



Appeal Decision

Site visit made on 4 April 2026

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

an Inspector appointed by the Secretary of State

Decision date: 24 April 2026

Appeal ref: APP/B1550/X/23/3329366

221 Greensward Lane, Ashington, Essex SS5 5JN

- 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 and Mrs Staff against the decision of the Rochford District Council.
- The application Ref 23/00609/LDC, dated 30 June 2023, was refused by decision dated 29 August 2023.
- The application was made under section 192(1)(b) of the Act.
- The proposed development for which a certificate of lawful development is described in the application form as a “games room”.

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 LDC submission to the Council has created some confusion because of the proposed description and details. I need to address this preliminary matter. Firstly, the applicant needs to accurately describe what is being applied for and, in the case of applications for proposed development, the proposal needs to be clearly labelled to enable a local planning authority (LPA) to understand exactly what is involved. In this case the application form describes the proposal as the erection of a games room, but the decision notice refers to the proposed development as follows: *Lawful Development Certificate for a replacement outbuilding to be used as a gym*. Having regard to the bundle of evidence, which includes detailed plans, aerial images and historic permissions and decisions made by the LPA, the latter best describes the proposal, and I will proceed on this basis.
3. A plan identifying the land to which the LDC application relates is required. It seems to me that the LDC application site, which is outlined in red on drawing ref 2021/12/221GL Rev A sheet 14, includes all the land occupied by the appellants. However, the written submissions before me indicate that the s192(1)(b) LDC relates to the proposed outbuilding, which is depicted by a red rectangle located within an area outlined in thick black line. The application plans show the proposed design and layout of the extent of the proposed outbuilding (drawing ref 2021/12/221GL Rev A Sheet 13 of 14).
4. The case for the appellants is a simple one, namely, the proposed outbuilding would be 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 (“the GPDO”). The Council’s decision notice alleges the proposal would not be lawful had operations begun on the date of the LDC application. Essentially, while the proposed use is

deemed incidental and physical tolerances are met, the Council's arguments are that the development would fall foul of basic criteria in GPDO class E, because the outbuilding would not be located within the curtilage to no. 221.

For the following reasons, I disagree.

5. 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)¹ of the 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 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.
6. Starting with the unit of occupation², the assessment turns on the concept of physical and functional separation. There are 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.
7. Applying established planning unit principles to no. 221, it is a dwelling and detached garage located in a substantial and landscaped plot, which the Council say extends to about 1000 square metres in area, and gently slopes northwards away from the dwelling. The aerial image illustrates concentration of built ribbon development in residential use close to the frontage adjacent to the highway. Part of the land is located to the rear of no. 223 Greensward Lane where there is an existing stable block, which is used for storage purposes and about 25 metres to the north of the dwelling.
8. Although a parcel of undeveloped land to the north and northwest is enclosed by vegetation, this area is mainly landscaped with extensive spread of foliage. It seems to me that this area is characteristic of agriculture or a nil use. That approach seems consistent with the submitted site plan, which shows the property and its residential use much closer to the adjacent highway, and delineated by a thick black line on drawing ref 2021/12/221GL Rev A sheet 14. At the date of the LDC application, no. 221 formed a single unit of occupation. However, given the evidence about the land's past use, it is incorrect to ascribe a residential use to the whole planning unit because the area beyond the thick black line has a different purpose and is agricultural in appearance and quality albeit the land probably has a nil use.
9. As a matter of fact and degree, my analysis is that no. 221 comprises a single planning unit in a mixed residential and agricultural use. That approach is broadly consistent with the third situation identified in *Burdle*. The change in use of all the LDC application site from agricultural or nil use to incidental residential use would constitute development.
10. 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

¹ 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.

² *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

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.

11. 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 case³. 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.
12. In comparison to the area outlined in red on drawing ref 2021/12/221GL Rev A sheet 14, there is no evidence to cast doubt over the claim that in the past, the area upon which the proposed outbuilding would be located was used for incidental residential purposes. For example, the area is hard surfaced, it is enclosed by fencing and the existing stable contains items of domestic nature. There is considerable force behind the claim that the curtilage to no. 221 extends over the area outlined in black line, because the land is clearly capable of such use and has been landscaped and includes ornamental plants. In addition, this area is used for recreation by the occupiers of no. 221 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 the appeal dwelling. 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.
13. In terms of the considerations of layout and function, proportionality is relevant. No. 221 is a detached building and the area outlined in black does not extend over an extensive parcel of land. The dwelling is set in proximity to the latter. When considered in context of the dwelling, it is physically proximate to no. 221. It lies close to the dwellinghouse, and it is visually connected. Compared to the land to the north and northwest, the land outlined in black 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 appellants 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 area upon which the LDC application outbuilding would be situated has a significant degree of association given its spatial and visual characteristics.
14. The area immediately around and about no. 221 possesses characteristics that strengthen the actual and perceived relationship with the property and building. It is reasonable to conclude that the size of the curtilage is proportionate to the needs and function of no. 221. I am not persuaded that the size of the area outlined in black in drawing ref 2021/12/221GL Rev A sheet 14, and its useful function in relation to no. 221, 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.

³ 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. In my judgment and fatally for the Council's case, the association is of such a close relationship and at such an intimate level that all the area outlined in black on drawing ref 2021/12/221GL Rev A sheet 14, especially the land upon which the proposed outbuilding would be sited, form part and parcel of the dwelling known as no. 221. 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.

Conclusion

16. 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.

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 30 June 2023 the matter described in the First Schedule hereto, constituting proposed replacement outbuilding to be used as a gym, 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 on drawing ref 2021/12/221GL Rev A Sheet 13 of 14 and 2021/12/221GL Rev A sheet 14, shown as a red rectangle within an area of land delineated by a thick black line. 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: **24 April 2026**

Reference: APP/B1550/X/23/3329366

First Schedule

Proposed replacement outbuilding to be used as a gym illustrated on drawing ref 2021/12/221GL Rev A Sheet 13 of 14 and 2021/12/221GL Rev A sheet 14, shown as a red rectangle within an area of land delineated by a thick black line.

Second Schedule

Land edged as shown on the plan attached to this certificate and identified as no. 221 Greensward Lane, Ashington, Essex SS5 5JN.

IMPORTANT NOTES

This certificate is issued solely for the purpose of Section 192 of the Act. 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 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 LPA.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **24 April 2026**

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

Land at: 221 Greensward Lane, Ashington, Essex SS5 5JN.

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Scale: Do not scale.

