

CERTIFICATE OF LAWFULNESS SUPPORTING STATEMENT



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**Certificate of Lawfulness at Homeland,
Eaughton Road,
Whaplode Drove,
PE12 0SP**

Client : Mr S. Jeffs

Date February 2015

Project No JDA/2013/195

This document has been prepared to accompany an application for a Certificate of Lawfulness in respect of a proposal to build a detached swimming pool outbuilding (Class E) at Homeland, Eaughton Road, Whaplode Drove, PE12 0SP

Planning Legislation :

Householder permitted development rights are set out in Town and Country Planning (General Permitted Development) Order 1995 ("the 1995 Order") and amended by the by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 and the Town and Country Planning (General

Permitted Development) (Amendment and Consequential Provisions) (England) Order 20143. Part 1 of Schedule 2 to the 1995 Order (as amended in 2008, 2013 and 2014) sets out the permitted development rules concerning what extensions, improvements and alterations a householder may make to their house and the area around it without the need for an application for planning permission.

Class E covers the provision of buildings and other development on land surrounding the house (the “curtilage”).

In April 2014, the Department for Communities and Local Government published formal Technical Guidance - “Permitted development for householders”. The pertinent section of this publication is Class E which has been repeated below verbatim with the applicants observations are presented in **red** bold text.

Class E

This provides permitted development rights within the area surrounding a house (‘the curtilage’) for:

- . ***(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure or***
- . ***(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas***

The applicant contends that the proposed building is “incidental to the enjoyment of the dwellinghouse” - further commentary below

Class E sets out the rules on permitted development for buildings etc within the area of land surrounding a house (guidance under Class A above (**A.1 (a)**) describes what will be the “curtilage”). Buildings should not be attached to the house and should be built for purposes incidental to the enjoyment of the house. Paragraph E.4 of Class E indicates that purposes incidental to the enjoyment of the house includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the house.

The extent of ‘residential curtilage’ is described by the red line on the Ordnance Survey based site location plan indicating the extent of the Application Site Area. All of the land within the red line is part and parcel of the gardens to Homeland.

But the rules also allow, subject to the conditions and limitations below, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a dwelling house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.

Under Class E, the following limits and conditions apply:

E.1 Development is not permitted by Class E if -

(a) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)

The proposed extension is significantly less than 50% of the total area of the curtilage therefore E.1. (a) is satisfied.

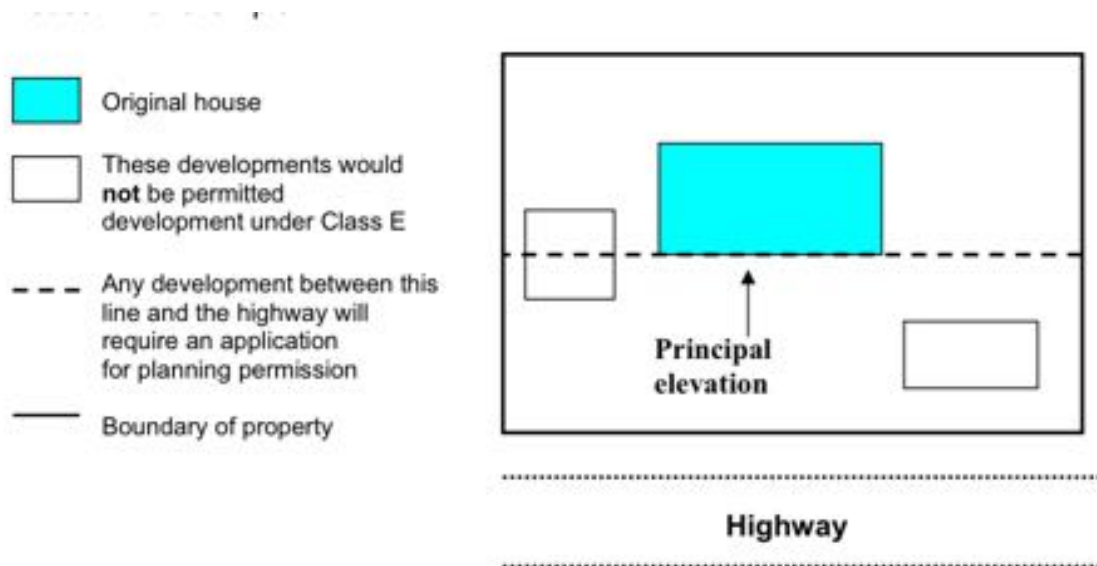
The total area of ground around the house covered by buildings, enclosures and containers must not exceed 50% of the total area of land around the original house. The 50% figure must also take account of any extensions to the original house under Class A of the permitted development rules or any extension to the original house that has been granted planning permission. The 50% limit excludes the area covered by the house as originally built but does include any separate detached buildings built prior to 1948 (e.g. a detached garage).

b) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse

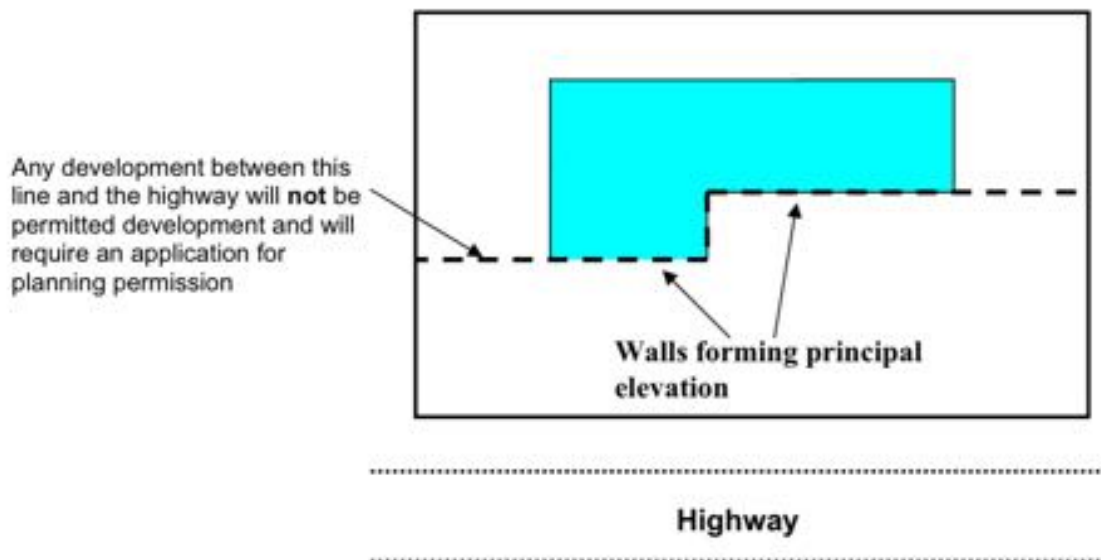
The applicant states that the proposal is NOT situated forward of the principal elevation which is considered to be the road frontage elevation therefore E.1. (b) is satisfied.

The guidance on Class A permitted developments - section (d) - describes what will be the principal elevation of a house.

‘Forward of a wall forming the principal elevation’ means that development is not permitted under Class E in any area in front of the principal elevation of a house. It also prevents permitted development anywhere in front of a hypothetical line drawn through the principal elevation to the side boundary of the land surrounding the house. For example:



Where the principal elevation comprises more than one wall facing in the same direction, all such walls will form part of the principal elevation and the line for determining what constitutes ‘extends beyond a wall’ will follow these walls:



(c) the building would have more than one storey

The proposal is single storey therefore E.1. (c) is satisfied.

Any buildings within the curtilage can only have one storey. Buildings with more than storey are **not** permitted development and will require an application for planning permission.

d) the height of the building, enclosure or container would exceed -

- . (i) 4 metres in the case of a building with a dual-pitched roof, **The building is under 4m in height therefore E.1. d,i is satisfied.**
- . (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or **Not applicable**
- . (iii) 3 metres in any other case **Not applicable**

The height of the building, enclosure or container should be measured from the ground level immediately adjacent to the building, enclosure, or container to its highest point.

The height limit on a “dual-pitched roof” of four metres should also be applied to buildings that have “hipped” roofs (slopes on all four sides)

If **any** part of the building, container or enclosure is within two metres of the boundary of the area around then house, then the height limit for the **whole** development is restricted to 2.5 metres if it is to be permitted development.

