
2020/0708 Lawful Development Certificate for Proposed Development

Applicant: Mr Wilfred Moston

Proposal: Erection of detached outbuilding (Lawful development certificate for a proposed development)

Address: Gransden House, Church Street, Royston, Barnsley, S71 4QZ

Site History

2019/1218 – Re-building and extension of existing garage along with erection of a residential annex outbuilding – Refused.

2010/0488 - Fell Horse Chestnut tree (T10) and replace with a similar species and remove lower branches of Sycamore (T9) within Tree Preservation Order No. 9/1996. – Approved w Conditions

B/05/1101/RO/TF - Remove all major dead wood from Beech tree T15, within Tree Preservation Order – Approve w Conditions

B/03/1753/RO/TF - Remove Ash tree, crown lift and crown clean 1 Sycamore tree and 1 Chestnut tree in TPO 9/ 1996. – Approved

B/02/0740/RO/TF - Fell two Sycamore trees (T12 and 13) and crown thin 7 trees within Tree Preservation Order (TPO 9/1996). – Refused

B/00/0202/RO/TF - Fell Sycamore tree within Tree Preservation Order – Approved

B/92/0850/RO - Erection of detached dwellinghouse with integral garage adj. – Approved

B/88/0965/RO - Extension and change of use of dwelling to residential home – Refused

B/88/0237/RO - Erection of bungalow – Refused

B/88/0235/RO - Extension and change of use of dwelling into elderly persons rest home – Refused

Site Description

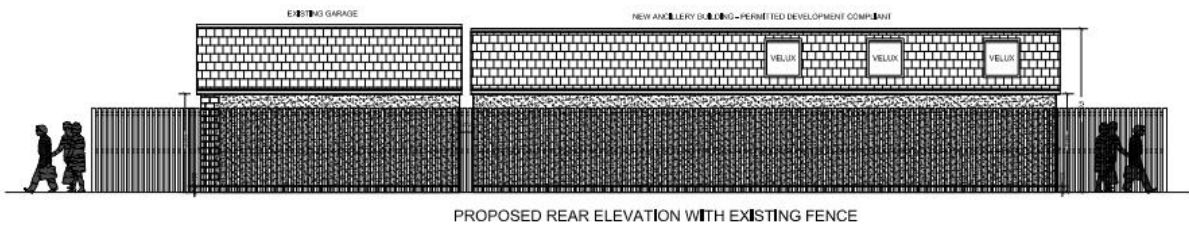
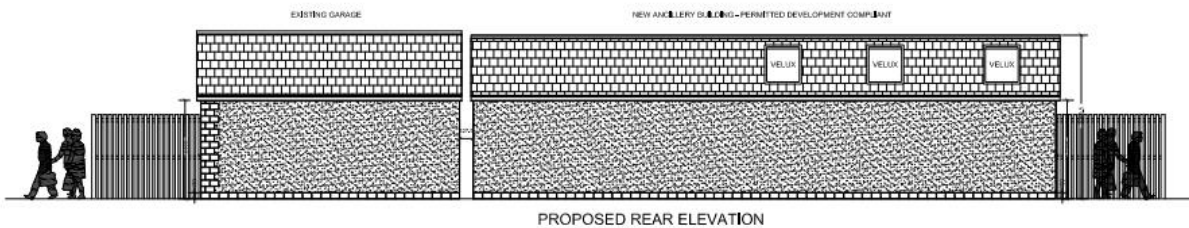
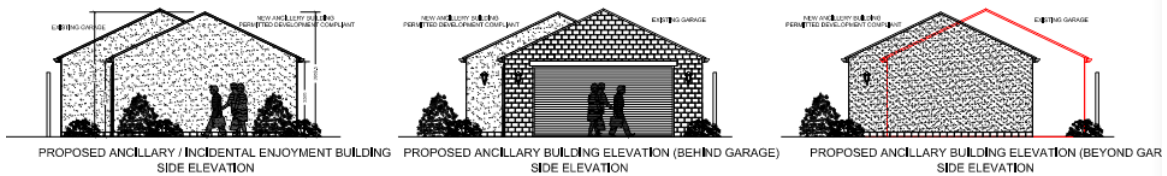
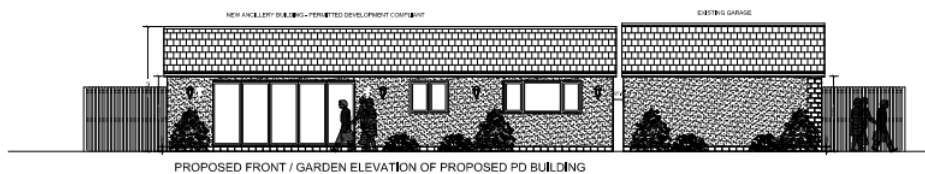
The application site relates to an outbuilding within the curtilage of the former Vicarage of St John's Baptist Church in Royston. Gransden House, indicated as the former Vicarage on OS Maps as early as 1850, has since been split into two dwellinghouses alongside the dwelling - 'Strathmore' - attached 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. Gransden House and Strathmore, on account of their presence on the earliest OS Maps, are considered a non-designated heritage asset by the LPA. The existing plans for 2019/1218 infer that the previous (garage) outbuilding was similar in scale to the re-built outbuilding but is materially less vernacular due to the loss of three sandstone elevations.

