



Appeal Decision

Site visit made on 8 November 2025¹

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 20th November 2025

Appeal ref: APP/W1525/X/23/3328832

Oak Cottages, Chalk Street, Rettendon, Chelmsford CM3 8DD

- 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 (LDC).
- The appeal is made by Mr Colin Murphy against the decision of the Chelmsford City Council.
- The application Ref 23/00820/CLOPUD, dated 17 May 2023, was refused by decision dated 11 July 2023.
- The application was made under section 192(1)(b) of the Act.
- The proposed development for which a certificate of lawful development is outbuilding with swimming pool, gym and bar.

Decision

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

Reasons

2. The bundle of evidence includes detailed plans, aerial images and historic permissions. The application plans show the extent of the application site outlined in red (for convenient shorthand, I will refer to this as "the LDC application site"). The drawings also illustrate the outbuilding's dimensions. The latter would comprise a swimming pool, gym and bar.
3. The Council's decision notice alleges the proposal would not be lawful had operations begun on the date of the LDC application. Essentially, the claim is that the development would fall foul of basic criteria in article 3, schedule 2, part 1 of class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ("the GPDO"). This permits outbuildings such as this one provided it is required for an incidental purpose, meets physical tolerances and falls within the curtilage of the dwellinghouse. The Council's reason for refusal clearly alleges conflict with the latter. However, for the following reasons, I disagree.
4. In the context of this appeal, the important point to keep in mind is that curtilage defines an area of land in relation to a building and not a use of land. It is relevant to s55(2)(d)² of the 1990 Act and the GPDO. It is often the case that the concept of "curtilage" and "planning unit" are confused: they are distinct and separate. The planning unit is a concept evolved as a means of determining the most appropriate physical area against which to assess the

¹ The appeal turns on the facts of the case and relevant planning law and whether the specific matter is lawful as defined by the 1990 Act. Planning merits are not relevant at any stage in this process nor are actual or perceived issues relating to the handling of the LDC application. Although I visited the appeal site nobody was available to permit access to the rear. However, I was able to see the site from public viewpoints given the property's location. I do not consider a site visit to the appeal property itself is necessary to determine the appeal and proceed on this basis.

² The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land... 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.

materiality of change in the use of land. The two will sometimes cover the same area on the ground, but that will not always be the case and does not in any event mean that they are the same thing.

5. My starting point is the planning unit³. Nos 1 and 2 each formed a residential unit of accommodation. The 2022 aerial image clearly illustrates the concentration of built development and residential use close to the frontage adjacent to the highway. The area to the rear and south is depicted as heavily wooded with extensive spread of vegetation. The appellant refers to this area as amenity land but in the absence of evidence to the contrary, it seems to me that this area was characteristic of woodland, forestry, agricultural or a nil use. That approach seems consistent with the planning history of each property whereby the land to the rear and south was excluded in several applications for planning permission.
6. At the date of the LDC application, Oak Cottages formed a single unit of occupation. On 18 April 2023 a new chapter in each dwelling's history began when permission was granted for the amalgamation of the two properties into one ("the 2023 permission")⁴. It is reasonable to hold that the physical amalgamation includes their respective curtilages: there is nothing before me to suggest otherwise. As a matter of fact and degree, I consider that Oak Cottages forms a single planning unit created by virtue of the 2023 permission. It is therefore necessary to consider the scope, effect and implication of the planning permission and determine whether the latter also defines the curtilage to Oak Cottages.
7. There is considerable body of judicial authority regarding rules of interpreting documents such as planning permissions. The judgments and the findings contained therein indicate that each case needs to be considered upon its individual circumstances. When there is disagreement as to the meaning and scope of development permitted by grant of planning permission, it is permissible to consider extrinsic material to resolve ambiguity.
8. The 2023 permission facilitated the change of use through operational development comprising a single storey rear extension, porch extension and alterations to fenestration: it cannot reasonably be argued the latter was causative of the change in use. This is because the two dwellings could have easily amalgamated into a single dwelling by creating an internal link. To my mind, the 2023 permission's effect is unequivocal and unambiguous. Clearly, it permits a material change in the use of the two dwellings into a single dwellinghouse through alterations and extensions. That approach is broadly consistent with recent judicial authority on the topic of amalgamation⁵.
9. The 2023 permission clearly incorporates the plans and the application forms. Given the requirement to identify land to which the application relates⁶, the approved block plan includes within the red-edged application site the area where the proposed outbuilding would be located. The local planning authority (LPA) must have been aware of the application site and its implication, because under the section "Notes to Applicant" at paragraph 3) it states the following: *"The red line indicating the application site boundary does not confirm the extent of the residential curtilage of the dwellinghouse"*.
10. Although *R v Ashford BC ex parte Shepway BC* [1998] EWHC 488 (Admin) related to an outline permission, the judgment and line of authorities that followed indicate an informative could not be incorporated to restrict the ambit or scope of the operative sections of the