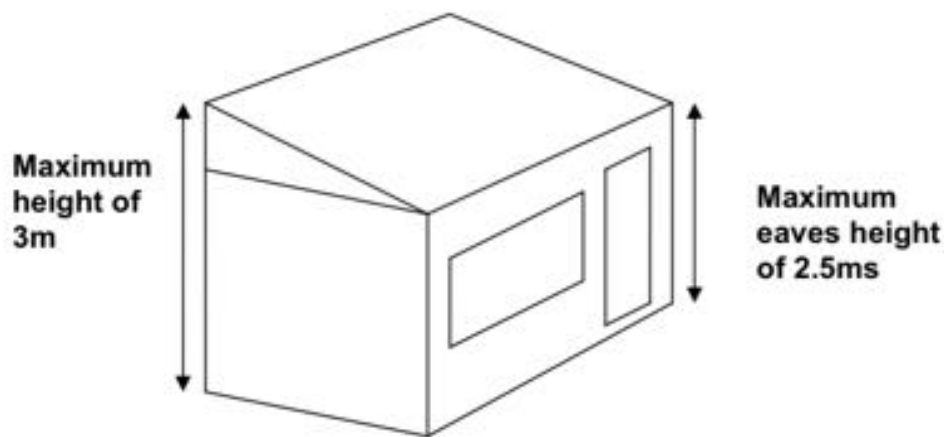
(e) the height of the eaves of the building would exceed 2.5 metres

Not applicable

The eaves of a building will be the point where the lowest point of a roof slope, or a flat roof, meets the outside wall of the building. The Guidance on Class A above includes examples and further guidance.

Under Class E the maximum height of the eaves on any part of the building (irrespective of

total height) is 2.5 metres. For example, on a building with a single- pitched roof, the 2.5 metres eaves limit and three metres maximum height limit would be as shown below.



f) the building, enclosure, pool or container would be situated within the curtilage of a listed building **Not applicable**

An application for planning permission will be required for any building, enclosure, pool or container that would be situated on land surrounding a listed building.

(g) it would include the construction or provision of a veranda, balcony or raised platform **Not applicable**

Verandas, balconies and raised platforms are not permitted development under Class E.

A raised platform is defined as any platform that has a height of more than 300 millimetres. Garden decking will therefore be permitted development under Class E subject to it not exceeding this 300mm height limit and subject to the other limits and conditions under this Class.

h) it relates to a dwelling or a microwave antenna **Not applicable**

Class E covers buildings that are for a purpose incidental to a dwelling. Class E does not provide permitted development rights for works related to a house (eg extensions to a house) which are covered by other Classes of the rules on permitted development. Permitted development rights for microwave antenna are covered under Class H of the rules.

(i) the capacity of the container would exceed 3,500 litres. **Not applicable**

A container with a capacity greater than 3,500 litres will not be permitted development and will require an application for planning permission.

E.2 In the case of any land within the curtilage of the dwellinghouse which is within -