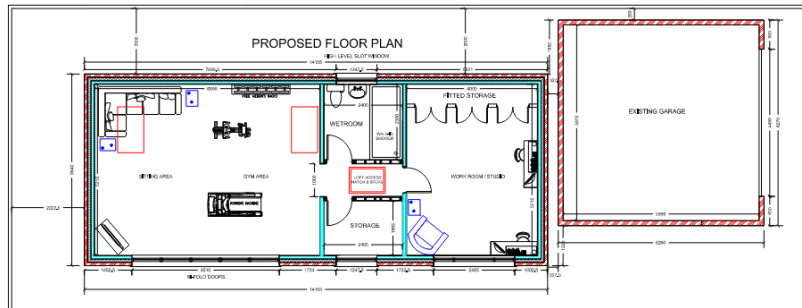


N.B A visit to the site has not been undertaken due to social distancing requirements. The photographic imagery above was taken following submission of the application 2019/1218. A visit to the site is not considered to be necessary as it will not prejudice the outcome of this case as it turns on legal matters and there is sufficient documentary evidence to understand the nature of the site and what is proposed.

Proposed Development

An application has been received requesting the issue of a Lawful Development Certificate (LDC) under Section 192 of the Town and Country Planning Act 1990. The applicant has re-built their existing single storey garage and proposes to erect a further detached single storey annex building beside its eastern elevation set further north by 1.65m to allow for a 2m distance to the southern boundary. The re-built garage shall be almost square at 6.29m in length by 6.27m in width while the detached annex shall be set forward 1.22m from the garage's northern elevation at a length of 14.17m by 5.84m in depth. The eaves and total height of the proposal are to be 2.39m and 3.96m respectively. i.e. being detached from the existing outbuilding and set out of line compared to the re-built outbuilding. The materials proposed on the outbuildings are stated to be stone on the floor plans but the elevation plan appears to contradict this with blockwork presenting only upon the western wall of the re-built garage and an alternative non-descript material (possibly outer-facing blockwork) applied to the rest of both outbuildings' elevations. Similarly the glazing and roofing materials are also not described within the pitched roof arrangement though three no. velux windows will be situated on the southern roof slope facing the neighbour's boundary. The internal layout of the annex will include a wetroom/bathroom, large storage cupboard, gym, living room and work room/studio. The overall external footprint of the outbuilding is measured at 82.75sqm.





Lawful Development Certificate Guidance

Lawful Development Certificates for proposed development 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.

Consultations

Conservation Officer – Provided advice on how to interpret clause G of Class E relating to outbuildings within the curtilage of listed buildings. Agreed with the conclusions of the case officer on grounds of not being incidental to the main dwelling whilst also contravening clause G of Class E .

South Yorkshire Archaeology Service – Objects to the proposal but recognises there are no lawful archaeological reasons within the GPDO that would sustain such an objection. The objection is consequently made for policy reasons.

Forestry – No response

Representations

The application was advertised by way of neighbour consultation letters sent to surrounding properties – no representations have subsequently been received.

