose. It would be on a scale that would be incidental to the enjoyment of the dwellinghouse as such. On the particular facts and circumstances of this case, the proposed containers would meet the necessary requirement of Class E(a).
17. Following my site visit, The Planning Inspectorate asked the Council to confirm whether an enforcement notice had been issued in relation to the storage containers. On 27 September 2024, the Council confirmed an enforcement notice has not been issued in relation to the containers.
18. The 1990 Act, at s55(2)(d) explains the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such does not amount to development. Two points. First, the buildings must be existing and not new buildings. Second, the land must fall within the curtilage, and I have found the land upon which the containers would be located falls within the curtilage so that land's use for incidental residential use is captured by the second limb to s55(2)(d).

Appeal B and C

19. In Appeal B, planning permission is sought for the existing entrance gates and, in Appeal C, the change of use of a stable building to a residential dwelling.
20. The Oaks is located within the metropolitan Green Belt. The common main issues are as follows: whether the development in each appeal constitutes inappropriate development inside the Green Belt, effect upon openness and character and appearance of the surrounding area. There is one additional main issue in Appeal C and that is the effect on living conditions of future occupiers.

Appeal B and C - Reasons

Inappropriate development

21. The appeal site's frontage comprised rustic, low-level, post and rail fencing with large mature hedging set behind, with a six-bar open field gate within the narrow access. These have been replaced by brick wall, pillars and gates, and a timber fence adjacent to Wantz Road. The plans show that the wall measures about 1.9m in height, it has 6 brick pillars with white pier caps and decorative toppings measuring up to 2.6m in height. The main gates have an ornate design and measure 2m in height and 4.15m in width. The boundary treatments in their totality span over 10m across the property frontage.
22. The appellant argues the scheme should be considered as the partial or complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt. However, in comparison to what existed previously, I consider that the design, layout and location of the wall, pillars, gates, and fencing have both a spatial and visual effect on openness, due to their positioning and location. The replacement boundary treatment has a greater impact on openness of the Green Belt than the existing development.
23. The Appeal B development constitutes the construction of new building which does not fall within any exception set out in paragraph 154 to the National Planning Policy Framework. The development also is at odds with Policy DM6 and S11 of the Chelmsford Local Plan 2020 (LP), which are broadly consistent with the Framework.
24. On 23 January 2009, planning permission was granted for the retention of a stable block for stabling purposes. The stable is of substantial construction and the main argument is that the Council did not consider properly the potential re-use of the building as a residential property. The proposal seeks to reduce by 40% the amount of hardstanding permitted by the 2009 Permission. It is acknowledged that a discharge of conditions application in 2011 proposed grass dressing to hard surfaces, but approved plan shows the existing access to the stable as a paved area: the latter covers an extensive part of the land and the access to the stable would be across this grass dressing. In addition, the parking and turning areas would be in proximity to the dwelling camouflaged by dense vegetation.
25. Nonetheless, the evidence before me indicates that the use of the stable in connection with the keeping of horses is low-key and limited in scale: linked to the residential use of The Oaks. While the appellant would be willing to designate for biodiversity landscaped areas, I take the view that a separate dwelling combined with its associated curtilage would have the potential to introduce domestic paraphernalia in this part of the Green Belt. For example, washing lines and outdoor furniture. Given the location of the stable combined with the nature of the proposed use as a single dwellinghouse, the development would both spatial and visual effect on the openness of the Green Belt.
26. Furthermore, the development would introduce comings and goings associated with residential living. The type and frequency of these activities would be materially different to the use of the building as a stable. The proposal would erode the open

aspect of this part of the Green Belt and represent encroachment, which is a serious planning objection. On balance, the nature and scale of the whole development would have a greater impact upon the openness of the Green Belt. the proposed development would conflict with national and LP Policy S11 and DM10.

Character and appearance

27. Given the location and positioning of The Oaks, the entrance gate position, height, length, ornate appearance, and enclosing nature, do not represent visually harmful development. They appear as physical barriers which are not that out-of-keeping with the quality of the street scene. The area includes dwellings with entrance and boundary features of varying design and height. Some of these appear comparable to the appeal site. The existing vegetation along Wantz Road frontage has been retained and, over time, will grow back and provide screening to the appeal site as well as the fence and wall features.
28. The new dwelling would lie outside of any defined settlement, but the appeal site is about 250 m from Margaretting. Although it is a service settlement with limited facilities, public transport connects the settlement with Chelmsford, and there are bus stops nearby. There is a school nearby and Ingatestone is within a reasonable travelling distance. Nevertheless, given the rural nature of the locality, future occupiers are likely to depend on private mode of transportation to meet daily or weekly travel needs.
29. The concern is, however, that the proposed driveway and parking areas would be located close to these green features. The proposed driveway would largely occupy an existing paved area. While there is nothing before me to suggest trees are protected, subject to the imposition of planning conditions, root protection zones could be established. The position, extent and location of the proposed driveway would not have a materially harmful visual effect on the appearance of the site. Additionally, subject to conditions, the scheme would not adversely affect the health and well-being of established trees and hedgerow.
30. Pulling all the above points together, the development in Appeal B and C does not, or would not, have a materially harmful effect on the character and appearance of the surroundings including natural and local environment. LP Policies DM17 would be met.

