

DELEGATED DECISION REPORT

SMD/2025/0008
Valid 06/01/2025

COPPICE SIDE MANOR
COPPICE LANE
WINNOTHDALE

**CERTIFICATE OF
LAWFULNESS FOR
PROPOSED ERECTION OF A
BUILDING TO FORM
HYDROTHERAPY POOL, GYM
AND COVERED BBQ AND
SEATING AREA**

**(CERTIFICATE OF
LAWFULNESS - PROPOSED)**

MAIN ISSUES

Would the proposed development be permitted by Class E, Part 1 Schedule 2 of the GPDO 2015.

SITE DESCRIPTION

Coppice Side is in a rural location between the hamlets of Freehay, Winnothdale and Greatgate. It is a detached property set back from the highway with a small, detached garage to the frontage. The property is provided with direct access from Coppice Lane and is set within a good-sized plot.

PROPOSAL

To build an L shaped detached single storey building to the side of the dwelling, approximately 17 metres to the west. The building would have a total footprint of some 78sq m. The plan annotations indicate that the building would be used to provide a gym with changing and shower room, a swim spa, and a covered BBQ seating area. The building would have a flat roof and its maximum height would be just less than 3m.

The application seeks confirmation and determination that the proposed development would be permitted by Class E, Part 1, Sched 2 of the GPDO and not require planning permission.

The application is similar in terms to an application that was refused in 2019 and 2024. In that application a similar building was proposed in a similar location. The application was refused because it was determined that the building would not be provided within the curtilage of the dwellinghouse and that the applicant had failed to demonstrate that it would be required for purposes incidental to the enjoyment of the dwellinghouse. With this application the design and location of the proposed building has been revised. There is some evidence in the form of statements from the applicant relative to the past use of the land as 'garden' and their requirements relating to the purpose of the building, and the applicant points to a householder planning application, approved in 2018, that accepted a location plan with a red edge that included and surrounded the area of land that forms this application site.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

84/13642/OLDDC Outline Permission for Dwelling. Approved

86/00264/OLDDC Reserved Matters for Dwelling. Approved

SMD/2018/0712 Alteration to store building, change of ridge and enlarge. Approved.

SMD/2019/0654 Certificate of Lawfulness for proposed building. REFUSED.

SMD/2024/0320 Certificate of Lawfulness for proposed building. REFUSED.

OFFICER COMMENTS

Would the development occur within the curtilage of the dwellinghouse?

It is the curtilage area and boundary which govern the tolerances under Class E, rather than the boundary of the land in the same ownership or occupation; and permitted development rights are limited to the curtilage. With this application a site and location plan has been included showing the house and its grounds, an area that includes the land on which it is proposed to locate the building, outlined in red. A parcel of land to the south of the dwelling, under the applicant's ownership but not claimed as the dwelling's curtilage, is outlined in blue.

The concept of the "curtilage" for the purposes of the GPDO was recently reviewed by the High Court in *Burford v SSCLG* [2017] J.P.L. 1300 at [32]–[37] per Supperstone J. The judge summarised the relevant factors for determining the curtilage as: (1) the physical layout of the building and the structure; (2) their ownership, past and present; (3) their use or function, past and present. The application of those factors to a given set of facts is a matter of planning judgment for the decision taker, to be impugned only on Wednesbury grounds, see [46].

The relevant authorities were reviewed in *McAlpine*³ and the following characteristics of curtilage defined: a) it is confined to a small area about a building; b) intimate association with land which is undoubtedly within the curtilage is necessary to make the land under consideration part and parcel of that undoubted curtilage land; and, c) physical enclosure is not necessary. I have also had regard to the Council's reference to *Tandridge* (11/09/1996 DCS No. 035-505-753), which established that the garden area should normally be proportionate to the size of the dwelling.

An area of land could not properly be described as a curtilage unless it formed part and parcel of the house or building which it contained or to which it was attached, *Dyer v Dorset CC* [1989] Q.B. 346, [1988] 5 WLUK 33 applied. It was the relationship between the main dwelling and the land in question which was relevant when considering function and/or use, *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No.1)* [2001] Q.B. 59, [2000] 2 WLUK 950 applied. Determining the curtilage was a question of fact and degree: "curtilage" connoted a building or piece of land attached to a dwelling house and forming one enclosure with it: it was not restricted in size, but had to be fairly described as being part of the enclosure of the house to which it referred, *Lowe v First Secretary of State* [2003] EWHC 537 (Admin), [2003] 2 P. & C.R. 24, [2003] 2 WLUK 184 applied (see paras 32-37 of judgment).

In this case the development would be carried out on an area of land to the west of the dwelling that was not shown and included within the red edge on the siting and layout plan that was approved with the planning permission to build the dwellinghouse in 1984 (Reserved matters 1986). That original plan identifies boundary with a hedge some 5-6m from the side of the dwelling.

Since that time, aerial photographs show that this area appears to be regularly mown, any of the original boundary hedgerow was either never implemented or long since removed.

Aerial photographs and site inspection show that the land is part of one parcel that surrounds and contains the dwellinghouse enclosed by hedgerow as one contained area. The side of the dwellinghouse and a slim patio pathway is open to the wider land to the west. Given the considerable size of the dwelling the land to the west, despite its considerable area, has a degree of intimacy and immediate location with the dwelling.

Providing 'functional' purpose and relationship with the dwelling house, brick pillars, automatic gate and a bound hardstanding driveway and parking area have been provided to the northern edge of the land.

On review and with consideration of submitted additional material it is reasonable to conclude that this area of wider land to the side of the dwelling should be considered to be part of the dwelling's curtilage.

