



Appeal Decision

Site visit made on 30 March 2026

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2026

Appeal Ref: APP/J1860/X/25/3363872

Wildberry Nook, Willow Road, Martley, Worcestershire WR6 6PS

- 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 and Mrs P Stansbie against the decision of Malvern Hills District Council.
 - The application ref M/25/00244/CLPU, dated 12 February 2025, was refused by notice dated 21 March 2025.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which an LDC is sought is the erection of an outbuilding ancillary to the main dwelling for residential storage/workshop and car parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application for an LDC was submitted under s192 of the 1990 Act to establish whether the proposed building would be lawful if instituted or begun at the time of the application. In this case, the proposed outbuilding has since been constructed. Nevertheless, as the application was submitted under s192, my decision will concern the lawfulness of the 'proposed development' as described.
3. For the avoidance of doubt, the planning merits of the proposed development are not relevant. The decision rests on the application of relevant law or judicial authority to the facts of the case. The onus of proof is on the appellants, and the relevant test is on the balance of probabilities.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. This turns on whether the building would constitute permitted development by virtue of the provisions of Article 3(1) and Class E(a) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

5. The appeal proposal is for an outbuilding for residential storage/workshop and car parking for purposes incidental to the enjoyment of the dwellinghouse. The application plans show that the building would measure 8m x 10.5m with a ridge height of 4m and eaves height of 2.5m. It would have a roller shutter door to the front and a pedestrian door and light panels in the roof. The outbuilding would occupy an area opposite the house on the other side of the driveway and would be

sited behind the rear garden of Honeycomb Cottage, a neighbouring property situated to the northeast.

6. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. This provision is subject to prescribed limitations and conditions. The Council's reason for refusal of the LDC relates solely to the location of the proposed outbuilding and the main dispute between the parties is whether that location is within the curtilage of the dwellinghouse.
7. The term 'curtilage' is not defined in the 1990 Act nor in any other legislation, including the GPDO. The Government's Permitted Development Rights for Householders: Technical Guidance 2019 (the Technical Guidance) describes 'curtilage' for the purposes of Schedule 2, Part 1 of the GPDO 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 large grounds, it may be a smaller area. This guidance provides helpful context as to the intended interpretation of the GPDO.
8. Established case law¹, some of which the appellants have referred to, directs that to support a conclusion that land forms part and parcel of the dwelling, and hence falls within the curtilage, the land must be intimately associated with the dwelling and must serve it in some necessary or reasonably useful way so that it can properly be regarded as part of the same domestic entity. Proximity alone is not a deciding factor, and there is no presumption that nearby land automatically falls within the curtilage. Regard must be had to physical layout, ownership and use or function (past and present). Physical enclosure is not necessary, but the degree to which the area falls within one enclosure is relevant as an aspect of the test of physical layout. The size of the curtilage relative to the dwelling may be relevant, but it is not determinative and need not be confined to a small area.
9. While curtilage defines an area of land in relation to a building, and not a use of land, it is not fixed for all time; its physical extent is readily capable of changing at any time. From the Court of Appeal's judgement regarding the case of *Sumption v LB Greenwich & Rokos* [2007] EWHC 2776 (Admin), on which the appellants place further reliance, it has become clear that land can very easily be incorporated into curtilage. The essential point remains that, in the relationship of the dwelling to its curtilage, this must be functional, and not merely spatial.
10. Having regard to all the authorities, the extent of the curtilage of a building is a question of fact and degree, and is therefore a matter for the decision maker, subject to normal principles of public law.
11. Wildberry Nook is a former stable building, the use of which has subsequently been granted residential use² on appeal and I was the Inspector for that case. The

¹ *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195; *Methuen-Campbell v Walters* [1979] 1 QB 525; *Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310; *Dyer v Dorset CC* [1988] 3 WLR 213; *Mc Alpine v SSE* [1995] JPL B43A; *Skerritts of Nottingham Ltd v SSETR (No.1)* [2000] EWCA Civ 60; *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin); *Challenge Fencing Ltd v SSCLG & Elmbridge BC* [2019] EWHC 553; *Hampshire CC v SSEFRA & Blackbushe Airport Ltd* [2021] EWCA 398; *Hiley v The Secretary of State for Levelling Up, Housing and Communities & Anor* [2022] EWHC 1289 (Admin).

² APP/J1860/C/23/3334212

dwelling is situated in the corner of a large open plot predominantly characterised by rough grassland enclosed by mature hedgerows along its boundaries. The land is situated behind two cottages which front the public highway. Access from the road is obtained via a loose stoned driveway which slopes downwards between the cottages. The appeal dwelling is situated on the left-hand side at the end of the drive and there is provision for parking immediately adjacent. The appeal land lies to the right-hand side at the end of the driveway, beyond the immediate area surrounding the dwelling.