Appeal C - living conditions of future residents

31. The Council's concern is that the proposals include refuse and recycling facilities, but these are some distance away from the highway and approximately 115m back, but local policy requires bin storage within 20m of the highway. Apart from the potential difficulties involved in collection, given the distance between the highway and dwelling, future residents would, potentially, find it hard to dispose waste due to the driveway's length, especially during inclement weather conditions. This would not be desirable nor practical for the occupiers, although the appellant indicates a private collection service could be arranged.
32. An alternative location closer to the access could also be provided and this would significantly reduce pull distance for the Council's operatives. The location of the

waste bins would be further away from the dwelling, but I am not persuaded by the evidence presented that future occupiers' living conditions would be adversely affected due to the need to walk to dispose waste. The development would accord with LP Policy DM26.

Appeal B and C - other matters

33. The appeal site falls within a zone of influence identified by Natural England for likely significant effects to occur to a European designated site. Those likely significant effects will occur through increased recreational pressure when considered either alone or in combination with other residential development. However, the appellant willingly made a financial contribution to meet the Council's requirements for the designated site. LP Policy DM16 states that where appropriate, contributions from developments will be secured towards mitigation measures identified in a Ramsar site.

Appeal B and C - other considerations

34. The following arguments are advanced in favour. In Appeal B, clearly there is a need for the walls, pillars and gates for privacy and security purposes and the overall height provide a visual barrier. The location of existing landscaping further reduces the visual effect of the walls. As I have already said elsewhere, this development does not have a materially harmful effect on the street scene and boundary.
35. In Appeal C, the proposed driveway could be sensitively constructed. Appendix E to the bundle includes details of grass-based surface construction. Additionally, the access could be positioned so that it would run past the dwelling although living conditions of the host dwelling's occupants would need to be considered and assessed.
36. One dwelling would deliver modest economic benefits, namely: there would be economic benefits through both the construction phase. Support for the services and facilities of Margaretting for instance local spending within the local public houses and restaurant and local revenue from tax receipts and new homes bonus.
37. In December 2021, the Council granted planning permission for the demolition of an existing factory and the construction of 5 dwellings. Like the appeal site, this scheme is within the Green Belt but within confines of Margaretting. Details of the scheme have been submitted in the appellant's bundle at appendix G, and it seems to me that, considerable weight was given to that site's previously developed status. It contained a large former factory building to the front of the site and several outbuildings and hardstanding areas. That development is not a strong precedent given the different location of the site and circumstances.

Appeal B and C - planning balance

38. Both schemes have harmful implications for the Green Belt in terms of inappropriateness, erosion of openness and encroachment into the countryside, which is a serious planning objection. In accordance with national policy, such harm carries substantial weight. Accordingly, there is conflict with the Green Belt protection objectives found in national and local planning policy.

39. My findings on character and appearance, living conditions in Appeal C and the compensation to mitigate effects on the protected site, are neutral in the planning balance in that they neither weigh in favour or against the schemes.
40. In Appeal B, the existing walls, pillars, gates, and fencing has replaced boundary treatments that were of a different design and layout. However, the existing boundary treatments are sympathetic and secure the property. Given the potential for further action and my findings elsewhere in terms of visual impact, granting planning permission for the existing boundary treatment would be a proportionate response to the retrospective development, due to the need to secure the property. This outcome comes at less expense and disruption. This consideration carries considerable weight. Individually or collectively, these considerations clearly outweigh the Green Belt harms. Looking at the whole case, I consider that very special circumstances exist which justify the development. Taken, as a whole, the LP policies identified would be satisfied.
41. In Appeal C, I attach moderate weight to the potential economic benefits of the proposed dwelling, additional landscaping for the proposed dwelling and driveway, including use of grass-based techniques. In addition, I recognise the stable exists and previously developed land would be redeveloped for residential use, but one dwelling makes a limited contribution to housing supply.
42. The appellant draws attention to other schemes in the area, but I must determine this appeal upon its individual merits. I attach little weight to the argument that the Council granted planning permission for a residential scheme on a site nearby, because of the circumstances of the appeal site and evidence before me.
43. The totality of harm to the Green Belt arising from the Appeal C scheme is substantial. I find that the other considerations advanced in support of Appeal C, individually or collectively, do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The development would conflict with the LP taken as a whole.

Appeal A, B and C - overall conclusions

44. Appeals A and B are allowed in terms set out below. In Appeal B, stipulating the development to be carried out in accordance with the submitted plans meets the relevant tests even though the existing wall and entrance gates may accord with the plans. Appeal C, however, should be dismissed.

Formal decisions

Appeal A

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

Appeal B

46. The appeal is allowed, and planning permission is granted for the existing wall and entrance gate at The Oaks, Wantz Road, Margaretting CM4 0EP in accordance with the terms of the application, Ref 23/01528/FUL, and the plans submitted with it, subject to the following condition:

- 1) The development hereby permitted shall be carried out in accordance with drawing numbers 01, 02 A, 03 A, and 04 A.

Appeal C

47. The appeal is dismissed.

A U Ghafoor

INSPECTOR



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 November 2023 the operations and use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown 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 positioning of 3 no. containers (domestic storage) constitutes permitted development by virtue of Article 3, Schedule 2, Part 1 Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

A U Ghafoor

Inspector

Date: 08 October 2024

Reference: APP/W1525/X/24/3336725

First Schedule

Positioning of 3 no. containers (domestic storage).

Second Schedule

Land at The Oaks, Margaretting, CM4 0EP

IMPORTANT NOTES – SEE OVER

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation or use 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

This is the plan referred to in the Lawful Development Certificate dated: 08 October 2024

by **A U Ghafoor**

Land at: The Oaks, Margaretting, CM4 0EP

Reference: APP/W1525/X/24/3336725

Scale: Not to Scale

