Planning Inspectorate

Appeal Decision

Site visit made on 13 October 2026

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2026

Appeal Ref: APP/Y2430/X/25/3368675
Willowmead, 5 Hollands Lane, Twyford, Leicestershire LE14 2HP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") against a refusal to grant a certificate of lawful use or development ("LDC").
- The appeal is made by Mr Gary Bird against the decision of Melton Borough Council.
- The application ref 25/00489/CL, dated 12 May 2025, was refused by notice dated 3 July 2025.
- The application was made under section 191(1)(b) of the 1990 Act.
- The development for which an LDC is sought is: Natural pond and landscaping.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. My decision rests on the facts of the case, and on relevant planning law and judicial authority. Therefore, the planning merits of the existing development are not relevant to an appeal against an application for an LDC. Consequently, I cannot consider any submissions in this regard, including the Council's concerns regarding *"flood risk, ecological impacts and potential regulatory requirements"* as detailed within the reason for refusal.

3. The description of development in the application form differs from that used by the Council in its decision and by the appellant in their appeal form. Section 191(4) of the 1990 Act allows the description of the development to be modified where an LDC is sought for existing development. Therefore, I have used the appellant's description from the appeal form as it accurately reflects the development and omits superfluous text. This is reflected in the banner heading above.

4. I am aware of an appeal[1] against an enforcement notice for the same development as described in the LDC. This is the subject of a separate decision. However, my determination is based solely on the evidence submitted in relation to this appeal.

5. I am also aware of another appeal[2] for the same site concerning a replacement dwelling, triple garage/pool, driveway and pond that was dismissed. The pond referred to in that appeal is the same pond that is the subject of this appeal. However, that Inspector noted that the pond lay outside the red line application boundary and therefore, it did not form part of the appeal proposal. Consequently, the pond was not considered further in that decision.

[1] Appeal Ref APP/Y2430/C/25/3368766
[2] Appeal Ref APP/Y2430/W/25/3368765

6. The appellant has raised several concerns regarding the Council's handling of their planning application, LDC and the enforcement investigation. However, this has not prevented me from forming a decision on the LDC.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant an LDC for the construction of an existing natural pond and associated landscaping ("the pond") was well-founded.

Reasons

8. For an LDC to be granted under s191 of the 1990 Act, it is necessary for the appellant to demonstrate, on the balance of probability, that the construction of the pond would have been lawful on the date of the application.

9. The pond has been constructed a substantial distance to the southwest of the dwellinghouse known as "Willowmead", 5 Hollands Lane. It was formed by excavating the ground to a depth of approximately 1m (according to the appellant) with the excavated material deposited around part of its perimeter to form a mound. At the time of my site visit, the pond was dry as construction had been paused. However, it is the appellant's intention to install a liner to retain water.

10. Section 55(1) of the 1990 Act defines development as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Engineering operations for the purposes of s55(1) involve works with some element of pre-planning which would normally, but not necessarily, be supervised by a person with engineering knowledge. However, this does not mean that an engineer must be engaged in the project, simply that it is the kind of operation on which an engineer could be employed, or which would be within their area of expertise.

11. It is my judgement that the works to excavate the ground and create a mound would have involved a degree of pre-planning to co-ordinate the operations. Furthermore, having regard to the depth and extent of the excavation, the works required to create the pond would have been relatively substantial, could have required an engineer to be employed, and is likely to have involved the use of mechanical equipment. Therefore, as a matter of fact and degree, I find that the pond constitutes an engineering operation and is *"development"* as defined by s55(1) of the 1990 Act.

12. The Council state that the land on which the pond has been excavated is not in active agricultural use and it has not been demonstrated that a pond is reasonably necessary for the purposes of agriculture as required by Part 6, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("GPDO"). The appellant asserts that the land is *"not agricultural"*. Consequently, I am satisfied that the pond is not permitted development under Part 6, Schedule 2 of the GPDO.

