



Appeal Decision

Site visit made on 22 December 2025

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 March 2026

Appeal Ref: APP/A1530/X/24/3347705

Victory Moorings, Coast Road, West Mersea, Essex CO5 8LS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Nick Moffat of West Mersea Marine Ltd against the decision of Colchester City Council.
- The application ref 231385, dated 23 June 2023, was refused by notice dated 18 August 2023.
- The application was made under section 192(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 described as 'A weekend food, drink and music festival over three days, in an open air space for no more than 28 days in total in any calendar year'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Within their application form, the appellant states '*Currently the area is used to store boats and during the summer months it is also used as a car park. My intention is to hold a weekend food, drink and music festival over three days, in an open air space for no more than 28 days in total in any calendar year. In 2017 and 2018 a weekend event was held in this space for which a premises license was granted, and an annual Fun Fair has been held here for over 30 years, for past events I have not been approached to apply for planning and therefore believed that for future events I would not need to apply. However it has beeb [sic] suggested that I apply for a LDC after an application for a premises license was submitted.*'
3. The appellant described the existing use class as 'B8- Storage or distribution' and the proposed use as 'E – Commercial, Business and Service.' The appellant ticked that the proposed operation or use is permanent and advise that they '*do not intend to use existing buildings on site for anything other than they are used now, I currently have an office and toilet facilities which will be fenced off during events. I do not intend to build any permanent structures on site to accommodate events, everything will be easily removable and taken down immediately after an event. The aim is to have pop up events for short periods of time for example three to four days.*'
4. The Council describes the application as '*for a Proposed changeof [sic] use to hold a food and drink festival as shown on Drawing Number(s)...*' and refused the application because it was stated that the temporary use of land would not fall under the provisions of Part 4, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) as the

land in question is within the curtilage of a building which is expressly excluded from the permitted development rights.

5. Within their appeal form, the appellant described the proposed use as '*change of use to continue to hold events for no more than eight days a year*'. I have used the description given in the application form, excluding words which do not describe development, in the banner heading above, as this seems to encompass the description used in the appeal form.
6. On their appeal form, the appellant ticked section 192 as the section under which the application was made. However, the appellant suggests that events have been held annually on the site for over 40 years (notwithstanding 30 years is the period referred to in the application form). Where a material change of use has continued without significant interruption, such that the applicant can demonstrate that the time for taking enforcement action has expired, such a use may be lawful by virtue of the passage of time. A use can be continuous but seasonal. I have therefore considered whether the appeal should be determined under section 191, which is for a certificate of lawfulness of existing use or development.
7. In order for an appellant to succeed in an appeal under section 191, the appellant would need to show that, at the date of the application, the use (or mix of uses) had continued without significant interruption for a ten year period. However, while reference is made to an annual fun fair, there is very little detail as to what the events which are stated to have taken place comprised, their frequency or how the overall use of the site has changed throughout the year and over the years. In this case, the evidence of how the site has been used is so limited that were I to consider the appeal under section 191, it would fail.
8. This does not mean that it would not be possible for the appellant to provide such evidence, nor does it mean that, were the appellant to provide further evidence it would succeed. It simply means that I do not have sufficient evidence to enable me to conclude that the use of the site for the holding of events would be immune from enforcement action by virtue of the passage of time. Consequently, there is little merit in going back to the parties on this matter. As the appellant submitted their application and appeal for a proposed use under section 192 of the Act, I shall therefore consider the appeal on this basis.

Main Issue

9. The main issue of the appeal is whether the Council's decision to refuse the certificate of lawfulness is well-founded.

Reasons

10. An application under section 192(1) of the Act¹ seeks to establish whether any proposed use of buildings or other land or operations proposed to be carried out in, on, over or under land would be lawful. Section 192(2) sets out that if on 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.

