



Appeal Decision

Site visit made on 1 September 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2026

Appeal Ref: APP/W1525/X/25/3367278

28 St. Nazaire Road, Chelmsford, Essex CM1 2EQ

- 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 Colin Siddle against the decision of Chelmsford City Council.
- The application ref 25/00116/CLOPUD, dated 23 January 2025, was refused by notice dated 24 February 2025.
- 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 construction of single storey pitched roof outbuilding.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a LDC is well-founded.

Reasons

3. An application under section 192(1)(b) of the Act¹ seeks to establish whether any 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.
4. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may 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 ii) They do not constitute a contravention of any enforcement notice then in force.
5. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be 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.

¹ Town and Country Planning Act 1990 (as amended)

6. The main thrust of the appellant's case is that the proposed development is granted planning permission by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO). Schedule 2, Part 1, Class E of the GPDO permits the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...².
7. There is no dispute that the proposed building would meet the size limitations set out under Class E. This appeal will turn on whether the proposed building would be for a purpose incidental to the enjoyment of the dwellinghouse. Case law has established that consideration of the term "incidental to the enjoyment of the dwellinghouse" there should be some connotation of reasonableness in the circumstances of each case, it should not be based solely on the unrestrained whim of a householder².
8. The test is whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse. The word 'incidental' connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling house.
9. 28 Nazaire Road comprises a modest two storey dwelling (the host dwelling) with a footprint of just over 50sqm³ and a wraparound garden which sides on to Tobruk Road. The rear garden is subdivided by fencing and a brick built outbuilding, which fully encloses a section of garden. A door in the side elevation of the host dwelling appears to have been bricked up and there appears to be no unimpeded access to a substantial section of garden directly from the house (fencing limits access from both the front and the rear).
10. It is proposed to erect an outbuilding measuring just over 10m by just under 6m, with a floor area of just over 50sqm. The appellant initially proposed an internal layout comprising a games room and a gym. Following refusal of the application, the appellant revised the internal layout, introducing a home office and swapping the gym and games room. The outbuilding would be located within the section of garden fenced off from the main house. Double doors to the outbuilding would be located in the rear, with another door in the side elevation facing Tobruk Road. There would be a window in the elevation facing towards the host dwelling.
11. It is stated that the games room would accommodate a pool table with suitable cueing space. However, the space provided appears significant. While darts, a TV and sofa are also shown on the floor plans, they relate poorly to each other, with the sofa facing the darts board rather than the TV. Although there is a room labelled 'gym', it is not clear why the proposed space is required in addition to the space provided in the 'Games Room'. There is no indication as to the equipment that would be located within the 'gym'.
12. Furthermore, it is not clear why two external doors would be required to the games room, neither of which face towards the host dwelling. It is more usual for habitable accommodation to have multiple accesses due to the need to comply with fire regulations, than an outbuilding which does not include habitable accommodation.

² Emin v SSE & Mid Sussex DC [1989] JPL 909

³ The Council suggests the footprint of the dwelling measures approximately 50.25m², which is not disputed by the appellant.

Although the building would be located within the garden of No 28, given its substantial size and position to the side of the main dwelling, and the location of fenestration, it would appear separate, rather than a subordinate outbuilding which is incidental to the use of the main dwellinghouse.

13. My attention has been drawn to an example of an outbuilding that secured a certificate in the London Borough of Havering, reference D0054.25, which would be used as a games room, home office and storage. However, I do not have full details of that application before me and cannot be sure it is comparable to this appeal. Furthermore, that is a decision by a different local planning authority. I am not bound by it, nor does it indicate that a different decision should be taken in this case, which I have considered on the evidence before me.
14. I note that planning permission was refused for the construction of a new dwelling on the land adjacent to 28 Nazaire Road and dismissed on appeal, reference APP/W1525/W/22/3303361. For the avoidance of doubt, this is not what is proposed and so it is not relevant to the appeal before me.
15. Having regard to the substantial space proposed, and the proposed design of the building, with two separate entrances, I find that the appellant has not shown that the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. I therefore find, on the balance of probabilities, that the proposed development would not be permitted by Part 1, Class E of the GPDO and the appeal must fail.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the construction of single storey pitched roof outbuilding 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