13. There is a dispute between the main appeal parties whether the land on which the pond has been excavated is within the residential curtilage of the dwellinghouse for the purposes of determining whether it is permitted development under Part 1,

Schedule 2 of the GPDO. What constitutes the curtilage of a dwellinghouse is a question of fact and degree and is primarily a matter for the decision maker[3].

14. I accept that curtilage is not defined by lines shown on an Ordnance Survey plan. It is also important to recognise that the question of curtilage is not a matter of land use; all the land recognised as being in residential use as a garden may not necessarily be regarded as being part of the curtilage. Caselaw has established that for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of it[4]. Other considerations include physical layout; ownership (past and present); and use or function (past and present).

15. The dwellinghouse and the surrounding land (including the pond) are all in the same ownership and it appears from the evidence before me that this was the case prior to the appellant purchasing the property in 2024.

16. The land includes a detached dwellinghouse with a large, detached outbuilding in proximity of the dwellinghouse's northern elevation. Hardstanding forms an area for the parking and turning of vehicles. At the time of my site visit the dwellinghouse was undergoing extensive renovation works and the land immediately surrounding it to the south, west and east had been almost completely cleared of all vegetation. Fencing and a hedgerow were in proximity of the dwellinghouse's western elevation and there was evidence that a former boundary treatment in proximity of the dwellinghouse's southern/southeastern elevations had been removed.

17. To the northeast/east of the dwellinghouse, the land was being used for the storage of building materials associated with the renovation works. A hardcore access led to a detached building that appeared to have been recently constructed. The intervening land between the dwellinghouse and the new building included grassed areas, a vegetable patch, a polytunnel and young trees. To the south, southeast and west of the dwellinghouse, the land comprised an extensive area of grassland that had the appearance of a field/paddock with saplings planted close to a brook. The pond has been constructed within this field/paddock; a substantial distance from the dwellinghouse. A second field/paddock adjoins the first field/paddock to the northeast and has a similar appearance.

18. Photographic evidence and the sales particulars for the dwellinghouse show most of the land to the northeast/east of the dwellinghouse (now containing the new building, hardcore access etc.) previously forming part of the field/paddock. Furthermore, the recently cleared area immediately surrounding the dwellinghouse previously comprised a garden with a lawn, planting and a bench. The dwellinghouse, detached outbuilding, its garden and hardstanding were enclosed by a post and rail fence and hedgerows that clearly demarcated them from the surrounding field/paddock and had a distinctly different appearance.

19. The evidence before me shows that the field/paddock in which the pond is located was previously used for the grazing of sheep by someone other than the property's owner. The appellant also states that fencing was in place to protect the planted area of garden from the sheep but has since been removed. Furthermore, the

[3] Burford v SSCLG & Test Valley BC [2017] EWHC 1493 Admin
[4] Methuen-Campbell v Walters [1979] 1 QB 525

sales particulars for the property describe a *"smallholding of approximately 7 acres [that] offers well-maintained and fenced grass paddocks"*.

20. Consequently, the evidence before me suggests that, prior to the appellant's ownership and the removal of garden vegetation and boundary features, the field/paddock containing the pond comprised separate land with no apparent functional relationship to the dwellinghouse. For these reasons, it is my judgement that the field/paddock in which the pond is located is not intimately associated with the dwellinghouse.

21. The appellant asserts that the pond is located within the village settlement and the field/paddock has been included within the red line boundary of previously approved planning applications involving the construction of a garage. However, these factors are not determinative of the extent of the dwellinghouse's curtilage.

22. For these reasons, I am not persuaded that the land on which the pond has been constructed forms part of the dwellinghouse's curtilage. Consequently, the appellant cannot rely on the permitted development rights set out in Part 1, Schedule 2 of the GPDO. As such, on the balance of probability, the pond does amount to development, and it has not been demonstrated that it is permitted development.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant an LDC for the pond is well-founded and therefore, the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act.

A Berry

INSPECTOR