

Householder Proforma – Existing Use (Lawful Development Certificate)

Application Ref: 2021/1221
Address: Gransden House, Church Street, Royston, Barnsley, S71 4QZ
Neighbour Representations: None
Property Description:

The application site relates to an outbuilding within the curtilage of the former Vicarage of St John's Baptist Church in Royston. Gransden House, indicated as the former Vicarage on OS Maps as early as 1850, has since been split into two dwellinghouses alongside the dwelling - 'Strathmore' - attached to the north of the applicant's property. The building is setback significantly from the highway with a long approach down a private drive which splits northward and southward to both dwellinghouses respectively. The site is secured by a mechanical gate which opens onto the garden which is set east and to the rear of Gransden House. The curtilage is relatively flat topographically and includes a recently re-built double garage with pitched roof, rendered side elevations and an anthracite door set within a sandstone clad surround. Upon visitation to the site for 2019/1218 the Case Officer observed that the footings of that proposal had been partially dug out along the boundary with the Clergy House. Both the re-built outbuilding and the trenches on the site infer that material operations have begun in line with TCPA Section 56 (2). More widely, the site is designated as Urban Fabric in the Local Plan Policies Map and is approximately 38m from the Grade I listed Church (St John's The Baptist) sited further south.



Development Description:

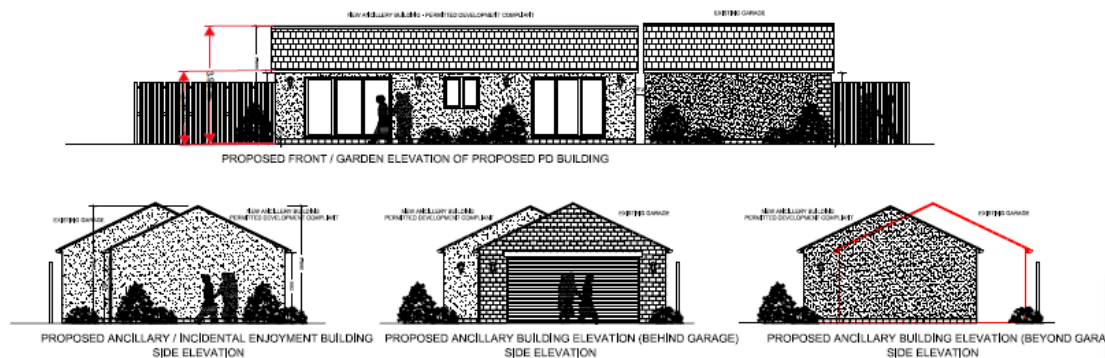
Irrespective of the above, the proposed development is to have a length of 12.14m, a width of 5.84m and an eaves and total height of 2.48m and 3.95m. The outbuilding will have a pitched roof and shall be sited 2m from the boundary with the 'The Vicarage' to the south. The floor plan indicates that the outbuilding will be used as a gym, bathroom and garden storage space. It is clear that the outbuilding has been designed to conform with PD rights and that this application has been submitted to confirm that this is the case.

N.B. The application has been publicised as a 'proposed development' so as not to confuse adjacent neighbours given that no structure is in place despite a material start having taken place.

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Householder Proforma – Existing Use (Lawful Development Certificate)

Elevation Plans



Local Plan Designation:

Urban Fabric

Conservation Area:
building

No – however it is within the setting of a Grade I listed

Relevant History:

2020/0708 – Erection of detached outbuilding (Lawful Development Certificate for a proposed development) – Refused – Appeal dismissed (APP/R4408/X/20/3263972)

Lawful Development Certificate Guidance

Lawful Development Certificates need to be determined in line with paragraph 009 of the Planning Practice Guidance (PPG) – Lawful Development Certificates. The PPG states the following with regard to determination:

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

In determining an application for a prospective development under [section 192](#) a local planning authority needs to ask “if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?”

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is, however, advisable to seek the applicant’s agreement to any amendment before issuing the certificate. A refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Relevant legislation in this instance is Sch. 2 Part 1 Class E of the General Permitted Development Order 2015 (as amended) allowing permitted development of ‘*building’s etc incidental to the enjoyment of a dwellinghouse*’. This section of legislation shall be used to determine whether the proposed development is considered lawful. The ‘permitted development rights for householders: technical guidance’, is also of relevance in respect of interpretation of Class E.

Representations:

The application was publicised in accordance with the requirements of the Development Management Procedure Order. No comments have subsequently been received.

Householder Proforma – Existing Use (Lawful Development Certificate)

Consultee Responses:

Responses have been received from the following consultees:

Conservation Officer – Objects in principle on heritage grounds but understands that this does not preclude the development from being determined lawful.

Legal – Queries the reduction in the size of the outbuilding and the enlargement of the rooms and whether these are reasonably required for purposes incidental to the dwellinghouse.

