

**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.: 2024/CL/90630/W

Site: West Lodge, New Hey Road, Fixby, Huddersfield, HD2  
2EJ

Description: Certificate of lawfulness for proposed erection of  
detached garage and store

Case Officer: Charlotte Dixon

**Decision Reference: PROPOSED OPERATIONS REFUSED**

**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 22-May-2024**

## **Site Description**

West Lodge is a single-storey detached dwelling located within the curtilage of a listed building. The list entry name is "Park Gates And Pair Of Lodges To Fixby Park" and the list entry number is 1313987. The property is attached to the listed Park Gates by the roof of a link extension.

The property is comprised of stone and has parking to the front, as well as a large garden to the rear.

## **Application Proposal**

The application is for a certificate of lawfulness for proposed erection of detached garage and store. The onus is on the applicant to provide evidence which states why the proposal fits with the permitted development legislation. In this case, the applicant has stated within their supporting statement that the proposal is permitted development. The property has not had its Permitted Development Rights removed.

The garage/ store is proposed to be 13.00m (W), 07.00m (D) and have a height of 03.00m. The outbuilding will be fully detached and situated to the north of the dwelling. The certificate of lawfulness would form a lawful decision on the principal elevation of the original building. As such, officers have reviewed the terminology on the definition of 'principal elevation' set out within the Permitted Development Rights for Householders: Technical Guidance Document (September 2019). In doing so, it was noted there were two distinct separating factors, including 'it will usually contain the main architectural features such as a porch serving the main entrance to the house'.

With respect to the applicant's view, it is considered that the outbuilding would be situated forward of the principal elevation. Taking into account the definition of 'principal elevation' set out in the Governments technical guidance note, it is considered that the main entrance to the house is situated on the original principal elevation located to the north facing obliquely towards the highway serving the dwellinghouse. The southern elevation of the dwelling fronts the garden, which is accessed via a set of patio style doors. The patio doors lead onto a raised terrace which houses residential paraphernalia such as a hot tub and patio chairs/tables which are often not typically associated with the front of a property.

Additionally, due to its location to the north of the site, the land is separated by a track between the land and the dwellinghouse which is in different title to the dwellinghouse and apparently in separate ownership given the track is in the same title as the radio antenna located to the north east. Consequently due to the physical separation of the parcel of land where the proposed garage and store is to be located, the proposed building is not considered to be within the residential curtilage of the dwellinghouse by virtue of physical separation of land in different ownership and therefore not forming one enclosure that could be considered curtilage.

### **History of negotiations/amendments received**

No negotiations have taken place and no amended plans received

### **Relevant Planning History**

2004/95819- Erection of single storey extension- Conditional full permission

2019/92121- Erection of detached garage with gym above- Withdrawn

2021/90120-Certificate of lawfulness for proposed extension and alterations (Listed Building)- Refused

2022/92245- Listed Building consent for demolition of link extension- Consent granted

2023/92914- Variation of condition 4 (external doors) on previous permission

2022/92245 for Listed Building Consent for demolition of link extension- Removal or modification of conditions

### **Consultations**

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

### **Law**

The site has no policy based constraints in respect of Permitted Development. As such, the application falls to be considered under the relevant legislation as follows:-

The Town and Country Planning Act 1990 Section 55 and 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 and the Town and Country Planning (General Permitted Development) Order 2015;
1. If so, whether Permitted Development rights apply to the property; and
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 proposal comprises the erection of a detached garage and store and thus the proposal constitutes the carrying out of building on and over land. As such, it is regarded as development as defined by Section 55 of the Town and Country Planning Act 1990.

## **Assessment**

### **Permitted development**

Schedule 2, Part 1, Class E of the Order sets out the Permitted Development Rights which relates to the provision within the curtilage of the dwellinghouse of-

*“(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 outbuilding is not considered to be within the curtilage of the dwellinghouse.*

### **Development not permitted**

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 G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);

*The property was not granted permission by any of the above.*

- (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);

*The proposed building is not considered to be within the curtilage of the dwellinghouse.*

- (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;

*The building would be located forward of the principal elevation of the original dwellinghouse, being placed to the north of the dwelling.*

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

*The outbuilding would be single storey in height.*

- (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,
  - (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
  - (iii) 3 metres in any other case;

*The outbuilding has a flat roof and has a maximum height of 3m however is proposed to be located outside of the curtilage of the dwellinghouse.*

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

*The height of the eaves of the building is proposed to be 3 metres, exceeding 2.5 metres.*

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

*It is unclear whether the land formed part of the curtilage of the listed building at the time of listing in 1976. Notwithstanding this, the proposed development fails on a number of other matters.*

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

N/A

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

N/A

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

*The application is not for the construction of a container.*

- (k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

(l)

N/A

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.

*The property is not situated in 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.

*The property is not situated in a conservation area.*

#### 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.

#### Conclusion

**Recommendation:**

#### **Decision Authorisation - Delegated Powers**

**Application Number:** 2024/90630

**Officer Recommendation:** Refuse certificate

The proposed detached outbuilding does not benefit from a general planning permission under the provision of Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), as the proposed outbuilding would not be within the curtilage of the dwellinghouse contrary to the provisions of Part 1 and would in any event be forward of a wall forming the principal elevation of the original dwellinghouse and the eaves height would exceed 2.5 metres contrary to Class E sub-paragraphs (c) and (f)..

Plans and specifications schedule:

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Site location plan	-	-	04/03/2024
Site plan	-	-	04/03/2024
Proposed elevations	-	-	06/03/2024

Supporting statement	-	-	04/03/2024
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