Planning Inspectorate

Appeal Decision

Site visit made on 2 November 2026

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date:18th November 2026

Appeal Ref: APP/F3545/X/24/3354872
Pelambech, Fen Road, Pakenham, Suffolk IP31 2LT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr T Lucas against the decision of West Suffolk Council.
- The application Ref DC/24/1060/CLP, dated 25 July 2024, was refused by notice dated 16 September 2024.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
- The development for which a certificate of lawful use or development is sought is erection of detached outbuilding for swimming pool.

Decision

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

Main Issue

2. The main issue in the appeal is whether or not the Council's refusal to issue the LDC was well-founded.

Reasons

3. General planning permission for a building within the curtilage of a dwellinghouse incidental to its enjoyment is given by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') subject to exceptions and limitations (E1, E2, E3).

4. The Council refused the LDC application on the basis that it determined that the proposed development would be located outside of the curtilage of the dwellinghouse. The Council also argued in its appeal statement that the building is not reasonably required for the incidental enjoyment of the dwellinghouse.

5. Notwithstanding these areas of disagreement, the Council does not raise any opposition to the appellant's position that the proposal would otherwise meet all the exceptions and limitations in respect of Class E[1]. I have seen no evidence to find to the contrary.

[1] For instance, the single-storey building would not exceed height or ground coverage requirements and would not be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.

Curtilage

6. The Council's view is that the curtilage only encompasses land narrowly confined to the area surrounding the house (Pelambech) and does not extend to a former allotment/sand pit at the rear of the site. It is said that the rear of the site does not have lawful use as the dwelling's residential garden, has been physically separated from it, was purchased separately and has not been historically associated with either it or the previous dwelling at the location.

7. The land in question is sited immediately behind, and accessed directly from, the rear of the dwellinghouse. It contains an area of lawn together with flowerbeds, shrubs, ornamental trees, covered bench and shed/summer house. On the basis of all the submissions and my site visit, I find as a matter of fact and degree that it is intimately associated with Pelambech and serves the purpose of the house as its residential garden[2]. It is part and parcel of it.

8. I am also satisfied, placing significant weight on the signed statement of the previous owner Mr Jacobi, that the land was in use as above from 1997 following his purchase of the house and land together. Further, being satisfied from the appellant's submissions that the land continued to be used in the same way after his purchase[3], I find that the residential garden use is lawful (having been in such continuous use for at least 10 years before the date of application for the LDC[4]). I have addressed this point because, while curtilage defines an area of land in relation to a building and not a use of land, land can only be treated as part of the curtilage of a building if its use (as part of the planning unit comprising the dwelling and the land occupied with it) is lawful.

9. It is of no account, as highlighted by the Council, that there has recently been removal of vegetation that previously formed a natural boundary between the property and the highway.

10. For these reasons, I conclude that the land upon which the building is proposed is within the curtilage of the dwellinghouse.

Incidental to the enjoyment of the dwellinghouse

11. The Council raises the case of *Emin v SSE & Mid Sussex DC* [1989] JPL 909. That piece of case law confirms that regard should be made to the use to which it is proposed that the building would be put and of the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwelling.

12. The proposal is for a single storey building (complaint with the dimensional requirements of E1) to accommodate a swimming pool, sauna and gym with toilet and shower facilities. This proposed use of the building would provide clear incidental quality as regards the enjoyment of the dwelling. I am satisfied that a building of the proposed size would be genuinely and reasonably required and not excessive for these purposes. The use would be subordinate to the main use of the property as a dwelling, notwithstanding the relatively large footprint of the proposal, and I do not find that the size of the building reasonably required is 'based on the unrestrained whim' of the occupier.

[2] The facts were materially different in the appeal before the Inspector in Appeal Ref APP/R3650/X/18/3205674, and according so were his findings. The house in that appeal was in substantial grounds, and the building was proposed in a location separated from the house by intervening woodland.
[3] And noting that the sales particulars refer to, and show photographs of, the 'beautifully landscaped garden'.
[4] Sections 191(2) and 171B(3) of the Act.

Conclusion

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a detached outbuilding for a swimming pool was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

Planning Inspectorate

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 25 July 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

General planning permission is afforded by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015

Signed

Andrew Walker
Inspector

Date 18th November 2026
Reference: APP/F3545/X/24/3354872

First Schedule

Erection of detached outbuilding for swimming pool

Second Schedule

Pelambech, Fen Road, Pakenham, Suffolk IP31 2LT

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.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated:18th November 2026

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

Land at: Pelambech, Fen Road, Pakenham, Suffolk IP31 2LT

Reference: APP/F3545/X/24/3354872

Scale: Do not scale