Pre-Application Advice History

2015/ENQ/00660 – Received 18/02/2016 –

Response from the Case Officer dated 11/12/15 stated the following:

In planning terms I do not have any issues with the erection of annex/granny, however I can not give any further guidance as I do not have any dimensions to eaves/ridge. If the building is to be located within 2m of the side boundary and you can keep the height at 2.5m the annex could be erected under permitted development if it does not have more than 3 rooms and there is some reliance on the main dwelling. If the building is to have a height greater than 2.5m planning permission will be required and there is a strong possibility that the conservation officer will object to the proposal because of the impact on the listed church to the rear.

If the height is to exceed 2.5m and the annex can be re-located to give a 2m clearance from the rear and side boundary, the height to the eaves could be constructed upto 2.5m with a further 1.5m to the ridge, totalling 4m.



2015-ENQ-00660
plans.pdf

A further response was provided on 26/02/2016 following submission of revised plans, it stated the following:

Firstly I would like to state that based upon the initial plans submitted (attached titled 2015-ENQ-00660 plans) the dormer bungalow to be located forward of the principle elevation of the dwelling and between the original dwelling and the highway would not be supported. The granny annex located to the rear of the property also indicated on these plans will require a planning application.

However you have submitted subsequent plans showing the amended location of the rear granny annex and its proposed elevations (attached plans ref: 2015-ENQ-00660 amended plans) I can confirm that the development proposed in document '2015-ENQ-00660 amended plans', falls within the parameters of permitted development and would not require a planning application.



2015-ENQ-00660
amended plans.pdf

2019/ENQ/00672 - Received 16/08/20 – Plans the same as current proposal. The following issues were outlined to the applicant:

- The case officer recommended that a planning application was required as the GPDO technical guidance clarifies that the permitted development rights do not? not extend to allow annexe uses in outbuildings.
- Likewise the eaves height was in excess of 2.5m within 2m of a boundary, further denying the potential for the proposal to be within permitted development rights.
- The re-building of the garage was advised as 'OK' in principle while the 'annex' aspect of the proposal was advised as unacceptable as it had no reliance on the main property.

