

Application Reference: 2025/1055

Site Address: 126, Hemingfield Road, Hemingfield, Barnsley, S73 0QA

Introduction:

This application seeks approval for a Certificate of Lawful Development for the proposed Demolition of an existing garage, the erection of a new single storey garage and a new sliding gate

Relevant Site Characteristics

The dwelling is a contemporary style yellow stone, detached house featuring an original conservatory/extension style projection on its rear elevation.

Site History

An extension to the dwelling was approved in the 1981 planning application B98/0917/PR

Detailed description of Proposed Work

The proposal seeks to replace the existing garage with a larger double garage and install a new sliding gate, whilst meeting the requirements of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Relevant Legislation

Section 192(1) of The Town and Country Planning Act 1990 provides that if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question. Section 192(4) then provides that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application.

The Town and Country Planning (General Permitted Development) (England) Order 2015

Part 1, Schedule 2

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

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);

- (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);
- (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;
- (d) the building would have more than 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;
- (f) the height of the eaves of the building would exceed 2.5 metres;
- (g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;
- (h) it would include the construction or provision of a verandah, balcony or raised platform;
- (i) it relates to a dwelling or a microwave antenna;
- (j) the capacity of the container would exceed 3,500 litres or
- (k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

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

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.

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.

Part 2, Schedule 2
Class A – gates, fences, walls etc

Permitted development

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development not permitted

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

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—

(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;

(ii) in any other case, 1 metre above ground level;

(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater; or

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building.

Interpretation of Class A

A.2 For the purposes of Class A, “school” includes—

(a) premises which have changed use under Class S or T of Part 3 of this Schedule (changes of use) to become a state-funded school or registered nursery as defined in paragraph X of Part 3; and

(b) a building permitted by Class C of Part 4 of this Schedule (temporary buildings and uses) to be used temporarily as a school, from the date the local planning authority is notified as provided in paragraph C.2(b) of Part 4.

Consultations

Legal Department:

Concern was raised as to the status of the track, which runs adjacent to the eastern boundary of the dwelling's curtilage, which in addition to providing the sole vehicular access to the current and proposed garage, is also a public right of way. If the track was considered to be a public highway, a 1m limitation may have applied to the height of new boundary treatments. As such the legal department were consulted for advice.

The legal consultee's response highlighted the following point of legislation:

“The adjoining track is signposted as a public footpath/PROW. A public footpath is defined as a highway in accordance with s329 of the Highways Act 1980 because the public have a right of way over it. Public footpaths do not carry any vehicular rights”

With no vehicular right of way, the track would not be considered as a public (vehicular) highway and any subsequent limitation on height of a boundary treatment would be the standard 2m maximum, as outlined in in the GPDO 2015 guidance.

The development is confined to land owned by the applicant (a copy of the deeds supplied), existing and future vehicular access along the track, which may also be partially owned by the applicant would be a civil matter between any interested parties, and beyond the remit of the planning department.

Planning Assessment

Principle

Permitted development rights were not removed for this dwelling in the sole recorded planning application of B98/0917/PR, so the dwelling benefits from the provision of the general permitted development rights, as detailed above. Although formal consultation was not undertaken, concern was raised about the ownership of the land. Whilst ownership is a civil issue, a copy of the deeds was provided, indicating the land was attached to the ownership of the dwelling. Any further issues included right of access would remain a civil issue between interested parties.

In support of the application was a planning statement and plans; Existing Plans and Elevations J003 – PL01, Proposed Site Plan J003 – PL02, and Proposed Plans and Elevations J003 - PL03.

Assessment:

The proposed garage would not take up more than 50% of the available curtilage of the dwellinghouse and would have approximate width and length measurements of 6.5m x 8.5m, an external footprint of 55 sqm and internal footprint of 49 sqm. The proposed eaves and roof heights are approximately 2.5m and 3.95m respectively, both within the allowances afforded by Class E, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, as the garage is also at least 2m from boundary treatments. The garage features two garage doors with a footprint size just over what may be considered as a double garage, if the application was for planning consent rather than a Certificate of Lawfulness. Therefore, it is expected that the garage would be of incidental use of the dwellinghouse, replacing an older existing garage.

The proposed sliding gate and any new or replacement fencing or walls would be erected in accordance with the provisions of Class A – gates, fences, walls etc, of Part 2, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015. This is indicated on the plans with a height of approximately 1.8m for the existing wall and fencing, along with the proposed sliding gate, all of which are adjacent to an access track not considered to be a public highway.

Conclusion

For the purposes of considering this application, the application was assessed against the criteria set out in Class E, Part 1, Schedule 2, and Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended) and was found to be compliant, therefore a lawful development certificate may be issued.

RECOMMENDATION: Approve subject to conditions

Justification

It has not been necessary to make contact with the applicant to request amendments to the proposal during the consideration of the application, as it was deemed acceptable. However, contact was in connection to a query over land ownership.

STATEMENT OF COMPLIANCE WITH ARTICLE 35 OF THE TOWN AND COUNTRY DEVELOPMENT MANAGEMENT PROCEDURE ORDER 2015

Due regard has been given to Article 8 and Protocol 1 of Article 1 of the European Convention for Human Rights Act 1998 when considering objections, the determination of the application and the resulting recommendation. it is considered that the recommendation will not interfere with the applicant's and/or any objector's right to respect for his private and family life, his home and his correspondence.