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

⁴ Council ref 23/00222/FUL.

⁵ *Lambeth v SSLUHC* [2024] EWHC 1391 (Admin).

⁶ Article 7 to the General The Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended.

permission. Perhaps the lesson here is that when express planning permission is granted for a use facilitated by operations and the LPA intend to limit, restrict or control the full extent, nature or scale of that specific use, it should consider imposing a condition, which can limit use rights as a matter of law. Planning permission will be required for any material change in use from a permitted use, but an LPA may only prevent a non-material change by restricting a use as described in the permission by way of condition⁷.

11. In this case, the 2023 permission to amalgamate two dwellings into a single dwellinghouse, in effect, contained a built-in change of use of the application site and, by virtue of s75(3) of the 1990 Act, the permission would also carry with it permission to use the new building for residential purposes and the extent of the land covered is ascertained by reference to the site as defined on the block plan. Thus, the LDC application site could, in theory, be used for purposes ancillary or incidental to the new dwellinghouse unless the permission itself showed some obvious restriction by condition: it does not do so. That said, it does not automatically follow the LDC application site, or all the land under the appellant's ownership, forms the curtilage to Oak Cottages.
12. In support of its proposition that a grant of planning permission cannot extend the curtilage by virtue of a site plan, the Council cite *Barnett v Secretary of State for Communities and Local Government* [2009] EWCA Civ 476. However, that case can be distinguished on the facts. In summary, the Court held that when planning permission was granted to alter or extend an existing dwelling rather than for a new dwelling, there was not necessarily either any new use of land or any extension to the existing curtilage. The Court drew a distinction between the situation where permission was granted for a new dwellinghouse whose curtilage would normally be identified by the site as defined on the site plan, and the situation where permission was sought to alter or extend an existing dwelling which had an existing curtilage. As I have said elsewhere, the 2023 permission created a new dwellinghouse.
13. 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. The Permitted Development Rights for Householders: Technical Guidance (2019) defines 'curtilage' for Part 1 purposes as 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 extensive grounds, it may be a large or smaller area.
14. There is considerable case law on the interpretation and application of the term "curtilage". The appeal parties refer to some of these relevant authorities. There is no need for me to repeat or summarise these judgments. That said, the earlier case law goes back to *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195 and *Methuen-Campbell v Walters* [1979] 1 QB 525. The line of judgments thereafter, and the findings therein, serve to illustrate that determining the curtilage is a matter of fact and degree based on the circumstances and evidence presented in each case⁸. There is however a common thread and that is that for land to fall within curtilage, the claimed curtilage land must be so intimately associated with the building, that it forms part and parcel of the building.

⁷ Line of judicial cases following *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107.

⁸ For example, *Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council* [1983] 46 P&CR 399, *Dyer v Dorset CC* [1988] 3 WLR 213, *McAlpine v SSE* [1995] 159 L.G. Rev. 429, *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin), *Challenge Fencing Ltd v SSHCLG* [2019] EWHC 553 (Admin), *Skerritts of Nottingham Ltd v SSETR (No. 1)* [2000] EWCA Civ 60, *Lowe v First Secretary of State* [2003] EWHC 537 (Admin), and *Burford v SSCLG* [2017] J.P.L. 1300, and *Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd* [2020] EWHC 959 (Admin), [2021] EWCA 398, [2020] JPL 1359, and *Hiley v Secretary of State* [2022] (Admin) EWHC 1289.

