



Appeal Decision

Site visit made on 22 September 2026

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 26th October 2026

Appeal Ref: APP/A4710/X/25/3376641

1 Sutcliffe Wood Lane, Hipperholme, Brighouse, Calderdale HX3 8PR

- 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 Scott Timperley against the decision of Calderdale Metropolitan Borough Council.
 - The application ref 25/00825/192, dated 4 August 2025, was refused by notice dated 14 November 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 described as 'Remove existing outbuildings, and build a new outbuilding'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In an appeal under s195 of the 1990 Act against the refusal of a LDC, the burden of proof is on the appellant. The standard of proof is the balance of probabilities. As such, matters in respect of Council site visits, the Council's handling of the case and the planning merits of the proposed development do not fall to be considered.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

4. In order for an LDC to be granted under s192, it is necessary for the appellant to show, on the balance of probabilities, that the development would be lawful at the date of the application.
5. Under Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse is permitted development, subject to various provisos. There appears to be no dispute between the parties that the proposed building would comply with the physical limitations set out in paragraph E.1. of Class E.
6. The dispute between the main parties is limited to whether or not the proposed structure lies within the curtilage of the dwelling.

7. The GPDO does not attempt to define the term 'curtilage' and there is no other authoritative definition for planning purposes. The '*Technical Guidance – Permitted development rights for householders*' document sets out that some terms are not defined in the GPDO but are understood in the case of 'curtilage' to mean '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.'
8. However, there are several authorities on the matter of curtilage. In *Methuen-Campbell v Walters* [1979] 1 QB 525, the Court of Appeal held that, for land to fall within the curtilage of a building, it must be so intimately associated with the building as to support the conclusion that it forms part and parcel of the building. In *R (oao Hampshire CC) v Blackbushe Airport* [2021] EWCA Civ 398 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 Court upheld the test for determining curtilage set out in the *Methuen-Campbell v Walters* judgment.
9. Ultimately, whether land forms part of the curtilage is a question of fact and degree for the decision maker. In reaching that judgment, regard should be had to all relevant circumstances of the case. Relevant considerations may include attachment to and enclosure with the building, the physical layout of the building and land; use or function, past and present and the size and scale of the land in relation to the building. Ownership may also be a consideration but is not determinative in itself.
10. No 1 is a traditional stone built end terrace property that sits within a hillside location on Sutcliffe Wood Lane. The topography of the area is such that the land to the rear of No 1 (and the detached garage) falls away steeply towards a valley and woodland. The area edged with a blue line and identified as curtilage in the site layout plans is of an irregular shape and considerable size. Although the majority of this land lies to the northern side of No 1, it is shown as encompassing the dwelling, a detached garage and the outbuilding proposed to be demolished.
11. The appellant states that they have used the land as part of the residential garden since their occupation of the property in 2007. It has been put forward that it accommodates domestic features including outbuildings for the storage of garden equipment and furniture, a decking area, a hot tub, parking and storage of a campervan and trailers. It is also stated that it is used for social gatherings such as family events and barbecues.
12. My site observations confirmed that along with a small mechanical digger, the land in question contains these structures, platforms and furniture and I have no reason to doubt that it is used for the social purposes suggested. Nonetheless, whilst the use of land is relevant to the consideration of curtilage, use and curtilage are distinct concepts. The use of land for garden-related or other domestic purposes does not, in itself, demonstrate that the land forms part of the curtilage of the dwellinghouse.
13. The Council's evidence, which includes historic cartographic records, illustrates the extent of the original curtilage of No 1. The historic map published in 1922 and entitled 'Yorkshire CCXXXI.10' shows it to be tightly drawn around No 1 and to

follow the uniform depth and alignment of the rear boundaries of the original neighbouring properties in the adjoining terrace row.

