

**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/92163/W

Site: Rough Lee Farm, Reddisher Road, Marsden,
Huddersfield, HD7 6NF

Description: Certificate of lawfulness for erection of detached
workshop/garage

Case Officer: Sharoz Ilyas

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 17-Jun-2025

Reference:	2024/CLD/92163/W
Applicant: -	L Macdonald
Location: -	Rough Lee Farm, Reddisher Road, Marsden, Huddersfield, HD7 6NF
Proposal: -	Certificate of lawfulness for erection of detached workshop/garage

Site Description

Rough Lee Farm is a semi-detached dwellinghouse surrounded by garden amenity space at the front and side. The immediate area is residential surrounded by rural fields.

Description of Proposal

Permission is sought for a Certificate of Lawfulness for the erection of a detached workshop/garage. The development involves the demolition of the existing garage and erection of a detached workshop/garage with a dual pitched roof.

The outbuilding would measure 8218mm wide, 6227m long and have a total height of up to 4000mm. The height to the eaves would be 2.5m.

History of negotiations/amendments received

Clarification was sought from the applicant regarding the extent of curtilage.

Relevant Planning History

None

Consultation Responses

None required.

Legislation

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 in section 55 of the Town and Country Planning Act 1990;
2. If so, whether Permitted Development rights apply to the property; and
3. 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.

The plans are for the erection of a single-storey detached outbuilding. Thus, the proposal constitutes the carrying out of building on and over land and as such, it is regarded as development as defined by section 55 of the Town and Country Planning Act 1990.

The application therefore falls to be considered 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.

The demolition of the building is defined as building operations by virtue of section 55 (1A)(b) of the Town and Country Planning Act 1990 and thus development as defined by section 55(1). However, the Secretary of State by way of direction under section 55(2)(g) has provided that the demolition of building under 50 cubic metres in volume should not be regarded as development for the purposes of the Act. Consequently, the proposed demolition of the existing garage, measured using the existing plans at more than 50 cubic metres (86 cubic metres), would be regarded as development by virtue of the Town and Country Planning (Demolition - Description of Buildings) Direction 2021. The demolition therefore falls to be considered under The Town and Country Planning (General Permitted Development) Order 2015 (as amended), Schedule 2, Part 11 (Heritage and Demolition).

Permitted Development Class E

Schedule 2, Part 1, Class E of the Order sets out the Permitted Development Rights which relates to:

‘(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’. In assessing the proposal against this:

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);

Comment: *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);

Comment: *The accumulative total of ground covered by buildings, enclosures and containers would not exceed 50% of the total area within the curtilage of the original 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;

Comment: *The outbuilding is not located beyond the principal elevation line of the original dwellinghouse and therefore does satisfy this requirement.*

d) the building would have more than one storey;

Comment: *The outbuilding would be a 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,
(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 proposed outbuilding is shown to have a dual-pitched roof and would not exceed 4 metres in height. However, the outbuilding is considered to be located within 2m of the boundary of the curtilage and does exceed 2.5m in height.*

The applicant annotates layout plan (23 J 61 01A) with a dotted line surrounding the garage indicating this represents the red line from the 2020 application. It is assumed the applicant is suggesting this is shown to be the curtilage boundary as established by the 2020 planning application for the erection of two storey side extension and external alterations (ref: 2020/93959). The applicant also submits that a Google Earth aerial image dated June 2009 of the land to the rear of the dwellinghouse shows this land to be curtilage presumably on the grounds it appears different to the wider field. The applicant offers no further evidence to demonstrate the extent of curtilage.

The extent of curtilage has been subject to numerous Court judgements, in particular the judgement of Mr Nigel Macleod¹ where three characteristics of a curtilage were identified: (a) it was confined to a small area about a building; (b) an intimate association with land which was undoubtedly within the curtilage was required in order to make the land under consideration part and parcel of that undoubted curtilage land; and (c) it was not necessary for there to be physical enclosure of that land which was within the curtilage, but the land in question at least needed to be regarded in law as part of one enclosure with the house. The Court also went on to determine² that relevant factors include physical layout, ownership past and present and function past and present.

In this instance it can be seen from a history of aerial imagery on Google Earth that the land immediately to the rear of the existing garage and dwelling was part of a wider field rising to the north. There is some indication on images dated 09/2005 and 06/2009 that the land to the rear was treated in a different manner to the wider field although all images before and after show the land to be largely of the same appearance to the wider field. It may be possible that the owner may have treated this land differently to the wider field for a period of time although it is considered a period of time between 2005 and 2009 insufficient to either establish any lawful use that could be considered incidental to the enjoyment of the dwellinghouse or to establish the land was subsumed into the curtilage of the dwellinghouse, which consists of parking land to the front of the dwellinghouse and domestic garden between the house and Reddisher Road. From a period between 1999 and 2003 there appears to be a feature of some relevance although the imagery is grainy and ambiguous as to what the feature may be. There is not clear indication the land was in anyway annexed from the wider fields and may simply be a change in the topography of the land as it slopes steeply from north to south. Moreover, the imagery does not provide any clear or precise evidence to show the land was used for purposes associated with the dwellinghouse. Since 2016, the land to the rear has undoubtedly formed part of the wider field to the north. Officer photographs taken on the site visit for the 2020 planning application clearly show a high retaining wall to the rear of the existing garage and canopy with rough grass steeply sloping northwards in the field land.

There is no compelling evidence submitted to show the land has in any way been used with intimate association with land considered to be within the curtilage of the dwellinghouse to the degree it can all be undoubtedly considered curtilage. Furthermore, the high retaining wall to the rear of the existing garage forms a physical boundary between the garage land and field and as such the garage, parking area and dwellinghouse can clearly be regarded as one enclosure excluding the field land to the north. Consequently, the land to the north does not meet the characteristics derived from the Court and whilst it may have been in the same ownership, the land

¹ *McAlpine v Secretary of State for the Environment* [1994] E.G.C.S. 189

² *Burford v SSCLG* [2017] J.P.L. 1300

has not functioned as curtilage both past and present and as such cannot be considered part of the domestic curtilage.

With respect to the applicant's dotted annotation on the layout plan, it is well established that the redline boundary shown for the extension of the dwellinghouse does not in law formally establish the curtilage to the property.

Finally, the applicant does not argue that the gated access to the field at the south-west corner of the proposed garage adjacent to the dotted line is within the curtilage of the dwellinghouse.

The proposed garage is therefore considered to be within 2 metres of the curtilage boundary both at the rear, side and front elevations and over 4 metres in height.

- f) the height of the eaves of the outbuilding would not exceed 2.5 metres;

Comment: *The height of the eaves of the development would not exceed 2.5m.*

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

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

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

N/A.

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

N/A.

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

N/A.

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

N/A

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

- (a) an area of outstanding natural beauty;
 - (a) the Broads
 - (b) a National Park; or

(c) a World Heritage Site,

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

Comment: *The property is not situated in the above.*

E.3 In the case of 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 dwelling.

Comment: *The property is not situated on article 2(3) land.*

Interpretation of Class E

E.4 For the purposes of Class E, “purpose incidental to the enjoyment of the dwelling house 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.

Demolition

Permitted development Class B (Demolition of buildings)

B. *Any building operation consisting of the demolition of a building.*

Development not permitted

B.1 Development is not permitted by Class B if—

a) the building has been rendered unsafe or otherwise uninhabitable by the action or inaction of any person having an interest in the land on which the building stands and it is practicable to secure safety or health by works of repair or works for affording temporary support;

b) the demolition is “relevant demolition” for the purposes of section 196D of the Act (demolition of an unlisted etc building in a conservation area);

c) the building is used, or was last used, for a purpose falling within—

(i) article 3(6)(p) (drinking establishments etc.) of the Use Classes Order; or
(ii) article 3(6)(q) (drinking establishments with expanded food provision) of that Order;]

d) the building is used, or was last used, for the purpose of—

- (i) a concert hall;
- (ii) a venue for live music performance; or
- (iii) a theatre; or

- (e) the demolition relates to a statue, memorial or monument (“a commemorative structure”) in place for a period of at least 10 years on the date of any proposed demolition, other than a commemorative structure—
 - (i) that is a listed building;
 - (ii) that is a scheduled monument;
 - (iii) within a cemetery, on consecrated land, or within the curtilage of a place of public worship;
 - (iv) within the grounds of a museum or art gallery; or
 - (v) within the curtilage of a dwellinghouse

Interpretation of Class B

B.3 For the purposes of Class B—

“cemetery” has the meaning given by section 214(8) of the Local Government Act 1972;

“dwellinghouse” does not include educational accommodation;

“excluded demolition” means demolition—

- (a) on land which is the subject of a planning permission, for the redevelopment of the land, granted on an application or deemed to be granted under Part 3 of the Act (control over development),
- (b) permitted to be carried out by a consent under Part 1 of the Ancient Monuments and Archaeological Areas Act 1979 (scheduled monument consent),
- (c) permitted to be carried out by a consent under Part 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (listed building consent),
- (d) required or permitted to be carried out by or under any other enactment, or
- (e) required to be carried out by virtue of a relevant obligation;

Comment: Taking into account the above, prior approval for the demolition would be required. While the proposed operations include the re-development of the garage for a replacement garage, the replacement is not considered to benefit from a deemed planning permission and therefore cannot be considered ‘excluded demolition’ for the purposes of the act.

In the absence of any other planning permission and without prior approval, the demolition of the garage cannot be considered lawful.

Conclusion:

The proposal has been considered against the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) and Section 55 of the Town and Country Planning Act 1990 (as amended). The application is recommended for refusal.

The proposed outbuilding at Rough Lee Farm does not meet permitted development as set out in Schedule 2, Part 1, Class E of the Town and Country (General Permitted Development) Order 2015. The demolition of the existing outbuilding/garage would not need prior approval and would be considered 'excluded demolition' for the purposes of the act.

Recommendation: REFUSE certificate

Decision Authorisation - Delegated Powers

Application Number: 2024/92163

Officer Recommendation: Refuse certificate

The erection of the proposed outbuilding at Rough Lee Farm does not benefit from a general planning permission granted by virtue 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 is within 2 metres of the curtilage boundary and exceeds 2.5 metres in height contrary to sub-paragraph E.1(e)(ii).

The proposed demolition of the existing garage is considered to be development that does not benefit from any general planning permission under Article 3(1) and Schedule 2, Part 11, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015(as amended) as the demolition does not have prior approval and is not regarded as excluded demolition.

Plans and specifications schedule: -

Plan Type	Reference	Date Received
Grouped Plans and Elevations – 01 – Existing	1052507	06/08/2024
Location Plan	1052499	06/08/2024
Grouped Plans and Elevations – 02 - Proposed	1052462	01/08/2024