Assessment:

The LPA understand that the outbuilding has been designed to meet the wording of the appeal decision APP/R4408/X/20/3263972 and that it is assumed that this translates automatically into being a development used in compliance with Class E of the General Permitted Development Order. The Inspector cites in paragraph 14 of their decision that a bathroom/wetroom is ‘reasonably required’ in connection with the gymnasium.

Irrespective of whether the bathroom within the outbuilding is reasonable or not, the test to be applied under Section 191 of the Town and Country Planning Act 1990, relates to whether the development is lawful or not. Class E under Part 1 of the General Permitted Development Order allows outbuildings to be developed lawfully without consent of the Local Planning Authority subject to the use of the outbuilding being incidental to the use of the main dwellinghouse. The [Permitted Development Rights for Householders: Technical Guidance](#) explicitly states on page 41 that ‘*a purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen*’. The technical guidance clearly outlines that a bathroom is not incidental to the main dwellinghouse as it is primary living accommodation.

A recent appeal decision relating to primary living accommodation and the incidental test under APP/X1545/X/20/3263452 provides further clarification as follows:

‘10. The Courts have held that the test in this respect is one of fact and degree². The sitting area within the detached outbuilding would, to adopt the language of Macleod QC in Peche D’Or Investments, not be expected to be regarded as being incidental to the enjoyment of a dwelling house as such because it is generally an integral part of the ordinary residential use as a dwelling house.

...

17. Even if I were to find the building met the limitations set out in Class E, the proposed use of the building is intended to be used as living accommodation for a member of the appellants’ family. As held in Peche D’or Investments v SSE[1996] and commented on in APP/W4705/X/14/2216602, given the word ‘provision’ in the GPDO, it is the primary intention of construction that should be considered. Since the building would be used to provide primary living accommodation, it would not be incidental to the enjoyment of the dwellinghouse and the works would not be development which is permitted by Class E. Furthermore, whilst the building is currently used for storage, it is not disputed that the building already comprises a bedroom, bathroom and kitchen.’

Based upon the above description, it is clear cut that the outbuilding reviewed under this lawful development certificate application is to be provisioned with a room classified as primary living

Householder Proforma – Existing Use (Lawful Development Certificate)

accommodation specified within the technical guidance and is not incidental to the main dwellinghouse, which also has a bathroom that could be used in connection with the gymnasium. On this point alone the development cannot be considered lawful as it is contrary to the interpretation and intent of Class E in the GPDO.

Fact and degree also indicate that the ability to access all rooms of the outbuilding internally infer that the use of the gym could quite easily revert to being used as a sitting room and kitchen unlawfully and without oversight by the LPA. It is appreciated that the LPA have to take the proposal at face value, however given the precedent set by previous submissions, it is highly likely that alternative uses will come forward that are not incidental to the enjoyment of the main dwellinghouse and which would likely be classified under the primary living accommodation interpretation de-lineated in the technical guidance document. Indeed the entire yoga area is not justified in the planning statement nor is the increased garden storage area. The LPA have not been provided evidence as to why these areas are now required and would query why it is not necessary to reduce the outbuilding in size to simply provide sufficient space for the gymnasium element alone. Indeed the garden storage area, which is identical to the sitting area proposed under 2020/0708, could be predicated on the purchase of new items that would fill this area but no such details have been submitted. Fact and degree thus dictates that it is reasonable to assume that the internal access and retention of bi-fold doors are for the purpose of including a lounge or similar use in this space once the outbuilding is developed. Bi-fold doors are an expensive item to incorporate into the design for the sake of a storage area and one which is not necessarily optimal for security in comparison to an opaque composite door.

The internal space of the outbuilding is also approximately 60sqm. This broadly equates to the minimum space standard for a two-bedroom dwellinghouse as set out within the South Yorkshire Residential Design Guide.

For the reasons cited above and In line with the internal legal advice sought by the LPA, the size of the outbuilding for the purpose of a gymnasium and garden storage area are not determined to be incidental to the main dwellinghouse as the new uses proposed to replace the sitting areas have not been justified and the outbuilding retains a substantial footprint and design indicative of primary living accommodation.

Conclusion:

In the opinion of the Local Planning Authority the proposed outbuilding is excessive in size and consists of primary living accommodation that would not be incidental to the main dwellinghouse to which it relates. The proposal therefore does not benefit from permitted development rights set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) under Sch. 2 Part 1 Class E and a Lawful Development Certificate cannot be issued by consequence.

The Local Planning Authority determine that insufficient evidence was submitted to justify the size and use of the building in line with the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Sch. 2 Part 1 Class E with the onus resting upon the applicant to provide sufficient evidence and information to substantiate lawful development, as stipulated by the Planning Practice Guidance.

Recommendation: Certificate Refused