



Appeal Decision

Site visit made on 6 May 2026

by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date 20 May 2026

Appeal Ref: APP/P3040/X/24/3357481

22 Costock Road, East Leake, Nottinghamshire LE12 6LY

- 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 A Lawless against the decision of Rushcliffe Borough Council.
 - The application ref 24/01217/CLUPRD, dated 15 July 2024, was refused by a notice dated 17 October 2024.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is a garage.
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Decision

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

Applications for costs

2. An application for costs has been made by Mr A Lawless against Rushcliffe Borough Council. This application is the subject of a separate decision.

Main Issue

3. Section 192(2) of the Town and Country Planning Act, 1990, as amended (the Act) indicates that if, on an application under that 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. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal, and the main issue is whether the Council's decision to refuse to grant the Certificate of Lawful use or Development (LDC) was well founded.

Reasons

4. The proposal is a detached garage on land at 22 Costock Road which is a detached dwelling. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for purposes incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure is permitted by Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO), subject to the restrictions set out in E.1, E.2 and E.3. However, the Council does not consider

that the proposed building benefits from the aforementioned rights as the proposed garage would not be within the curtilage of 22 Costock Road.

5. Curtilage defines an area of land in relation to a building and not a use of land. There is no all-encompassing, authoritative definition of the term curtilage. The Technical Guidance¹ 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 within large grounds, it may be a smaller area.
6. Generally, to fall within the curtilage of a building, it is enough that the land serves the purpose of the building in some reasonably necessary or useful manner, even though it need not be marked off or enclosed in any way. However, other considerations, such as past and present relationships or ownership and function, must be taken into account. In the absence of any statutory or authoritative definition, it was held in *Dyer*² that the term bears its restricted and established meaning, a small area forming part and parcel with the house or building which is contained or to which it was attached.
7. Having regard to all the authorities, including *McAlpine*³; *Burford*⁴ and *Sutcliffe v Calderdale*⁵, it is apparent that whether something falls within a 'curtilage' is a question of fact and degree and, thus, primarily a matter for the decision maker. What is also apparent is that the relevant date to determine the extent of the curtilage is the date of the LDC, but this involves considering both the past history of the land and how it is laid out and used at the time of the application. It is possible for the extent of curtilage to change over time.
8. No 22 Costock Road is situated at the corner of Meeting House Close and the site of the proposed garage forms part of its residential garden⁶. It is understood that the existing side garden area to No 22 was formerly in the ownership of the neighbouring property, No 1 Meeting House Close. However, in 2021, the appellant purchased the Land from his neighbour and incorporated it into the garden of No 22. Planning permission was granted in May 2024 for the appeal property to construct a two-storey side extension on part of that side garden area and to construct a new access off Meeting House Close to provide on-site parking⁷.
9. It is the Council's case that although the appeal site is recognised as having a lawful residential garden use that does not mean that it is curtilage. It is their view that the land was not historically part of the garden area to No 22 and that aerial images suggest that historically there was a physical barrier between the site of the proposed garage and the dwelling at No 22. Furthermore, the site history shows that historically this land was associated with the adjacent development of Meeting House Close and did not form part of the original grant of planning permission for No 22 Costock Road which only had a small strip of land to its side which linked its front and rear gardens.

¹ Permitted Development Rights for householders: Technical Guidance, September 2019.

² *Dyer v Dorsett CC* [1983] 3 WLR 231

³ *McAlpine v SSE* [1995] JPL B43.

⁴ *Burford v SSCLG & Test Valley BC* [2017] 1493 (Admin)

⁵ *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310

⁶ 22/00853/CLUExD, Lawful Development Certificate for use of Land as residential garden land.

⁷ APP/P3040/W/23/3332638. Two storey side extension and new parking space accessed off Meeting House Close.

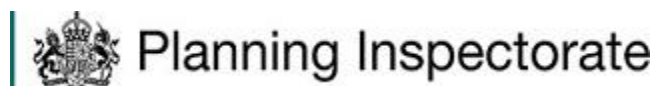
10. As set out in paragraph 7 above, there is no dispute that the land where the proposed garage would be sited did not form part of No 22's "original" curtilage but was purchased from a neighbour and incorporated as residential garden in 2021. However, the curtilage of a dwelling can change over time. There is no physical separation between the side garden area and the house, and the land all forms part of one enclosure with the dwelling and its rear garden. A new hedgerow has been established around the property's perimeter and the land has been in use as a garden for No 22 for a number of years. I am also mindful that planning permission has been granted on this garden area for a two-storey side extension to the dwelling and as a parking area for the property. Thus importantly, it serves as an access, parking and garden area for the house and is physically and functionally associated with it. Therefore, I am satisfied that, as a matter of fact and degree, the land where the garage would be sited is within the curtilage of the dwellinghouse for Part 1 purposes.

Conclusion

11. For the reasons given above, I conclude that the Council's refusal to grant a Certificate of Lawful Use or Development in respect of a garage at 22 Costock Road, East Leake, Nottinghamshire LE12 6LY was not well-founded and the appeal should succeed. I will exercise powers transferred to me under section 195 (2) of the 1990 Act, as amended.

Elizabeth Pleasant

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 15 July 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed garage is “permitted development” falling within Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, for which planning permission is granted by Article 3(1) of that Order.

Signed

Elizabeth Pleasant

Inspector

Date 20 May 2026

Reference: APP/P3040/X/24/3357481

First Schedule

Garage (as shown on Drawing Nos: 2405/01 and 2405/02, dated 11 June 2024. Scale 1:200.

Second Schedule

Land at 22 Costock Road, Easte Leake, LE12 6LY

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated 20 May 2026

by Elizabeth Pleasant DipTP MRTPI

Land at: 22 Costock Road, EAST LEAKE, LE12 6LY

Reference: APP/P3040/X/24/3357481

Scale: Not to Scale