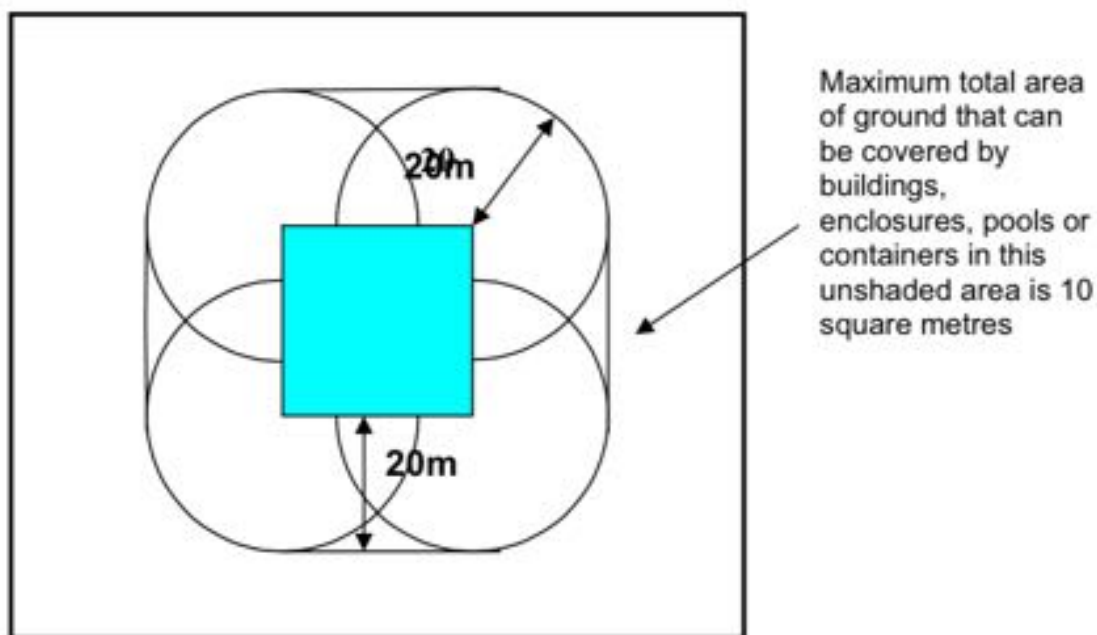
. (a) a World Heritage Site,

- . (b) a National Park, ,
- . (c) an area of outstanding natural beauty or
- . (d) the Broads,

development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres

Not applicable

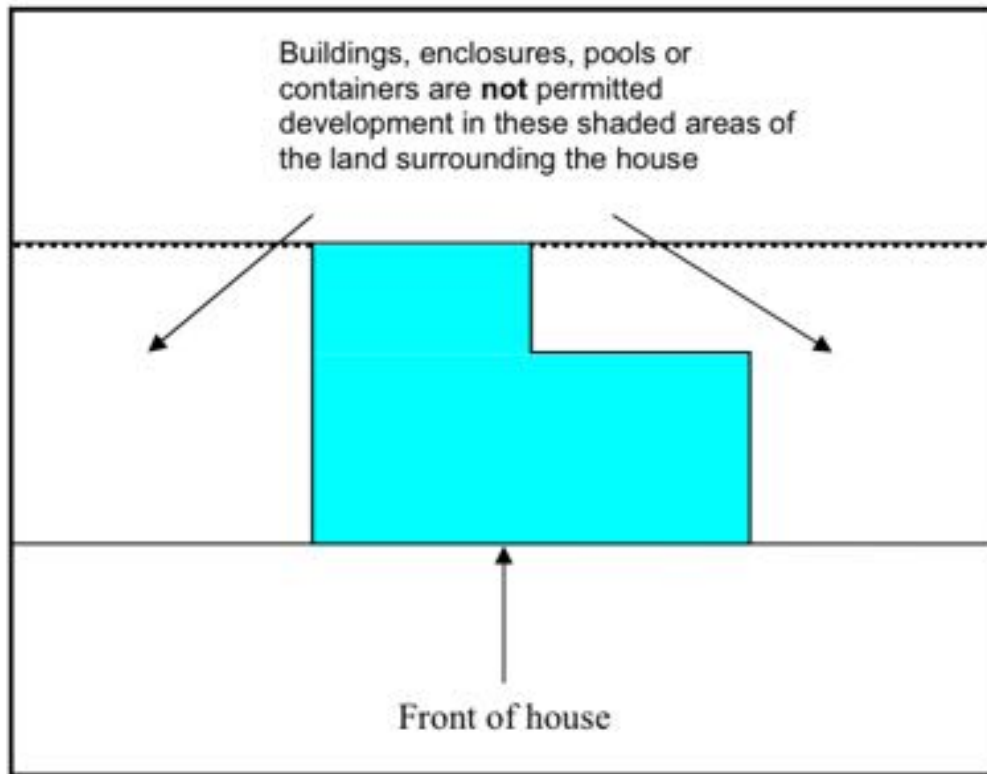
The effect of this limitation is to restrict the amount of permitted development for buildings, enclosures, pools and containers located more than 20 metres away from any wall of the house. The total area of ground which may be covered by buildings etc more than 20 metres from any wall of a house is 10 square metres.



E.3 In the case of any land within the curtilage of the dwellinghouse which is article 1(5) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse

Not applicable

This additional restriction applies for land surrounding a house in National Parks, the Broads, areas of outstanding natural beauty, conservation areas, and within World Heritage Sites. In these areas, buildings, enclosures, pools or containers sited on land between a side wall and the boundary of the land surrounding the house are not permitted development:



Interpretation of Class E

E.4 For the purposes of Class E, “purpose incidental to the enjoyment of the dwellinghouse as such” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse

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Commentary on legislation :

There are two aspects of the interpretation of Class E that require further commentary by the applicant and they relate to question of ‘incidental use’ and the ‘principal elevation’.

