



Appeal Decision

Site visit made on 14 July 2025

by **Robin Buchanan BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date 24 July 2025

Appeal Ref: APP/C3620/X/24/3358048

Oakdale Farm, Weare Street, Ockley, Surrey RH5 5NN

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended (the Act) against a refusal to grant a certificate of lawful use or development.
- The appeal is made by Mr G Gong against the decision of Mole Valley District Council.
- The application ref MO/2024/1638, dated 30 September 2024, was refused by notice dated 25 November 2024.
- The application was made under section 192(1)(b) of the Act.
- The development for which a certificate of lawful use or development is sought is 'an outbuilding'.

Summary Decision: The appeal is dismissed.

Main Issue

1. The main issue is whether the Council's decision to refuse the application for a lawful development certificate was well-founded.

Reasons

2. The application was made to ascertain whether the proposed outbuilding would have been lawful if begun on the date of the application. For the appeal to succeed, the onus and burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that it was lawful. In this case, that the outbuilding was granted planning permission by Article 3(1) and Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).
3. Amongst other things, buildings erected under Class E must be 'within the curtilage of the dwellinghouse' and built for 'a purpose incidental to the enjoyment of the dwellinghouse as such' by its occupants. Both stipulations need to be met.

Curtilage

4. Curtilage is not a use of land and there is no authoritative definition for planning purposes, even in the GPDO. The Council's 'definition' is said to be from the 'GDPO' but this abbreviation (also used by the appellant) has not been explained. The wording both parties have referred to is an understanding of curtilage provided in relevant guidance¹. It is not part of the GPDO. I have also had regard to an appeal decision referred to by the Council². But what is curtilage essentially remains a judgement in each case informed by matters of fact and degree.
5. Oakdale Farm house is in a rural setting at the southern end of a small group of mainly former farm or equestrian buildings, mostly converted for domestic use. This

¹ Permitted development rights for householders: technical guidance' September 2019

² APP/C2741/X/22/3297054

- includes a building to the north of the house for guest accommodation with a gym and games room (the annexe).
6. The orientation of the wide rear elevation of the house is westward. At my site visit I saw that a large, broadly rectangular shaped, well-maintained closely mown lawn stretches some distance in this direction perpendicular behind it. This rear garden is terraced down a gentle slope, initially by a low retaining wall with steps then terminates in the vicinity of a low retaining wall with some paving and ornamental plant pots. Towards this end of it a nub extends northwards, including a pond.
 7. The outbuilding would be located to the west of the annexe, close to and facing it, backed by some trees in a pocket of open land (the site). The site was rough cut grassland at the time of my site visit and there is little to suggest that this was not its condition on the date of the application.
 8. The appellant claims that the site forms part of the rear garden of the house. Alternatively, that it is 'in the area around the house' and has also compared it to the absolute or proportionate extent of 'the grounds' of the house and other domestic development granted planning permission by the Council, such as a tennis court to the north east of the house. The appellant's plans also show a 'domestic use land boundary' inclusive of the site. Consistent with the relevant guidance and the other appeal decision, none of the appellant's descriptions are necessarily the same as curtilage for the purpose of the GPDO, nor is the notion of a planning unit or the extent of property ownership. It is not for me to establish what is the entire curtilage.
 9. The appellant's domestic use land boundary is largely without readily identifiable features on the ground, so is somewhat arbitrary. There is also little evidence of any historic provenance to this boundary and it plainly excludes, for example, a large part of the rear garden of the house which is land in domestic use. There is therefore little to counter that this boundary was contrived to include the site and as such is not a proxy for curtilage in this case.
 10. There is unchallenged evidence that historic plans and aerial photographs show the house and rear garden visually and physically divided from the site by trees or hedgerow when it and the annexe building was in agricultural use. Intermittent remnants of intervening boundary hedgerow or trees remain and similar features still form a discernible perimeter around all of the rear garden. This delineates between the mown grass lawn and the surrounding rough cut grassland in a large field, which the rear garden otherwise seamlessly flows into, without a fence for instance. The site maintained as rough cut grassland is more akin to the surrounding field than the mown lawn.
 11. The site is notably offset to one side of the house, behind and separated from it by a long intervening building, a large external storage structure and some trees. It is as a result mostly out of sight of the house and not readily apparent to a casual visitor to the house or even as part of the rear garden of the house. This discrete, separate enclosure of land forms an immediate setting to the annexe (and as was this former farm building) not the house.
 12. The site is near the annexe. It can also be accessed from the house by the occupants of the house, which is not overly distant. But there is little objective evidence about a specific purpose of the site and by whom it has been or is used and how often. There is otherwise little to suggest that it was used as part of the

rear garden of the house historically as opposed to part of a working farm when the annexe was a farm building, or since and used with the annexe not the house.

13. There is no apparent reason why the Council could only have granted planning permission to convert the annexe building, or for the tennis court, if either was in the curtilage of the house, as the appellant suggests. Both were a distinctly different form and nature of development to the provision of a domestic outbuilding under the GPDO. Moreover, neither necessarily required location within a curtilage, as opposed to existing or acceptable new residential garden land. That the site is near the annexe doesn't construe that it suddenly thereafter formed part of the curtilage of the house as a result of the annexe coming into being.
14. I accept that curtilage does not need to be confined to a small area and need not be set in stone, so can change from time to time. But the appellant's evidence is not sufficiently precise or unambiguous with regard to the functional use of the site by the occupants of the house as part and parcel with the house. Similarly, it has not been shown that visually and spatially the site has served the purpose of the house in a useful way or that it forms part of the land within which the house sits. There is no sworn affidavit or statutory declaration to give greater credence to what the appellant suggests or to otherwise counter my overall impression in these respects. These circumstances significantly diminish the appellant's claim that the site has been intimately associated with the house, rather than simply part of the wider land ownership and a working farm complex or thereafter associated with the annexe. As such, I give limited weight to the appellant's evidence that is before me.
15. Therefore, as a matter of fact and degree, the appellant has not demonstrated, on the balance of probabilities, that the proposed outbuilding would have been within the curtilage of the house. In these circumstances, it would not have been granted planning permission by Article 3(1) and Schedule 2, Part 1, Class E of the GPDO. Consequently, on this basis it would not have been lawful if begun on the date of the application.

Incidental purpose

16. The outbuilding would not have been permitted development having regard to curtilage so I do not need to consider if it would have been built for a purpose incidental to the use of the house. To do so would not alter my decision or the outcome of the appeal.

Conclusion

17. For the reasons given above, and on the evidence now available, I am satisfied that the Council's decision to refuse to grant a lawful development certificate for the erection of an outbuilding was well-founded. Accordingly, the appeal does not succeed and I will exercise the powers transferred to me under section 195(3) of the Act.

Formal Decision

18. The appeal is dismissed.

Robin Buchanan

INSPECTOR