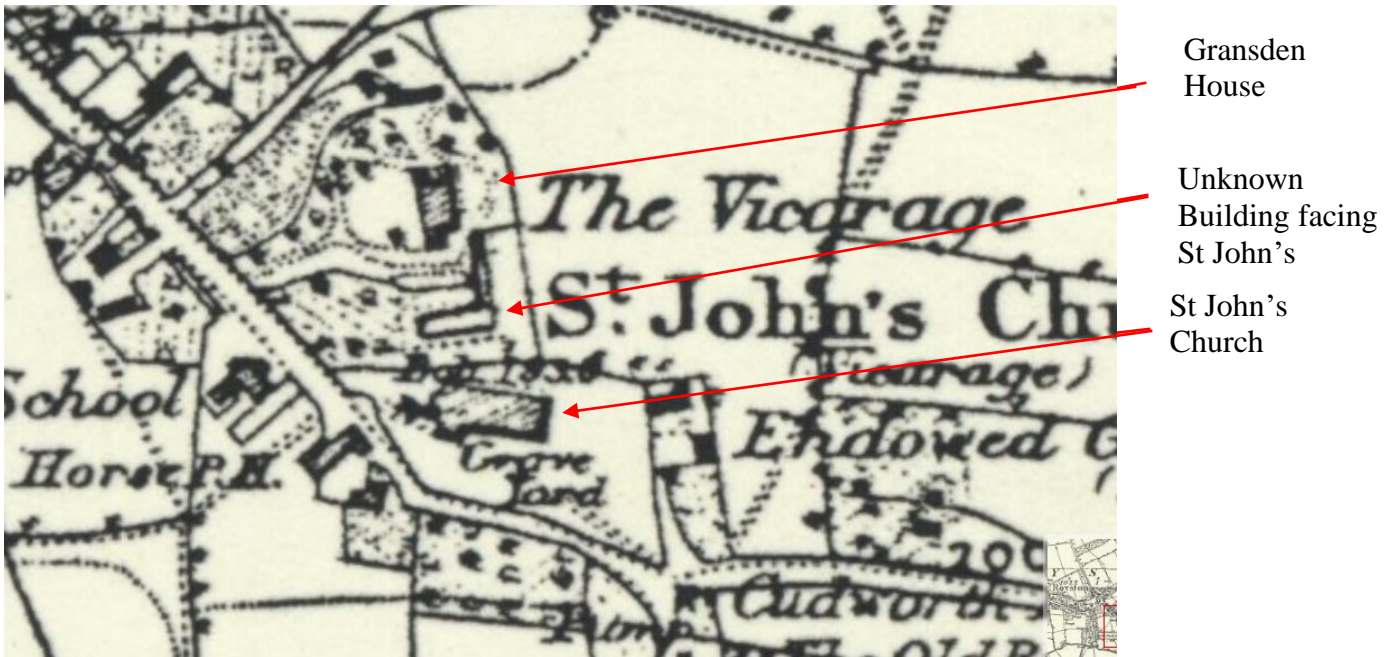
Lawfulness Assessment

Any outbuilding constructed between St John's and the applicant's property is determined to be within the historic curtilage of the Grade I listed building due to Gransden House being the original Vicarage – this is especially prescient in the context of Historic England's Advice Note 10 on how to determine a curtilage of a listed building:

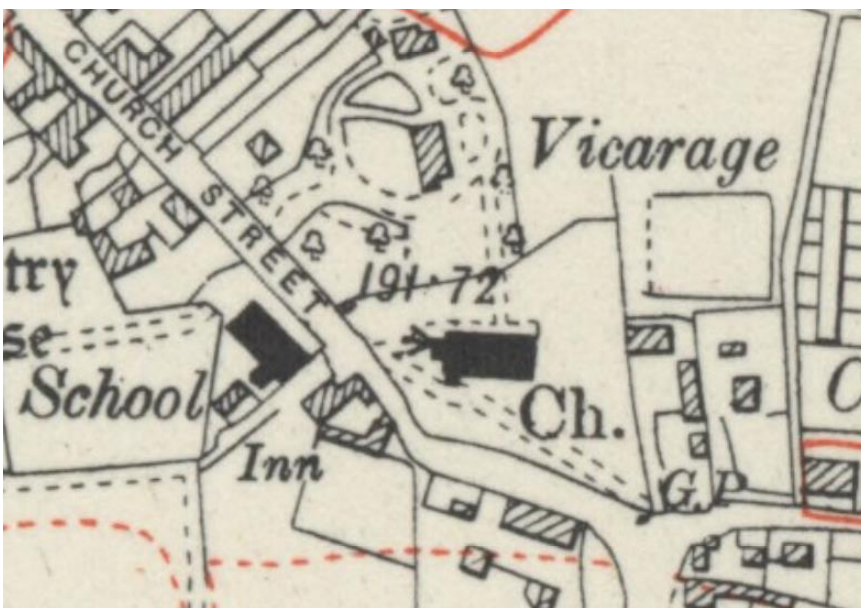
The curtilage of a building (the principal building) is in general terms any area of land and other buildings that is around and associated with that principal building. The courts have said that there are three key factors to be taken into account in

assessing whether a structure or object is within the curtilage of a listed building: (1) the physical layout of the listed building and the structure; (2) their ownership, both historically and at the date of listing; and (3) the use or function of the relevant buildings, again both historically and at the date of listing (these tests were first proposed in the Attorney-General ex rel. Sutcliffe and Others v. Calderdale BC, 1982, as accepted by Debenhams plc v. Westminster CC, 1987). (p.1)

Given the high level of special historic interest concerning Grade I assets, it is felt by the LPA that the proposal is in fact within the curtilage of the Church, especially in relation to points (2) and (3) of the Advice Note and logically it follows that this is the interpretation provided within the General Permitted Development Order 2015 Sch. 2 Part 1 Class E.1 (g). When assessing the 1854 OS Six Inch Map, the proposal is sited in roughly the same location as where an unknown building is identified below.



The above evidences the historic layout of St John's curtilage where the eastern side of the unknown building appears to extend southward towards the church to form its curtilage. Subsequent OS maps, such as the 1948 OS map below, also present a path directly connecting the Vicarage and St John's thereby substantiating the shared curtilage that they possessed.