Incidental Use

Since *Emin v Secretary of State for the Environment and Mid-Sussex County Council*, QBD, 1989, there have been many Appeals that have dealt with the question of ‘incidental use’ and, crucially, whether or not a proposal is ancillary and subordinate.

In the *Emin* judgement, Sir Graham Eyre QC refers to the need to address “the nature of the activities to be carried on in the proposed building to ensure they are incidental or conducive to the very condition of living in the dwellinghouse.” He says that the scale of those activities is an important matter and that “In that context the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities.” “When a matter is looked at as a whole, size may be an important consideration but not by itself conclusive.” Whilst it is a matter primarily for the occupier to determine what incidental purposed he proposes to enjoy, an objective test of reasonableness should be applied having regard to the circumstances of a particular case. Whether a building is required for a purpose associated with the enjoyment of a dwellinghouse “cannot rely on the unrestrained whim of he who dwells there”. It was also held that the term incidental connotes

an element of subordination in land use terms in relation to the enjoyment of the dwelling itself. Reference is made to the need to consider whether, in the context of the planning unit, "the uses of the proposed buildings are intended and would remain ancillary or subordinate to the main use of the building as a dwellinghouse."

In this case, the building is required to contain a swimming pool of the proportions indicated therefore, it must be considered whether, in the circumstances of this case, it has been shown that the proposed building is reasonably required for purposes incidental to the enjoyment of Homeland as a dwellinghouse.

It is self evident from Emin and subsequent Appeals that a home office, games room and gym or swimming pool at all are uses which are not usually part of primary living accommodation. They are capable, in principle, of being incidental to the enjoyment of a dwellinghouse. The applicant does not consider that the extent of separation of the proposed building from Homeland or its orientation would prevent the requirements of Class E being met.

The proposed building satisfies the dimensional and ground coverage requirements of Class E but, additionally, is for the applicant to show, on the balance of probabilities, that the building is reasonably required for incidental purposes.

The Courts have held that the word 'required' in Class E should be interpreted to mean 'reasonably required'. Thus, in this type of case, the appellant should demonstrate that what is being proposed is reasonably required for a purpose incidental to the use of the dwellinghouse as a dwellinghouse. As said, the onus of proof is squarely upon the appellant and the relevant legal test is based on the balance of probability.

The proposed structure is reasonably required for the applicant to house a swimming pool of the size shown along with ancillary uses - the proposal has been planned with these spatial requirements in mind.

It is a matter of fact that there are no rooms within Homeland or in any existing Outbuilding that could be used for this purpose as none are large enough. The test of 'reasonableness' and indeed scale is therefore satisfied.

The Principal Elevation ;

What is a Principal Elevation?

The term 'principal elevation' is a new phrase introduced within the new 2008 GPDO for Permitted Development. There has been much debate as to what it means as it should replace the term 'front elevation'. In most cases it will be the same thing.

This is what Communities and Local Government has to say on the matter in their Technical Guidance ;

Definition of Principal Elevation ;

There is no definition of principal elevation in the GPDO.

It would have been extremely difficult to come up with a definition that provided absolute certainty as to what the principal elevation was in all circumstances.

However, we believe that in the vast majority of cases it would be perfectly clear what the principal elevation was i.e the part of the house that fronts the highway and which usually contains the main entrance.

In practice we accept that in a minority of cases there will have to be an assessment by the planning authority on a case by case basis as to what constitutes the principal elevation.

This is what the Planning Portal has to say on the matter ;

In most cases, the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.

There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation (for example, on a corner plot), a view will need to be taken as to which of these forms the principal elevation. Note, however, that in such cases the second elevation will also be subject to the restrictions under Class A if it is a side elevation and fronts a highway.

It should be common ground that that there will only be one 'principal elevation' in any situation and the normal dictionary meaning of "principal" – first in importance – means that the Order envisages there being only one elevation that forms the principal elevation for the purposes of the Order.

The Technical Guidance makes clear that the starting point for determining the principal elevation is a consideration of the one that fronts the highway. In this case, this is the one containing the entrance porch facing the Highway which forms one of the main (and original) architectural features of the house.

In these respects, this elevation meets two of the criteria for a principal elevation as set out in the Technical Guidance - it contains the main entrance AND fronts the Highway.