14. Whilst it is not entirely clear which boundary wall the Council is referring to in its submissions, I saw an original stone wall that runs alongside the flank elevation of No 1 on my site visit. This wall defines the access route to, and encloses, the rear terrace areas associated with the original dwellings in the terrace row. Its position and alignment are consistent with the tightly drawn curtilage boundaries shown in the historical map 'Yorkshire CCXXXI.10'.
15. There has been some encroachment into the land to the rear of the terrace row over the years, as shown in the historical map published in 1959 and the Council's aerial images. However, this map and a coloured Google Earth image dated 31 December 2002 show most of the land edged blue on the submitted plans to be laid out as a separate parcel of land outside of, and to the side of the original stone wall. This arrangement is markedly different from the established pattern of residential curtilages associated with the neighbouring properties in the terrace row.
16. Indeed, the substantially larger and irregular extent of the land outlined in blue, relative to the dwellinghouse and the pattern of neighbouring residential curtilages, is indicative of land that extends beyond what would typically be regarded as residential curtilage.
17. Whilst I have had regard to the appellant's historical photograph, which I am informed predates the 1950s, the image is of poor quality, being both low-resolution and blurred. As such, I am unable to determine with any certainty what feature the arrow is intended to identify. This photograph therefore does not amount to sufficiently precise and unambiguous evidence of the historical extent of the residential curtilage. Furthermore, whilst it is asserted that outbuildings have been present on the land since the 1980s, no substantive evidence has been provided to support that claim.
18. On my site visit I also saw that the disputed land benefits from a separate vehicular access track, which is provided via a metal gate on a section of Sutcliffe Wood Lane that is much further to the north of No 1. This access point is not shown on the submitted plans and provides direct vehicular access to the land independently of the dwellinghouse. The metal gate and a section of this access track are also located on land that is outside of the blue line.
19. Furthermore, my site observations confirmed that No 1 already benefits from a detached garage (as shown in the plans), which fronts Sutcliffe Wood Lane and is accessed directly off this highway. Whilst the existence of a separate access is not determinative of whether the land falls within the curtilage of the dwellinghouse, it is indicative of a degree of physical independence from it.
20. Accordingly, the presence of this dedicated access, when read alongside the historic boundary wall, and the Council's historic mapping evidence and coloured images, supports the view that the land has existed as a separate plot rather than forming part of the established domestic curtilage.
21. The appellant contends that the "10-year rule" would apply in any event. However, this application has been made under s192, which relates to the lawfulness of proposed development. The consideration of a s192 appeal for a Class E

outbuilding does not include whether garden use is lawful through the passage of time. As previously noted, the issue before me is whether, at the date of the application, the land forms part of the dwellinghouse's curtilage for the purposes of Class E of the GPDO. Length of use, in itself, is not determinative of that question.

22. The appellant has also drawn my attention to planning permission 08/01832/HSE, which he considers to demonstrate that the land has formed part of the dwellinghouse curtilage from at least 2008. However, I do not have the full details of this case before me, including the approved plans, the decision notice or officer report. In the absence of this information, I am unable to ascertain the extent of the application site, whether the planning permission related to the land now in dispute, or whether the status of the land as residential curtilage formed part of the decision maker's assessment.
23. Nor does the absence of enforcement action necessarily indicate that the local planning authority accepted the land as residential curtilage. There may be a range of reasons why enforcement action was not pursued, and no evidence has been provided to demonstrate that a formal determination regarding the status of the land was made.
24. Therefore, whilst I accept that the land in question contains a number of domestic features and has been used in conjunction with the dwellinghouse for several years, I do not find that these matters demonstrate that it forms part and parcel of the dwellinghouse. Having regard to the historic mapping evidence, together with the physical characteristics of the site and all of the evidence before me, the appellant has not demonstrated, on the balance of probabilities, that the land shares the intimate association with the dwellinghouse necessary for it to be regarded as forming part of its curtilage.
25. Accordingly, the proposed development would not be on land within the curtilage of a dwellinghouse. For the reasons given above, I conclude that the Council's refusal to grant a LDC in respect of the removal of existing outbuildings and the building of a new outbuilding was well founded. The appeal should fail, and I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Mark Caine

INSPECTOR