12. The host dwelling is an L shaped, modestly sized structure providing compact one-bedroom accommodation. A limited area of land within the internal angle of the L-shape is laid out as formal domestic outdoor space, comprising a patio with raised planters. This patio extends marginally beyond the north-west elevation of the building furthest away from the road. Land beyond this area is largely open and extends uninterrupted to the site boundaries.
13. The LDC application sought to erect an outbuilding on land occupied by two small sheds, which are described as having fallen into a state of disrepair. At the time of my recent visit, they had been removed. It is stated that these structures were originally associated with the former equestrian use and later with the residential occupation of the dwelling. However, no substantive evidence has been provided to demonstrate how these structures or the land served a function incidental to the enjoyment of the dwellinghouse so as to support the appellants' position that the appeal land formed part of the residential curtilage.
14. The appellant places reliance on a description within my earlier appeal decision, which refers to "a stone driveway sloping down from the road to a parking area to the side of the building". I do not agree that this description relates to the appeal land. That reference described land immediately adjacent to the dwelling, which was evidently used for domestic parking, rather than the more open land beyond.
15. Furthermore, from my recollection of my previous visit to the site undertaken in connection with the earlier appeal in June 2024, the appeal land had the characteristics of the wider rough grassed area. At the time of my visit, the land was occupied by items including an open-sided metal structure, non-domestic equipment such as livestock water tanks and machinery, and what appeared to be a military vehicle. Elements of this storage remained evident at the time of the current appeal visit. Part of the area on which these items were stored was covered with stone similar to that used on the drive, and rough grass extended over the remainder of the land.
16. It is asserted that the appeal land has been used as residential curtilage since commencement of the residential use, and an annotated aerial image dated 6 March 2023 is provided to support the appellant's position that the land forms part of the curtilage with the dwelling. While this image indicates that part of the land was surfaced in a similar manner to the adjacent driveway, it lacks sufficient clarity or detail to demonstrate the nature or consistency of any domestic use over a meaningful period.
17. I also find that there is an absence of visual unity between the appeal land and the domestic space associated with the dwelling. From the evidence before me, the land proposed for the outbuilding does not read as part of a single, coherent domestic enclosure, but instead shares the physical characteristics and

appearance of the wider rough grassed area, as described above. While there are no physical structural boundaries, the driveway and the open space immediately surrounding the dwelling create a single readable enclosure with the dwelling. Beyond this, the character changes markedly. The appeal land does not exhibit features that would indicate it had been incorporated into the domestic enjoyment of the property, either visually or functionally. To a reasonable observer, it appears separate from the dwelling and its immediate domestic setting.

18. While the land is within the same ownership as the dwelling, ownership alone is not determinative of curtilage. I find that the land retains a non-domestic appearance and lacks the intimate physical or functional association with the dwelling required for it to be regarded as forming “part and parcel” of the residential curtilage. Accordingly, I am not persuaded that the land had been physically or functionally attributed to the residential use of Wildberry Nook to a degree sufficient to establish it as curtilage.
19. The appellants also place reliance on the concept of the planning unit, with reference to *Burdle & Williams v Secretary of State for the Environment* [1972], in support of their appeal. However, the identification of a planning unit is undertaken for the purposes of assessing the lawfulness of land use and whether a material change of use has occurred. It does not determine, and is not determinative of, the extent of the domestic curtilage for the purposes of Class E of the GPDO.
20. Curtilage is a separate legal concept and is assessed by reference to the physical layout, visual unity and functional relationship between the land and the dwelling. Accordingly, even if the appeal land were to form part of the same planning unit, or be included in the land within the red line for the change of use of the former stable building, that would not, in itself, establish that it has an intimate association with the dwelling or that it forms part of the residential curtilage.
21. On the information before me and for the reasons given, I conclude that it has not been demonstrated that, on the balance of probabilities, the proposed outbuilding would be located within land with an intimate association with the dwellinghouse. Therefore, as a matter of fact and degree, the land lies outside the curtilage of the dwellinghouse. The proposed development therefore does not fall within the scope of Class E of Part 1 of Schedule 2 to the GPDO, and the operational development as proposed would not have been lawful at the date of the application.

Other Matters

22. Had I considered the appeal land to form part of the curtilage of the dwellinghouse, I consider that the proposal would likely fail with regard to Class E.1(c) that any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. This is because, in my opinion, the principal elevation, identified by the presence of the main entrance, is most likely the north-east facing elevation on the inner section of the L shape.
23. The Technical Guidance explains that the principal elevation is typically the part of the dwelling that fronts, either directly or at an angle, the main highway, and usually accommodates main architectural features such as bay windows or a porch to the main entrance. Although in these circumstances, there are no clear architectural features that would ordinarily identify a principal elevation, it is my view that the elevation which faces the public highway is more likely to be a side elevation to the property, as noted in my previous decision. The main entrance to

the dwelling on the northeast elevation on the inner side of the L shape provides access to the open plan kitchen/dining and sitting room and would therefore likely form the principal elevation. In this respect, the proposed outbuilding would be situated on land forward of the principal elevation and would therefore not meet the requirements set out in Class E(c) of the GPDO.

Conclusion

24. I conclude therefore, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of an outbuilding ancillary to the main dwelling for residential storage/workshop and car parking was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR