

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/91958/W

Site: 66, Nettleton Road, Dalton, Huddersfield, HD5 9TE

Description: Certificate of lawfulness for proposed erection of detached garage

Case Officer: Jessica Irwin

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 24-Feb-2025

Officer Report
2024/91958

Site Description

66 Nettleton Road is a semi-detached, red brick property with a small lean-to extension to the rear, located in a residential area surrounded by dwellinghouses varying in size and design. The house benefits from a small garden to the front of the property with a drive to the side leading to a long rear garden, containing two garages. There is a fence dividing the long rear garden into two sections, the first garage is of more of a traditional design located close to the dwellinghouse, the second garage is of a more industrial design, a large flat roof building, located in the land to the very rear boundary. Aerial imagery also indicates that vehicles have been stored in the area around this building.

Description of Proposal

Permission is sought for a Certificate of Lawfulness for the erection of detached garage. This does not include any hard surface nor, the demolition of any other structure, consequently the Council must proceed on the basis that the existing outbuildings are to be retained.

The outbuilding would be asymmetric in design with a flat roof, its maximum length would be 11.4 metres, it's shortest length would 8.38 metres, with a width of 7.49 metres and 2.5 metres in height. Pebbledash concrete panels will be used in the construction.

The property has not had its Permitted Development Rights removed.

History of negotiations/amendments received

The Council contacted the agent acting on behalf of the applicant to clarify the size and location of the garage in relation to the existing buildings. The agent suggested that the two outbuildings were to be demolished to facilitate the new development and provided an additional plan showing hardstanding leading to the rear garden where the proposed outbuilding would be located. However, during our correspondence, we explained that including the removal of the existing buildings into the description could cause difficulties in so far as the demolition may not be permitted development without prior approval (Part 11, Class B, paragraph B.3). The agent then suggested that the owner may or may not remove the existing buildings and as the application is limited to the erection of the outbuilding, not including any demolition or hardstanding, the Council determined that we must assume their retention. The description applied for is simply the erection of a garage, not including any hard surface and not the demolition of any other structure, consequently the Council must proceed on the basis that the existing buildings are being retained.

In addition to the above, the Council sought clarification on the use of the building and whether the outbuilding would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse. As part of the application, it is claimed that the building will be used for the storage of cars, amongst other domestic paraphernalia, in connection with the owner's hobby.

We asked the agent for further information on what exactly the hobby consists of. The agent advised that the applicant currently has 3 cars in their collection with the purpose of restoring, repairing them and taking them to racetracks.

Relevant Planning History

Complaint reference number: COMP/18/0066, description: alleged change of use from residential to vehicle breaking, reason for closure: no further action – resolved

Complaint reference number: COMP/20/0293, description: alleged unauthorised use as car repair/scrapyard at residential address, reason for closure: no further action – resolved

Consultation Responses

None required.

Issues and Assessment

Applications for Certificates of Lawful Developments for the erection of outbuildings to dwellings are assessed against the general permission conferred by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Schedule 2, Part 1, Class E of the Order sets out the Permitted Development Rights which relates to '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'. Buildings under Class E should be built for purposes incidental to the enjoyment of the house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can properly be described as having a purpose incidental to the enjoyment of the house.

Schedule 2, Part 1, Class F of the Order sets out the Permitted Development Rights which relates to hard surfaces incidental to the enjoyment of a dwellinghouse.

In assessing the proposal against this:

Outbuilding

Class E – buildings etc incidental to the enjoyment of a dwellinghouse

Permitted development

E. 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.

Comment: *In this instance, the dimensions of the proposed outbuilding are approx. 11.4metres x 7.5metres. While the size of an outbuilding is of some*

relevance, it is not determinative. The relevance of size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse. For the purposes of Class E, the building must be genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. The determination of whether a building is incidental to the enjoyment of the dwellinghouse is a matter of fact and degree based on the specific circumstances of each case. In this instance, the agent has advised that the building will be used for the purpose of storing, restoring and repairing vehicles as a hobby. However, as this application is for the erection of a large outbuilding, with the existence of two existing buildings – both of which appear to be in use as garages. When measuring via our mapping systems, the smaller of the two being approximately 29 square metres and the larger being approximately 59 square metres. To my understanding, the existing buildings would provide sufficient room for the applicants collection and the applicant has not provided any reasoning why a large, third outbuilding would be genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose.

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

Comment: *permission to use the dwellinghouse as a dwellinghouse has not been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule.*

(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: *the total area of ground covered by the building would not exceed 50% of the total area of the curtilage.*

(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 proposal shall be in the garden to the rear of the dwelling; therefore, the proposal would not be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.*

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

Comment: *the proposal is 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;

Comment: *the building is proposed to be within 2 metres of the boundary and is proposed to have a maximum height of 2.5 metres and therefore does not exceed the above.*

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

Comment: *the proposed building is to be a maximum height of 2.5 metres and has a flat roof, therefore the eaves will not exceed the above.*

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

Comment: *the building would not be situated within the curtilage of a listed building.*

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

Comment: *the proposal does not include the construction or provision of a verandah, balcony or raised platform.*

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

Comment: *the proposal does not relate to a dwelling or microwave antenna.*

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

Comment: *the proposal does not exceed capacity.*

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

Comment: *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.

Comment: *the proposal is not within the curtilage of those listed 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 dwellinghouse is not located on article 2(3) land.*

Conclusion:

For the purposes of Class E, the proposed outbuilding must be genuinely and reasonably required to accommodate the proposed use or activity incidental to the enjoyment of the dwellinghouse and thus achieve that purpose. The determination of whether a building is incidental to the enjoyment of the

dwellinghouse is a matter of fact and degree based on the specific circumstances of each case. In this instance, there have been no supporting materials provided to justify why such a large domestic garage would be required for such purposes, in addition to the two existing buildings currently on the site. Therefore, the outbuilding would not benefit from permitted development rights provided by Schedule 2, Part 1 (Development within the curtilage of a dwelling house), Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and is recommended for refusal.

Decision Notice:

The proposed erection of an outbuilding is not considered to benefit from a general planning permission under the provisions of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) as it has not been demonstrated the building is required for purposes incidental to the enjoyment of the dwellinghouse.

Plans and specifications schedule: -

Plan type	Reference	ID	Date received
Application form		1049695	12/07/2024
Grouped plans and elevations	(20)002	1049697	12/07/2024
Location plan	(EX)002	1049696	12/07/2024