Is the building required for a purpose incidental to the enjoyment of the dwellinghouse?

Purposes incidental to the enjoyment of a dwellinghouse have been held to include those connected with the running of the dwellinghouse or with domestic and leisure activities of the persons living in it. Specifically, a games room to accommodate a billiards table has been held (in an appeal decision reported at [1987] JPL 733) to satisfy that objective. In *Emin v SSE* [1989] JPL 909 the High Court accepted that it would be wrong to consider that the proposed buildings could not reasonably be said to be required for a use reasonably required for the enjoyment of the dwellinghouse simply because it would provide more accommodation for secondary activities than the house provided for primary activities; that was not part of the test as to which buildings fell within this class.

In *Emin* it was said that "the fact that such a building had to be required for a purpose associated with the enjoyment of the dwellinghouse could not rest solely on the unrestrained whim of him who dwelt there. It connoted some sense of reasonableness in all the circumstances of the particular case.....the word 'incidental' connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse itself." The judge also said "...the question as to whether a building qualifies for the purpose of the order would raise questions of fact and degree which are quintessentially appropriate for consideration by a planning authority or the Secretary of State or his Inspector, who were well practised in the problem of resolving sometimes difficult and finely balanced issues of fact in the field of land use planning."

Two principles have emerged from the cases. First that something which is 'incidental' cannot be a dwellinghouse nor, therefore, can it be for something for the provision of a dwellinghouse purpose, such as a bedroom or kitchen. Secondly, that it is a matter of fact and degree in each case. The building must be "required" for the incidental purpose, it is a matter primarily for the occupier to demonstrate what incidental purposes he intends to enjoy.

The proposed plan marks an internal area for a swim/spa area alongside a gym at 46 sqm, with an outdoor kitchen and covered seating area covering 17 sqm. The building would be 17 m from the side of the dwellinghouse.

It is said in submissions that the facilities are required in the treatment and management of the applicant's stated medical conditions. Appeal examples have been provided demonstrating that gyms, spas and pools are routinely accepted as uses/purposes incidental to the enjoyment of the dwellinghouse.

An 'incidental' functionality is dependent on a close relationship or proximity to the dwellinghouse so that it is used in connection, and with some ease of access, between the dwelling and the incidental building. The 17m proximity in this case, within the context of the size of the dwelling, the plot and the scope of the curtilage as discussed above, is not considered impractical for the building to properly function for incidental purposes.

In order to satisfy Class E it is not enough to meet the physical criteria and state that the building will be used as a gym and spa pool. It is also necessary to provide enough evidence to show, on the balance of probability, that the building is reasonably required for a use which is truly incidental and not for a primary residential use. Considering all the circumstances and submitted explanation as to why the building is required for the stated purposes, it is concluded on balance that this building is required for a purpose incidental to the enjoyment of the dwellinghouse. It would therefore be permitted development under Class E.

Having regard to this judicial advice and the circumstances of this case, the proposed new building may be reasonably considered as incidental to the enjoyment of the dwellinghouse. Thus as a matter of fact and degree the proposals come within the terms of Class E of Part 1 of GPDO.

Other Considerations

This application is like a previous application that was refused in 2019 and 2024 because the application failed to demonstrate that the building would be provided within the curtilage of the dwellinghouse; and be of a size and facility reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The application is submitted by the same applicant and concerns a similarly sized and proposed building that would be in a similar location within the enclosed area of land to the northwest of the dwellinghouse. If such a building was to be provided in the curtilage of the dwelling and was required for purposes incidental to the enjoyment of the dwelling, then in all other respects a building of this height dimension would be permitted.

The new evidence with this application is provided in the form of sworn statements from the applicants, the dwelling's residents, explaining that they have lived at the property since June 2018. They state that the land is used as 'garden' and that in their knowledge it was used as such by previous owners. A recent appeal decision that this Council received relative to a certificate application for a proposal to provide a garage building within a larger area of ownership adjacent to the dwelling. The Council had refused the application, but the appeal was allowed with the Inspector finding that a garage would be provided within the dwelling's curtilage (APP/B3438/X/20/3259656). In that case the Inspector noted and gave weight to the presence of off-road parking, some areas of hardstanding and vegetable plots, an outbuilding used as a garage/workshop, a small store and evidence of a septic tank within the lawn. Importantly, in that case the Inspector was able to identify that the disputed land was more than just 'garden' but used for identifiable residential purposes by the occupiers of the house for a significant period "Importantly, it serves as an access, parking and garden area for the house and is functionally associated with it".

In this application case, the land is described as, and has the appearance of, a 'garden', it is mown grass land that is open to and consistent with other lawned land that surrounds the dwelling. The land in question includes a large, powered access gate between brick pillars and a driveway hardstanding. There is evidence therefore, that the land has in the past and is currently used for identifiable residential purposes that have functional connection and usefulness to the dwellinghouse. In these regards, as a matter of fact and degree, a conclusion in the case of this application, that the proposed building would be provided within the curtilage of the dwellinghouse for Part 1 purposes.

CONCLUSION / PLANNING BALANCE

On review of the case under the terms of this repeat application, it is considered for all the above reasons, which in summary include the application successfully demonstrating:

- The building would be provided within the curtilage of the dwelling;
- A building of the proposed size and uses are 'required' for purposes incidental to the enjoyment of the dwellinghouse; and
- The proposed uses of the building amount to purposes incidental to the enjoyment of the dwellinghouse.

The grant a certificate of lawful use or development is justified.

OFFICER RECOMMENDATION : APPROVE

Case Officer: Ben Hurst

Recommendation Date: 04/03/2025

X 

Signed by: Jane Colley Signature

On behalf of Staffordshire Moorlands District Council