Planning Inspectorate

Appeal Decision

Site visit made on 4 November 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2026

Appeal Ref: APP/R0660/X/25/3375428
Brynlow Farm, Artists Lane, Nether Alderley, Cheshire East SK10 4UA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr & Mrs Ed Kershaw against the decision of Cheshire East Council.
- The application ref 25/1370/CLPUD, dated 2 April 2025, was refused in part by notice dated 8 September 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 'Erection of homes leisure suite and garage incidental to the enjoyment of the existing dwelling Brynlow Farm'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellants applied to the Council for the erection of a homes leisure suite and garage incidental to the enjoyment of the existing dwelling at Brynlow Farm. The proposal comprised two buildings, the first a leisure suite, comprising a swimming pool, with steam room, jacuzzi, changing facilities and toilet, and a gym. The second, a garage. The Council certified that the proposed garage would be lawful, but refused to certify the proposed home and leisure suite outbuilding would have been lawful. This appeal therefore concerns the proposed homes leisure suite and not the garage.

3. The appellants and Council use the term 'menage' to describe an enclosed parcel of land dressed with aggregate and bound by post and rail fencing used for the exercise of horses. Since the dictionary definition of 'menage' is a group of people living together in one house, I shall use the word 'manège' which, in my experience, is generally used to describe an area within which horses are trained or exercised. My use of the term 'manège' rather than 'menage' has no bearing on my consideration of the appeal.

Main Issue

4. The main issue of the appeal is whether the Council's decision to refuse the application in part is well-founded. This appeal will turn on whether the proposed homes leisure suite would be located within the curtilage of the dwellinghouse and if so, whether it would be for a purpose incidental to the enjoyment of the dwellinghouse.

Reasons

5. An application under section 192(1)(b) of the Act[1] 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.

6. 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.

7. 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 an 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.

8. The main thrust of the appellants' 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…'.

9. There is no dispute that the proposed building would meet the size limitations set out under Class E. What is in dispute is whether the proposed building would be located within the curtilage of the dwellinghouse and whether it would be for a purpose incidental to the enjoyment of the dwellinghouse.

Curtilage

10. The appeal site comprises a two storey detached dwelling, outbuildings and a manège. The appeal site is accessed via Artists Lane, with a tarmacked drive leading to the dwelling and stables building and a hardcore track leading to a manège. The manège is stated to lie less than 30m from the rear of the dwelling, a point which is not disputed by the Council.

11. The appellants have provided a plan, which shows land within their ownership outlined in blue and the extent of land they consider to be curtilage outlined in red. Outside the alleged curtilage, but contiguous with it are fields, which together extend to around 15.5ha. It is suggested that the use of the manège is associated with the use of the existing house and stable block and that the manège has been in use for over 10 years. Prior to that, it is stated to have been part of the domestic garden of Brynlow Farm.

[1] Town and Country Planning Act 1990 (as amended)

12. The Act does not define the term ‘curtilage’. The Permitted development rights for householders: Technical Guidance (2019) advises ‘curtilage’ is 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.

13. Appeal decision APP/F2605/X/23/3327845 has been drawn to my attention. The approach, at paragraph 13, referencing the case of *HM Attorney-General ex rel Sutcliffe & Rouse Hughes v Calderdale BC* [1983] JPL 310 has been commended to me, as has the case of *Burford V Secretary of State for Communities and Local Government & Anor* [2017] EWHC 1490.

14. From the decisions and case law cited, it is possible to distil the following: When considering the extent of a building’s curtilage, regard must be had to three principal factors in respect of the relevant land. These factors concern the ownership position (past and present), its use or function (past and present) and the building/land’s physical layout. It is for the decision-maker to adjudge the curtilage given the ordinary meaning of words, on a fact and degree basis, and by deciding what weight to give to each of the relevant factors.

15. 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 the building. Curtilage does not need to be confined to a small area, though the size of the curtilage relative to the building may be relevant. Whether the land or building said to be within the curtilage are ‘ancillary’ to the main building will be relevant but there is no legal requirement that the curtilage should be ancillary. Physical enclosure is not necessary but the degree to which the building and claimed curtilage fall within one enclosure is relevant as an aspect of the test of physical layout.

Ownership: Past and present

16. The property is stated to be one registered title which is owned by the appellants and has always been held under a single title. The appellants purchased the property in January 2025. A letter from the Branch Manager of Andrew J Nowell & Company (the Estate Agent) states that prior to the appellants’ purchase of it, the property was sold in 2016 and subsequently rented out, with three separate tenancies during that period (2016-2025).

17. A Statutory Declaration of an individual, whom I shall refer to as JC, supports the appellants’ contention that the property has been held under a single title, confirming the extent of the property and their ownership of it between June 1974 to June 1983.

18. The Council does not dispute the appellants’ suggestion in this regard and, while there is a significant gap between JC’s ownership of the property and the property being rented in 2016, I see no reason why ownership of parts of the property would have changed during that period.

19. From the evidence, it seems likely that the appeal site has been held under a single title for a significant period of time. I afford this factor modest weight, since the land includes a substantial area, including land which the appellants do not dispute does not fall within the curtilage of the dwellinghouse.

