

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) Section 191/192

**DELEGATED DECISION FOR APPLICATION FOR CERTIFICATE OF
LAWFUL DEVELOPMENT**

Reference no.: 2020/CL/94415/W

Site: 5, Park Drive South, Huddersfield, HD1 4HT

Description: Certificate of lawfulness for proposed erection of
detached garage

Case Officer: Tom Hunt

Decision Reference: PROPOSED OPERATIONS REFUSE

**I hereby authorise the refusal of this application for the reasons set out
in the officer's report and recommendation annexed below in respect of
the above matter.**

Kevin Walton

AUTHORISED OFFICER

Date 25-Feb-2021

Officer Report

Site Description

The application relates to 5 Park Drive South, a semi-detached property in Huddersfield. It is faced with mainly render and stone base and has a two storey projection from its primary elevation. Both front projection and host dwelling is hipped finished in pantile concrete roof tile. The dwelling benefits from a detached garage to its eastern side. It sits within a large wedge shaped plot bounded by low stone walls, driveway and lawned front and rear gardens.

Description of Proposal

Permission is sought for a Certificate of Lawfulness for the erection of a detached garage within the curtilage of the property.

The detached garage would be located to the east of the property. It would be a wedge shaped garage with 4.3m width at its principal elevation not forward of the host property, be 16.4m in depth, 10m at its rear elevation and following the boundary with a west elevation angled to meet the front and rear elevations measured at 17.5m approximately. It would be designed with a flat roof which would have a maximum height of 2.5m.

History of negotiations/amendments received

No negotiations have taken place and no amendments have been received. A request by the Officer for more information regarding floor plan, details of the rig and purpose of the garage had been supplied by the agent.

Relevant Planning History

No relevant planning history attached to the site.

Consultation Responses

This is an application for a Lawful Development Certificate and for this reason, no consultations are necessary.

Legislation

The Town and Country Planning Act 1990 Section 55 & the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Assessment

The main considerations in the determination of this application are:

1. Whether the proposed development would constitute development as defined section 55 of the Town and Country Planning Act 1990;

The proposal comprises the erection of a detached garage. Thus, the proposal constitutes the carrying out of building on and as such the proposal is considered to constitute development as defined by section 55 of the Town and Country Planning Act 1990.

2. Whether the proposed development falls within permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 1 (Development within

the curtilage of a dwelling house), Class E (buildings etc. incidental to the enjoyment of a dwellinghouse).

The assessment of whether this building of substantial proportions relative to the size of the garden would be considered to meet Class E of Part 1 which provides a general planning permission for curtilage buildings that are required for purposes incidental to the enjoyment of the dwellinghouse.

The purpose is to accommodate a hobby of restoring vehicles including a workshop along with a gym and storage area. The applicant claims one vehicle is worked upon over a period of a number of months and the garage is required to house a large vehicle hoist and provision a covered workshop to work on the vehicle.

Class E of Part 1 provides a general planning permission for curtilage buildings that are required for purposes incidental to the enjoyment of the dwellinghouse as such. In this case the building is proposed to provide a large covered workshop for vehicle repairs which is much larger than a typical garage ordinarily seen at a dwellinghouse. However, while the building is substantial and larger than the footprint of the dwellinghouse that it is proposed to serve, the Courts have held that size alone is not a reason to say a building is not incidental (*Emin v SSE [1989] JPL 909*) although the test must be based on objective reasonableness and should not be based on an unrestrained whim of an occupier (*Wallington v SoS for Wales [1990] 62 P & CR 150*).

It is not doubted that the occupier enjoys a hobby and repairing a single vehicle at any one time cannot be carried on at a dwellinghouse although the question is whether or not it can be said in all reasonableness that the significant size of the garage is required for the carrying on of that hobby.

The applicant shows the building housing a large vehicle hoist and providing significant workspace and workshop areas. It is noted a large vehicle hoist is already sited in the garden of the dwellinghouse along with paraphernalia including tools and other items of industrial nature. While it is not uncommon for vehicle repairs and/or restoration to be undertaken at a dwellinghouse, typically hobby mechanics would tend to have limited equipment housed at a dwellinghouse and would not likely invest in a building of such size to carry on the hobby.

