



Appeal Decision

Site visit made on 15 December 2025

by Timothy C King BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2026

Appeal Ref: APP/M1595/X/24/3336878

Burnside, Southend Road, Corringham, Thurrock, Essex SS17 9ET

- 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 M Reed against the decision of Thurrock Borough Council.
 - The application ref 23/00998/CLOPUD, dated 4 August 2023, was refused by notice dated 19 October 2023.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is the erection of a proposed swimming pool building for the occupants of the property at Burnside.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address of the appeal site set out on the Council's decision notice is misleading, given the actual land involved, and it is different to that provided by the appellant on his original application form. Having visited the site and familiarised myself with the land's contextual setting, I am satisfied that the appellant's description is the correct address for the land the subject of the proposal. Accordingly, the address on the banner heading above reflects that of the application made.
3. In an appeal under s195 of the 1990 Act against the refusal of a LDC the burden of proof is on the appellant. The test of the evidence is one of balance of probability. As such, the planning merits of that applied for do not fall to be considered. The decision will be based instead strictly on evidential fact, planning legislation, and relevant case law.

Main Issue

4. The main issue in this appeal is whether the operations described on the application form would have been lawful if instituted at the date the application was made, and whether the Council's decision to refuse to issue an LDC was well founded.

Reasons

5. Burnside is one of some 14 dwellings set back off this stretch of Southend Road. All of these properties' rear gardens, apart from Burnside, which sits towards the middle of this row, are set behind what is effectively a linear rear boundary. Roughly at this point, Burnside's rear garden opens out into a much wider,

- substantial area of land. With this included, it more than doubles the depth of the dwelling taken together with its front garden along with what would have presumably been the extent of its original rear garden. This additional piece of land, which appears as a substantial grassed expanse, is under the owner's control, and is effectively a continuation of garden land. Accordingly, the extent of Burnside is now something of an anomaly to the prevailing pattern of development.
6. The Council's decision was based on its assessment that the said area of land lies outside the property's residential curtilage. Accordingly, as Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO) only applies to '*Development within the curtilage of a dwellinghouse*', the intended development would not be covered by Class E thereto.
 7. Class E is concerned with outbuildings incidental to the enjoyment of a dwellinghouse. To qualify the proposed building has to satisfy a series of provisos and conditions. One of these is that if any part of the building proposed would be within 2m of the boundary of the curtilage of the dwellinghouse the height limit for the total development is restricted to 2.5m from ground level. Instead, the building would be to a height of 4m. Further, it is proposed that the building's footprint would be distanced considerably less from the boundary than that required. The Council estimates a separation of just 1.5m.
 8. Irrespective, therefore, of whether or not the piece of land involved would constitute Burnside's residential curtilage, the proposed development would not fall within the parameters of Class E, and the appeal must fail in this regard.
 9. The proposed building's siting aside, the appellant's representations are concerned primarily with attempting to show that the piece of land to the rear can be considered as curtilage, and a series of aerial photographs have been provided in an attempt to support the claim. Accordingly, in planning terms, I now examine the concept of residential curtilage and also garden land.
 10. The term 'curtilage' is not defined in the 1990 Act nor in any other legislation, including the GPDO. Its meaning and application is derived, instead, from court judgements.
 11. In terms of what can be reasonably considered as residential curtilage it was held in *Dyer v Dorset CC* [1989] that curtilage constitutes a piece of ground attached to a dwellinghouse and forming one enclosure with it; thereby the area attached to and containing a dwellinghouse and its outbuildings. The case of *McAlpine v SSE* [1995] did not depart from the above judgement save for the mention of it being constrained to a small area around a building. More generally, the Court of Appeal in *SSETR v Skerritts of Nottingham* [2000] decided that the definition of a curtilage in relation to a building must remain a question of fact and degree in each case.
 12. Curtilage defines an area of land in relation to a building, and not a use of land. It is not fixed for all time; its physical extent is readily capable of changing at any time. From the Court of Appeal's judgement regarding the case of *Sumption v LB Greenwich & Rokos* [2007] EWHC 2776 (Admin) it has become clear that land can very easily be incorporated into curtilage.
 13. The essential point, in the relationship of the dwelling to its curtilage, is that this must be functional, and not merely spatial. This was addressed in the judgement of

Methuen-Campbell v Walters [1979] 1 QB 525 where it was held that for land to fall within the curtilage of a building there should be an intimate association.

14. The 'planning unit' and curtilage are two separate and entirely different concepts, and one must not be confused with the other. The whole unit of occupation, which is that ringed red on the location plan that accompanied the LDC application, is the planning unit. In the recent judgement of *Hampshire CC v SSEFRA* [2020] it was held that the correct test to apply was whether the land was so intimately associated with a building that the land formed part and parcel of the building.
15. In this instance I find that the land under Burnside's control, in its entirety, makes up one definable planning unit. However, it is important in the planning context not to use the word 'curtilage' loosely to refer to the entirety of the surrounding land forming part of a property, and it is apparent here that the terms 'curtilage' and domestic 'garden' are not interchangeable,
16. Weighing all the evidence up, considering the size of the land relative to the dwelling and the extent of its identifiable original rear garden, I do not find that there is any intimate association between these two pieces of land. It is an obvious disproportionate relationship and, given the factors I have outlined, the aerial photographs do not help the appellant's case.

Conclusions

17. I have found that the land at issue cannot be seen as having been subsumed into the dwelling's curtilage, nor is there any intimate relationship. Instead, the land in question represents a substantial extension to the rear garden.
18. Although the refusal reason failed to mention that the proposed building would not fall within the parameters of Class E the Council clearly took the line that as, fundamentally, the rear land was not residential curtilage it was not necessary to mention this additional flaw in the appellant's claim. I conclude, therefore, that the Council's decision to refuse the LDC was well founded
19. The appeal, therefore, does not succeed. Accordingly, I shall exercise my powers under section 195(3) of the 1990 Act, as amended.

Timothy C King

INSPECTOR