¹ Town and Country Planning Act 1990 (as amended)

11. Section 191(2) sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
12. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development is lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
13. The Council refused the application on the basis that the temporary use of land as a food and drink festival would not fall under Part 4, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended (the GPDO) as the land in question is within the curtilage of a building, which is expressly excluded from the permitted development rights. The appellant does not suggest that the proposed use would not be development for the purposes of the Act, rather the appellant's case seems to be that it would be permitted by the GPDO.
14. Part 4, Class B of Schedule 2 of the GPDO permits the use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of (a) the holding of a market; (b) motor car and motorcycle racing including trials of speed, and practicing for these activities, and the provision on the land of any moveable structure for the purposes of the permitted use. Development is not permitted by Class B if (b) the land in question is a building or is within the curtilage of a building.
15. The Act does not define the term 'curtilage'. In support of their case, the Council has drawn my attention to an appeal decision, reference APP/V2255/X/19/3241797, which set out pertinent case law, including *Methuen-Campbell v Walters* [1979] 1 QB 525, *Dyer v Dorset CC* [1988] 3 WLR 213 and *McAlpine v SSE* [1995] 159 L.G. Rev. 429. While I do not have full details of the appeal decision referred to, given the reference number, it seems the decision is a number of years old and may concern a dwellinghouse, rather than a commercial site.
16. Nevertheless, having regard to case law on the matter, it is well established that the extent of the curtilage of a building is a question of fact and degree, and a matter for the decision maker. The relevant factors for determining curtilage are the physical layout, ownership (past and present) and use or function (past and present). While size may be relevant, what must be asked is whether the land is part and parcel of the building as a matter of fact and degree.
17. The appeal site comprises a substantial area which is used as a boat yard. The site is accessed from the Coast Road via an access which is shared with a restaurant, Seafood at Dawn, and an oyster business, West Mersea Oysters. I carried out my visit during the winter months and saw a significant number of boats stored within the boat yard. The appellant states that the site is used to store boats

during the winter months, and, during the summer months when most of the boats are on moorings, the site is used as a car park and for events. The application was made in June, when, it is stated, the majority of the site was used as a car park and for events.

18. The Council suggests there are several buildings to the north and north-east that are within the curtilage of the application site. Firstly, a group of buildings stated to have recently been used as the Oyster Bar (now occupied by Seafood at Dawn, and West Mersea Oysters), which, it is suggested, have a clear physical relationship to the boat yard and have historically been under the same ownership as the boat yard. Secondly, a smaller building which is stated to be an office building.
19. Within the location plan, the red line appears drawn around the office building so as to exclude it from the application site, with a blue line drawn around the entrance to the site and a strip of land between the Coast Road and the appeal site. The buildings described by the Council as The Oyster Bar (which include Seafood at Dawn and West Mersea Oysters) are not included in either the red or blue line boundary of the application plan. While the buildings are therefore not included in the application site, this is not itself an indication that the appeal site is not within the curtilage of any of those buildings.
20. The Council has drawn my attention to an application which has previously been made, reference 146349, where the buildings (Seafood at Dawn and West Mersea Oysters) are shown within the blue line boundary of the application, suggesting that the buildings have, at one time, been in the same ownership as the appeal site. The appellant states that the restaurant² was built by an individual, whom I shall refer to as MD, about twenty years ago on land that he (MD) owns. MD is stated to have been operating the building under the name The Oyster Bar, which, it is stated, has since been changed to sell oysters, cold seafood and drinks. Seafood at Dawn is stated to continue the use of the outside seating area.
21. During my visit, I saw that the building identified by the Council as 'The Oyster Bar' is advertised as 'West Mersea Oysters' (the part of the building which is located adjacent to the Coast Road) and 'Seafood at Dawn', which is advertised as a licensed restaurant (the part of the building which is located towards the rear of the building, adjacent to the outdoor seating area). However, it is not clear why the blue line for application 146349 was drawn around the wider site, including The Oyster Bar buildings. I have no substantive evidence, such as land registry documentation, to show how the ownership of the land has changed over time.
22. The appellant has provided me with a number of photographs which show fencing which has been erected around land to the rear of Seafood at Dawn, suggesting that there is physical delineation between the restaurant and the Victory Dock. The appellant questions why, in 2019, when MD applied for a change of use, reference 193108, their application '*for a new external seating area to the rear of the restaurant with shading. New bin store and change of use and refurbishment of existing outbuilding*' was approved when it was within the curtilage of the building.
23. While I have not been provided with substantive details of application reference 193108 (or others relating to the restaurant) that application is likely to have been an application for planning permission and so compliance with the GPDO would

² Now Seafood at Dawn and West Mersea Oysters

not have been needed. The reason curtilage matters in this appeal, is because the appellant has applied for a lawful development certificate, on the basis that (notwithstanding any argument regarding immunity, which I have addressed above) permitted development rights under Class B of Part 4 of Schedule 2 of the GPDO would apply³.