Conclusion ;

A recent appeal case referred to what the average man on the "Clapham Omnibus" would consider to be the principal or main elevation of a property.

On the balance of probabilities, and as a matter of fact and degree, the most appropriate conclusion based on a dictionary definition of "principal" as "first in rank or importance" is that the elevation facing the Highway must be the Principal Elevation.

All of the other applicable criteria in Class E is satisfied by the proposal and we would contend, therefore, that a Certificate of Lawfulness should be issued by the LPA.

UK Supplementary Planning Guidance

3. MAIN CONCEPTS

3.1

This section explains in detail the concepts that are fundamental to interpreting and applying the [legislation](#). These concepts are:

- **Principal Elevation** a term used to identify the "front" of the dwellinghouse
- **Fronting a Road** is a way of determining if the principal elevation, or side elevation, is in the public domain
- **Front and Rear Curtilage** is a way of defining the area of land used for the comfortable enjoyment of the dwellinghouse
- **Site Coverage** is used to control the overall amount of ground covered by development
- **Original or Existing Dwellinghouse.** The original dwellinghouse is the dwellinghouse as built or as it was on 1 July 1948 if it was built before then. The existing dwellinghouse is the house immediately before carrying out the proposed development
- **Height and Ground Level.** How the height of development is measured



3. MAIN CONCEPTS

Figure 1: In this example the principal elevation is the elevation that fronts the road. It has the main door and is the obvious orientation of the dwellinghouse. The side elevation has no windows and has a shorter length. The rear area is more private with a higher fence.



Figure 2: In this example the side elevation has the main door and a longer length, it has only a secondary window. The windows in the principal elevation show the main orientation of the dwellinghouse and it fronts the road. The boundary treatment indicates a more private rear area.



Figure 3: In this example the dwellinghouse on the corner plot will face two roads. However, the principal elevation has the main door and fronts the same road as the adjacent dwellinghouse. Opposite the principal elevation is the private rear area. The side elevation - although fronting a road and having windows - does not reflect the main orientation of the dwellinghouse.



Residential Curtilage

All of the area of land shown within the red line is residential curtilage. This fact was confirmed in Appeal Ref: APP/A2525/A/14/2218313 - 29th July 2014 where the Inspector stated "The appeal site currently forms part of the garden of 'Homeland'"