Use/function

The appellants state that the manège has been in use for over 10 years and that prior to that period it was part of the domestic garden of Brynlow Farm. It is suggested that the use of the site is that the stables and the house were used in conjunction with the manège and thus all functioned as a single entity. The Council, by contrast, states that the land has never been 'certified' as garden land used in association with the functions of the dwelling.

1975 to 1983

20. Within their statutory declaration, JC explains that the land (which includes the manège) during their time at the property was not used as part of the wider land holding but was part and parcel of the house and used in association with it. They also state that it is their 'clear recollection' that the 'land shaded blue' was always part of the garden of the house.

21. However, it is not clear what the individual means by the term 'part and parcel' or how the land was used in association with the house. Furthermore, the plan referenced shows a blue shaded area which washes over the dwellinghouse, the stables and the manège, as well as surrounding land. While the manège appears to have been constructed after their occupation of the property (because one is not visible in the aerial photograph dated 2010), even if the stables were not present, the land shaded blue included the dwellinghouse, which is clearly not garden.

22. The area where the manège is now located appears to have previously been covered by trees. I am mindful that the photographs provided do not include the period referred to by JC (1974 to 1983) and that the presence of trees (if indeed there were any at that time), of itself, does not mean that the land was not part of the garden to the dwellinghouse. However, it is not clear from JC's statement as to *how* this area was used in association with the dwellinghouse. The statement lacks precision and does not explain in sufficient detail how the land was used at that time.

2016 - 2025

23. The Estate Agent states that the first tenant (2016-2018) and final tenant (2022-2025) kept their personal horses on site and utilised the stables and manège throughout their occupancy. They state that the middle tenant (2018-2022) did not have an equestrian interest and did not keep horses at the property.

24. The appellants suggest that the Estate Agent has an intimate knowledge of the property, however, it is not clear how they (the Estate Agent) know how the site was used. It seems unlikely that a branch manager would have overseen day-to-day activities at the site. Furthermore, while the Estate Agent's evidence points towards the keeping of horses in association with the use of the dwellinghouse, the information provided within the letter is limited and does not enable me to understand how the manège was used by the different tenants.

2025 – the date of the application

25. The appellants purchased the property in January 2025[2] and, while I note that they have discussed the use of the site with an Estate Agent asserted to have an

[2] As detailed in Appendix 2 of the Appellants' Statement of Case.

intimate knowledge of the property, it is unclear what the appellants' firsthand knowledge is regarding the use of the property prior to their purchase of it.

26. The LDC application was made in early April 2025, a limited time after their purchase of it. During my visit, I saw grass growing through the surface of the manège and the fencing in a poor state of repair in places, suggesting it has not been used for some time. While my site visit was carried out more than a year and a half after the LDC application was made, it is unclear how the site has been used between the appellants' purchase of it and the date of the application.

27. The appellants suggest that, in terms of function, the logical use of the site is that the stables and the house were used in conjunction with the manège and that they all functioned as a single entity. However, while this points towards the land being a single planning unit, that is not the same thing as curtilage. While the exercise and training of horses may have been incidental to the enjoyment of the dwellinghouse, evidence on this matter is limited.

Layout

28. During my visit, I saw that fencing has been erected around a substantial area, including the dwellinghouse, the manège and an area of land outside the suggested curtilage. The land within the fencing appeared neatly mown at the time of my visit. The appellants suggest that fencing and hedges lead to the conclusion that the site edged red functioned as a single domestic curtilage and has a different character to the land edged blue.

29. However, it is not clear which fencing and hedges the appellants suggest should lead me to conclude that the land edged red comprises curtilage. The fencing which was *in situ* at the time of my visit does not appear to have been present in 2021, nor does it align with the extent of land asserted by the appellants to comprise curtilage. It is not clear how the extent of the asserted curtilage has been derived, having regard to features on the ground (past or present).

30. The Council suggests that the area where the proposed building would be located appears a parcel of land, separated and distinctly detached from the main dwellinghouse by a track and row of trees. It is suggested that the aerial imagery for the site clearly shows the area of land as separated and divided from the main residential curtilage. The Council states that it considers the residential curtilage associated with the dwelling to be the area to the north, beyond the track serving the manège and 'tree bank'.

31. The Council has provided an aerial photograph dated 2021, which shows what appear to be a band of trees or dense vegetation between the dwellinghouse and the manège. The vegetation appears to have enclosed a grassed area to the rear of the dwellinghouse. In 2021, the track, which leads to the manège, also appears to have given access to the fields beyond. An aerial photograph dated 2010 shows a similar band of vegetation enclosing the grassed area to the rear of the dwellinghouse. Despite its proximity to the dwellinghouse, the manège is likely to have been visually and physically separated from it in 2021.

32. From my site visit, it is clear that the site has changed since 2021. Vegetation has been removed, affording clear views between the manège and the dwellinghouse and fence boundaries have changed, enclosing a substantial area, including the

manège, dwellinghouse and parts of field (or paddock) to the south and east of the manège.