24. The outside seating area with shading permitted under 193108 is stated to have been completed and I have been provided with photographs of the fencing. Users of both premises would use the access road from the Coast Road, to Victory Dock, to access the premises. During my visit, I saw the fencing around the seating area for Seafood at Dawn. While the degree to which the building and claimed curtilage fall within one enclosure is relevant as an aspect of the test of physical layout, given the way the boundary has been tightly drawn around the seating area, part of the appeal site is likely to be used as part of the restaurant use, if only for getting to and from the seating area. It is therefore not clear to me, from the evidence provided, whether the land in question is, on the balance of probabilities, not within the curtilage of those buildings.
25. The Council has drawn my attention to an application concerning the office building, reference T/COL/00/1414. During my visit, I was able to see this building, which is accessed from within the dock yard. The Council suggests that available evidence confirms that the building has operated as the “West Mersea Marine, Victory Dock Office” since at least 2009. I have very little evidence regarding the office building, which sits within the Victory Dock site. The building faces in towards the appeal site, has steps and a substantial patio area within the appeal site itself and includes toilets which, I consider likely, would be used by users of the dock yard.
26. Although no substantive details regarding the office building have been provided by the appellant, it seems likely that the building is used in association with the dock yard. Given the physical layout of the site and the likely relationship between the site and office building, I consider it likely that the appeal site is within its curtilage. Fencing the building off during events would not change this. While local residents may support the use of the site for the holding of events, as set out above, planning merits are not relevant to an application for an LDC. The appellant has not shown, on the balance of probabilities, that the land in question is not within the curtilage of a building and so I consider it unlikely the proposed development would benefit from the planning permission granted by the GPDO under Part 4, Class B of Schedule 2.
27. The appellant raises concerns about the Council’s consideration of their application, including delays in responding to queries and apparent reference to a houseboat known as Molliette. I note that in correspondence from the Council, an aerial photograph is shown with a circle around what (from my visit) appears to be a house boat in the dock. However, even if the officer referred to in the correspondence did think Molliette was a building, this does not address the Council’s points regarding the other buildings within the wider site. Even if there was some delay in the Council responding to the appellant’s queries, therefore, it seems unlikely that it would have prevented the appeal.

³ In order to benefit from the planning permission granted by the GPDO, the development would need to fall within the limitations set out in the relevant Class. As set out above, for Class B this excludes a building or land within the curtilage of a building.

28. During my visit, I saw that a number of shipping containers are located within the site, along with a substantial canopy, which has been constructed around a boat, adjacent to the office building, and which is evident on the aerial photograph provided by the Council, suggesting that it may have a sense of permanence and be a building. While neither party has mentioned these structures, since the appeal must fail anyway, I consider it is unnecessary to go back to the parties and seek comment on these matters.
29. It seems, from the appellant's evidence, that a premises license was applied for and approved in 2017 and renewed in 2018 for music events held on site. While the planning department may not have questioned the need for planning permission for either of those events, an application for a license is dealt with under different legislation and so may not have come to the attention of the planning department. The granting of a license does not constitute a planning permission, nor is it an indication that permitted development rights would apply.
30. The appellant has drawn my attention to other events which have taken place at sites along the Coast Road (128 Coast Road and 110 Coast Road). However, I have limited details of the events held, or the sites referred to and so it is not clear whether the sites benefit from planning permission for such events, whether the events were carried out under permitted development rights, or whether the events were carried out without the benefit of planning permission. It has therefore not been shown that these examples are comparable to the appeal scheme before me.
31. Thus, for the reasons set out above, I find that the appellant has not shown, with evidence which is sufficiently precise and unambiguous, that the proposed use of the site for a weekend food, drink and music festival over three days, in an open air space for no more than 28 days in total in any calendar year would, on the balance of probabilities be permitted by Class B of Part 4 of Schedule 2 of the GPDO. I have no reason to believe that such use of the site would not be development for the purposes of the Act, or that it would be immune from enforcement action for any other reason. Consequently, the appeal must fail.

Conclusion

32. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a weekend food, drink and music festival over three days, in an open air space for no more than 28 days in total in any calendar year is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M Savage

INSPECTOR