15. There is no evidence to cast doubt over the claim that in the past, the LDC application site was used for incidental residential purposes. For example, the area has been landscaped and includes ornamental plants. There is considerable force behind the claim that the curtilage extends over the garden permitted by the 2023 permission because the land is clearly capable of such use. In addition, the land to the rear and south is used for recreation by the occupiers of Oak Cottages and in my assessment, there is significant overlap between the use of land incidental to the enjoyment of the dwellinghouse and land falling within curtilage to Oak Cottages. Curtilage does not need to be confined to a small area, but this is not a case where additional land in a non-residential use has been incorporated into the residential curtilage.
16. In terms of the considerations of layout and function, proportionality is relevant. Oak Cottages is a detached building and the LDC application site does not extend over an extensive area. The dwelling is set in proximity to the LDC application site. When considered in context of the dwelling, it is physically proximate to Oak Cottages. It lies close to the dwellinghouse, and it is visually connected. It does not form an expansive area nor appear as self-contained parcel. There seems to be very little, if any, physical barriers demarking curtilage from other land under the appellant's ownership, and the extent of the area is reasonably described as forming one enclosure with land attached to or immediately around and about the dwellinghouse. Contrary to the Council's submissions, I find that the LDC application site has a significant degree of association given its spatial and visual characteristics.
17. The identified characteristics strengthen the actual and perceived relationship with the property and land immediately around and about the building. It is reasonable to conclude that the size of the curtilage is proportionate to the needs and function of Oak Cottages. I am not persuaded that the size of the LDC application site and its useful function in relation to Oak Cottages is not proportionate to the size and function of the property. In terms of past and present ownership and use or function, there is a degree of connection between the LDC application site and the dwelling. In my judgment and fatally for the Council's case, this association is of such a close relationship and at such an intimate level that all the area, especially the land to the rear and south, form part and parcel of the dwelling known as Oak Cottages.
18. Consequently, taking a reasonable view, in all probability and as a matter of fact and degree, I find that, at the date of the application, the land on which the development is proposed forms part of the curtilage of the dwellinghouse, and it would not have failed the basic criteria of Class E to the GPDO.

Other matters and conclusions

19. In its statement of case, the Council try and introduce a further reason for refusal. Had it felt strongly that the outbuilding's size and scale is not genuinely required for incidental purposes, it should have formulated a reason for refusal on that basis to avoid surprise. In any event, the appellant has responded to this argument in their final comments. I am satisfied, because of the available evidence, that the proposed use, size and scale can be regarded as reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such.
20. My decision is likely to be disappointing for the Council, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me. For the reasons given above I conclude, on the evidence now available and applying the correct approach and balance of probability test, the Council's refusal to grant a LDC in

respect of the outbuilding was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under s195(2) of the 1990 Act.

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 17 May 2023 the matter described in the First Schedule hereto, constituting outbuilding with swimming pool, gym and bar, in respect of the land specified in the Second Schedule hereto and edged 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:

Permitted development by virtue of article 3, schedule 2, part 1, class E of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 as amended. For this reason, no enforcement action may then be taken in respect of the proposed outbuilding, as illustrated drawing 862b/02/A and 862b/03/A. The proposed outbuilding does not constitute a contravention of any of the requirements of any enforcement notice in force.

Signed

A U Ghafoor

INSPECTOR

Date: 20th November 2025

Reference: APP/W1525/X/23/3328832

First Schedule

Outbuilding with swimming pool, gym and bar,

Second Schedule

Land edged as shown on the plan attached to this certificate and identified as Oak Cottages, Chalk Street, Rettendon, Chelmsford CM3 8DD.

IMPORTANT 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 proposal described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date. This certificate applies only to the extent of the proposal 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 20th November 2025

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

Land at: Oak Cottages, Chalk Street, Rettendon, Chelmsford CM3 8DD

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Scale: Do not scale.