33. The appellants suggest that it is possible to walk from the house to the manège without passing through numerous gates, however, the manège itself remains fenced. Furthermore, the track to the north of the manège is still evident, despite being partly grassed over. While the manège may be less than 30m from the rear of the dwellinghouse, from my inspection of the site I consider it is sufficiently distant, separated by fencing[3] and the track, that it does not appear intimately associated with the dwellinghouse.

34. Despite the appellants recognising the different factors that should be considered, they have provided little explanation as to its use, function or layout following their purchase of it, or at the time of the application. It is not clear from the evidence when the changes to the appeal site were made, including the removal of trees and erection of fencing, or what the layout of the premises was between the aerial photograph being taken in 2021 and the date of the application. There is also a lack of clarity regarding the layout of the appeal site at the date of the application.

35. I recognise that the manège is likely to have been for the exercise and riding of horses kept in the nearby stables and that occupants of the house may have walked their horses from the stables to the manège. However, while the evidence submitted points towards the manège forming part of the planning unit, the planning unit and curtilage are not necessarily the same. The surrounding fields, for example, may also have been used for the exercise and riding of horses kept in the stables. That would not mean that they are necessarily within the curtilage of the dwellinghouse. Indeed, the appellants accept that the curtilage does not extend across their entire landholding (which, given its extent and character, I would concur).

36. While the manège and the dwellinghouse are likely to have remained in the same ownership for a significant period of time, given the physical layout of the site, separating it physically and visually from the dwellinghouse, I consider it is not intimately associated with the dwellinghouse to support the conclusion that it forms part and parcel of the dwellinghouse. Although a manège or arena may typically be fenced off, that fact does not alter my conclusion in this regard.

37. Thus, as a matter of fact and degree, I find that the proposed leisure building would not be located within the curtilage of the dwellinghouse.

Whether for a purpose incidental to the enjoyment of the dwellinghouse

38. The Council has gone on to consider whether the building would be for a purpose incidental to the enjoyment of the dwellinghouse and, since both parties have addressed this matter, so shall I. The proposed leisure suite plan shows that the building would be laid out with a swimming pool, spa[4], plant room, steam room, changing room, wash room and gym with gym store. It is not clear what the space between the plant room and the steam room would be used for.

39. In support of their case, the appellants have drawn my attention to appeal reference APP/R0660/X/24/3345078, which concerned a proposed outbuilding which would include a double garage, a swimming pool, a bathroom, plant room,

[3] The post and rail fencing surrounding the manège.
[4] The spa is not shown on the Proposed Site Plan – Leisure Suite, drawing 2420-1020 rev B

office and a utility/kitchenette. The points of dispute in that case were whether the proposed utility/kitchenette would be incidental to the enjoyment of the dwellinghouse and, owing to the circulation space around the swimming pool, whether this would be reasonably required, and whether the outbuilding would be 'excessively large' when compared to the main dwellinghouse.

40. I do not have full details of that case before me and, while the appeal decision has been provided, it is not clear what the size of the building would have been, or what the extent of the circulation space around the swimming pool was. I cannot, therefore, be sure it is comparable to the appeal scheme before me. Nevertheless, I agree that there is no reason in principle that a covered swimming pool could not be incidental to the enjoyment of a dwellinghouse. Indeed, Class E refers to '*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*…'.

41. The fact that such a building has to be required for a purpose associated with the enjoyment of a dwelling house cannot, however, rest solely on the unrestrained whim of the person who dwells there but connotes some sense of reasonableness. Size may be an important consideration but is not, by itself, conclusive. 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.

42. The proposed plans show that the building would measure just under 35m by around 16m, with an eaves height of around 2.5m and an overall height of around 4m. While the pool would be smaller than one typically found in a public facility[5], it would have generous circulation space around it. The appellants suggest that circulation space of 2m allows for comfortable and safe movement and that guidelines for public pools require much more space around the edges of pools, especially at the ends, for storage and circulation. However, I have no guidelines before me. Furthermore, what is being proposed is not a public pool, nor would the circulation space be limited to 2m.

43. While I accept some circulation space would be required to enable safe movement around the pool, including maintenance, the space that would be provided appears overly generous, particularly between the pool and the various rooms which are located off the main pool room. Circulation space within the gym would also be generous. The proposed plan shows what appears to be a running machine, rowing machine, a couple of mats and weights. However, it is not clear why such a substantial space, as well as a store, would be reasonably required for such a limited range of equipment.

44. While I have not been provided with detailed measurements of the main dwellinghouse, from the proposed site plan, it seems that the proposed building would have a footprint which is significantly greater than the footprint of the dwellinghouse. The word incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling house itself. However, while single storey, given its substantial size relative to the dwellinghouse, it would not, in judgement, appear subordinate to it.

[5] Less than 25m

45. Having regard to the substantial space proposed and the proposed design of the building, with significant circulation space, I find that the appellants have not shown, on the balance of probabilities, 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 have also found that the proposed building would not be located within the curtilage of the dwellinghouse. Thus, the proposed homes leisure suite is development for which planning permission is required and the appeal must therefore fail.

Conclusion

46. For the reasons given above, I conclude that the Council's refusal in part to grant a certificate of lawful use or development for a homes leisure suite 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