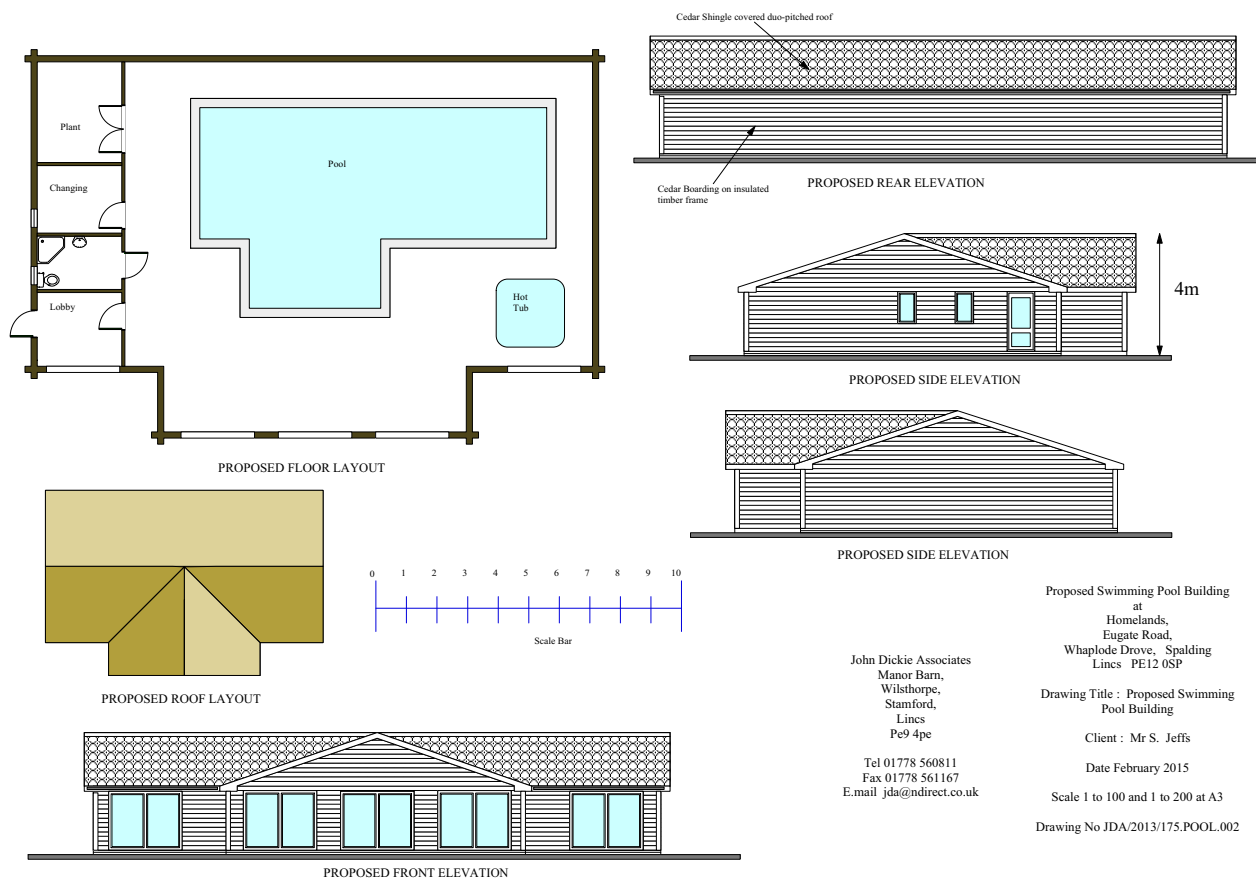
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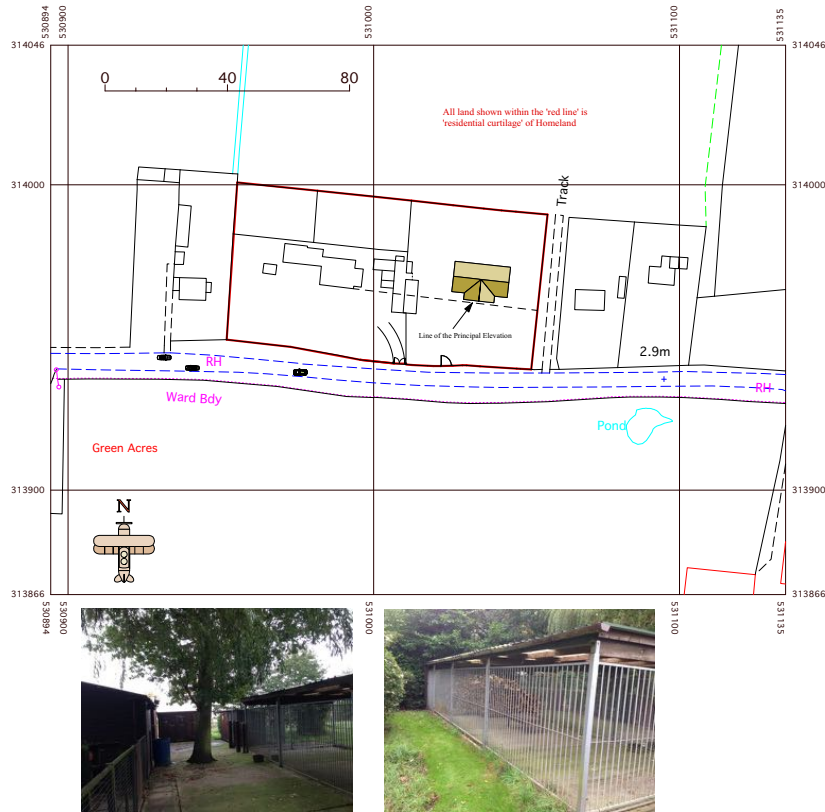
Appendix A

Main design drawing



Appendix B

Site Location Plan



Road Frontage

Proposed Swimming Pool Building
at
Homelands,
Eugate Road,
Whapload Drove,
Spalding
Lincs
PE12 0SP

Drawing Title : Proposed Site Layout

Client : Mr S. Jeffs

Date February 2015

Scale 1 to 1000 at A3

Drawing No JDA/2013/175.POOL.001

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Appendix C

Block Plan