In fact it is more common for the carrying on of a small scale hobby involving the restoration of a single car would ordinarily be undertaken in a typical domestic garage without the requirement for a large workshop. Consequently it is considered the activities described, equipment to be housed and floor space proposed go beyond what may be reasonably required for a small scale hobby.

Furthermore, it is considered the building including the facilities and storage of industrial paraphernalia would not be out of character in a small commercial garage rather than at a semi-detached dwellinghouse with moderately sized garden. In such circumstances the Courts have held that a person living next door to a particular use should expect to see things which are normal to the use as such (*Harrods Ltd v SoS [2002] JLP 1321*) and in this case, the sheer scale of the building and its proposed use to house large equipment and workshop would be considered unusual for the scale and character of the dwellinghouse.

Overall, the applicant has not demonstrated that the substantial size of the building is required for the proposed vehicle repair hobby or that the workshop and large

equipment the building is proposed to house can be reasonably incidental to the dwellinghouse as such.

Notwithstanding the above:-

Schedule 2, Part 1, Class E – *Buildings etc. incidental to the enjoyment of a dwellinghouse.*

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

a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);

Comment: *N/A.*

b) 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);

Comment: *No more than 50% of the curtilage of the dwellinghouse would be covered by extensions, buildings or enclosures.*

c) 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;

Comment: *The garage would not be located forward of the original dwellinghouse.*

d) the building would have more than a single storey;

Comment: *The garage would be single storey.*

e) the height of the building, enclosure or container would exceed –

(i) 4 metres in the case of a building with a dual-pitched roof,

(i) 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

(ii) 3 metres in any other case;

Comment: *The proposed outbuilding would not exceed these dimensions or be within 2m of the boundary.*

f) the height of the eaves of the building would exceed 2.5 metres;

Comment: *The height of the eaves and roof is 2.5 metres.*

g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;

Comment: *The application property is not a listed building.*

h) it would include the construction or provision of a verandah, balcony or raised platform;

Comment: *None of the above are proposed.*

i) it relates to a dwelling or a microwave antenna; or

Comment: *The outbuilding would not be a dwelling or include an antenna.*

j) the capacity of the container would exceed 3,500 litres.

Comment: *The application does not relate to a container.*

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

(a) an area of outstanding natural beauty;

(b) the Broads;

(c) a National Park; or

(d) a World Heritage Site,

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.

Comment: *The dwellinghouse is not located within any of the above.*

E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) 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.

Comment: *The dwelling is not located on article 2(3) land.*

Conclusion

The proposed development has been assessed against the relevant legislation, Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), Schedule 2 Part 1, Class E and it is considered that in this instance, that the proposals would not constitute permitted development.

The occupier had not demonstrated that the substantial size of the building is reasonably required for the proposed vehicle repair hobby or that the workshop and large equipment the building is proposed to house can be ordinarily incidental to the enjoyment of the dwellinghouse as such.

As a result, the proposed double garage would require planning permission and the lawful development certificate is therefore not granted.

Recommendation: **Refuse Certificate**

Decision Authorisation - Delegated Powers

Application Number: 2020/94415

Officer Recommendation: Refuse Certificate

The proposed detached garage as shown on the submitted plans listed in this decision notice is not considered to benefit from a general planning permission under Schedule 2, Part 1, Class E (buildings etc. incidental to the enjoyment of a dwellinghouse) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). The applicant had not demonstrated that the substantial size of the building is reasonably required for the vehicle repair hobby or that the large workshop and equipment the building is proposed to house can be ordinarily incidental to the enjoyment of the dwellinghouse as such.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Plans – Grouped Plans and Elevations	01 – Existing		04/01/2021
Plans – Grouped Plans and Elevations	02 – Proposed		04/01/2021
Plans – Grouped Plans and Elevations	Proposed Floor Plans and Elevations Dwg. No 1536/5		12/02/2021
Plan General	06 – Supporting Information		19/02/2020

Report Dated:

25/02/2021