



Appeal Decision

Site visit made on 21 May 2026

by **T C King BA(Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 July 2026

Appeal Ref: APP/W1525/X/24/3342034

Dane Court, Copt Hill, Danbury, Chelmsford, CM3 4NW

- 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 Jon Hannaford against the decision of Chelmsford City Council.
 - The application ref 23/01805/CLOPUD, dated 9 November 2023, was refused by notice dated 3 January 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 the construction of a single-storey store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In an appeal under s195 of the 1990 Act against the refusal of a LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of that applied for do not fall to be considered. The decision will be based strictly on evidential fact and on relevant case law.

Main Issue

3. The Council's reason for refusal relates solely to the issue of what constitutes curtilage in this particular instance. The size and dimensions of the proposed development were submitted to the Council as part of the application, but the Council is not alleging that the proposed development fails to meet any of the other conditions or limitations set out in Class E.
4. The main issue is, therefore, whether the Council's decision to refuse to grant a LDC was well founded. The point of dispute between the parties is whether or not the land where the proposed building would be sited falls within the curtilage of the dwelling and, therefore, whether the proposal can be considered as permitted development in accordance with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO).

Reasons

5. The Council, in considering the application, concluded that the land upon which the store building would be erected did not constitute residential curtilage relating to the site's large, detached dwelling. The dwelling is set within an expansive plot of

open, well-tended land, fronted by a large, imposing dwelling, and surrounded by woodland.

6. Curtilage is a legal term describing the relationship of land to a building; it is not a use of land for planning purposes and neither is it necessarily the same as the planning unit. There is no authoritative or precise definition of the term 'curtilage.' However, there are several authorities on the matter which I set out below, that illustrate, in the planning context, the concept of residential curtilage and also its status when also taking into account associated garden land.
7. Curtilage defines an area of land in relation to a building. It is not fixed for all time; its physical extent is readily capable of changing through time. From the Court of Appeal's judgement regarding the case of *Sumption v LB Greenwich & Rokos* [2007] EWHC 2776 (Admin) it has become clear that land can very easily be incorporated into curtilage. The appellant, in the current case, has drawn my attention to the fact that the red line shown on various past applications relating to the site has differed. This might be the case but I am not of the view that this has any bearing on the current appeal. On the basis that residential curtilage can change over time, I am assessing this appeal on the land's physical arrangement, as is now evident from my site visit observations.
8. Historical authority on this issue is the case of *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P. & C.R. 195, where it was held that:

"The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way."
9. The above judgement, which is somewhat generalised, has effectively been overtaken by subsequent court rulings whereby the concept of residential 'curtilage' has been better clarified. Also, in applying *Sinclair-Lockhart* to the current proposal, whilst a residential outhouse in near proximity to the dwelling might reasonably be considered as serving the house in some necessary or useful way, I would question whether an extensive store, with its floorspace annotated on drawing no. 967/A3/330 rev C), on the face of it, has little relationship to the residential use, and being distanced in excess of 50m from the site's dwelling, can be considered in similar terms.
10. It was held in *Dyer v Dorset CC* [1989] that curtilage constitutes a piece of ground attached to a dwellinghouse and forming one enclosure with it; thereby the area attached to and containing a dwellinghouse and its outbuildings. More recently, the Court of Appeal in *SSETR v Skerritts of Nottingham* [2000] decided that the definition of a curtilage in relation to a building must remain a question of fact and degree to be decided on a case-by-case basis.
11. The essential point, in the relationship to the dwelling to its curtilage, is that this must be functional, and not merely spatial. This was addressed in the judgement of *Methuen-Campbell v Walters* [1979] 1 QB 525 where it was held that for land to fall within the curtilage of a building there should be an intimate association, such as to lead to the conclusion that it can be considered as part of the building. The case involved whether a paddock in the grounds of a house could be seen as being

within the curtilage of the house. Again, fact and degree came into play. Physically, the paddock was well apart from the house, though was contiguous with its garden.

12. The Council cites the very recent case of *R (on the application of Hampshire CC) v SSE* [2021] EWCA Civ 398. Referred to as the *Blackbushe* case, it was held that for land to be described as curtilage it must form part and parcel of the building, and not that of wider land associated with the building. The 'planning unit' and curtilage are two separate and entirely different concepts, and one must not be confused with the other. Moreover, in the current appeal, the initial application form describes the use as 'commercial/business/service'. Taken together with the proposed building's extensive floor area; 15.9m x 8.9m, and the said drawing, the intended store does not convincingly suggest any intimate or necessary relationship with the dwelling.
13. In *Blackbushe* the Court upheld the test for determining curtilage is as set out in the *Methuen-Campbell* judgement, where it was made clear that any determination is primarily a matter for the decision maker, taking into account the relevant considerations including attachment to the house and enclosure with it, the physical layout of the building and land; use or function, past and present and whether the size of the land is proportionate to the size of the building. Ownership is also a consideration, but is obviously not determinative in itself.
14. Taking all these factors together, it was held that the correct test to apply was whether the land was so intimately associated with a building that the land formed part and parcel of the building. Here, for the reasons I have described, I consider that there would be no such relationship.

Conclusions

15. To summarise, the appellant takes the view that the replacement dwelling previously created defines the current use of the land in its entirety and it would appear that, on this basis, the appellant has advanced the argument that the area of the site upon which the store would be sited, must constitute residential curtilage. I disagree, and consider that the Council's representations which take the contrary view that curtilage has no direct association with land occupation is the correct approach in instances such as this.
16. Consequently, in taking a fact and degree approach, I have concluded that the LDC applied for cannot be reasonably granted for the store as it would not be permitted development within Schedule 2, Part 1, Class E of the GPDO.
17. Accordingly, I find that the Council's decision was well founded, and I shall, therefore, exercise my powers under s195(3) of the 1990 Act, as amended

T C King

INSPECTOR