Given that Gransden House is the former vicarage of the St John's the Baptist Church it can be assumed that the church was the principle building on the site which was supported by the vicarage as a residence for the Church's vicar. This association is clearly demonstrated on all of the OS maps dating back to 1854 (the

earliest available OS map) and reinforces the shared history and presumably, curtilage, that they have shared for the past two centuries. Indeed the institution of modern fencing and boundary treatments does not overcome this fact and the LPA feel that the weight attributed to the historic relationship between the two buildings is more substantive than the existing curtilage split formed by the new vicarage located further west which has artificially severed the historic relationship shared between St John's and Gransden House. This is especially true owing to the fact that no planning application history exists for a proposed dwelling where the new Vicarage resides and it simply benefits from being established development erected in excess of four years ago. It is highly unlikely that the new Vicarage would be approved permission were such a proposal determined under current guidance and policies.



Historic England's 2020 Listing Map Entry presents the location of the path that would have led to the Vicarage from St John's

On the basis of the above assessment, the LPA consider that any outbuilding within the curtilage of Gransden House would not benefit from permitted development rights on account of GPDO 2015 Sch. 2 Part 1 Class E.1 (g) as Gransden House is determined to be an 'associated' building to the Grade I listed St John's Church and thus within the latter's curtilage in line with the advice presented within Historic England's Advice Note 10 and the case law stated therein.

Separately, the proposed outbuilding does not benefit from Class E due to it not presenting as a building that is incidental to the enjoyment of the dwellinghouse (Gransden House). Determination of this factor, given evidence of previous appeals and case law¹², is related to the factor and degree to which a building can reasonably be presumed to be secondary residential accommodation that does not include primary residential accommodation. Further to this, the size of the outbuilding relative to the host dwelling is also of contextual importance. Both of these factors, use and size, can instruct the LPA as to the level of reliance the outbuilding shall have on the host dwelling in terms of its facilities and uses and whether they will in fact amount to a building that will exceed an incidental use allowed under Class E.

The LPA agree with the majority, but not all, of the contents of the attached planning statement submitted by the applicant which states that the proposal meets the criteria for Class E. The LPA's opinion diverges on the matter of it being incidental due to the building's excessive size and its incorporation of a living room and a bathroom. Indeed, the LPA have serious concerns that this building is capable of being used as a separate dwellinghouse due to its previous planning history and that the issuance of a Lawful Development Certificate

¹ Case Law – Peche D'or Investments v SSE (1996)

² Appeals –

APP/K0425/X/20/3245303

APP/K2230/X/19/3241778

APP/D2320/X/19/3239530

would result in a building that would clearly exceed the intention of GPDO Class E for outbuildings that are of an incidental, ancillary and subordinate nature to the host dwelling.

Firstly, in respect of size, the outbuilding is proposed at 82.75sqm in footprint compared with Gransden House's footprint (not including the attached dwelling or rear extension) of approximately 122.4sqm. When viewed in terms of reasonableness, as set out by Inspector Jones in paragraph 9 of her decision APP/D2320/X/19/3239530, the proposed building (not including the existing re-built garage) will constitute approximately 67.6% of the dwelling's original footprint. The LPA do not view this proportion as reflective of a reasonable size. For comparison's sake and one's understanding of how large this outbuilding would be, it would meet the minimum criteria for a three bedroom single storey dwellinghouse that could house four occupants as required by the Nationally Prescribed Space Standards. Indeed, this context substantiates the LPA's concern relating to the size of the outbuilding and how its future use may evolve beyond its purported intent.

As regards the interpretation of primary and secondary residential accommodation, the uses suggested on the submitted plan are a mix of both primary and secondary accommodation. The LPA interpret the gym area and the work room as an incidental use that would be classified as secondary residential accommodation; especially in the context of the ongoing pandemic and future 'work from home' arrangements that have become prevalent in 2020. Nevertheless, no evidence has been submitted which justifies the size of the gym area nor that of the work/studio room, both of which seem excessive. Indeed the work room/studio is 17.85sqm in size and seems far in excess of the space required for two adults to work at desks. The wetroom and living room areas are classified as primary residential accommodation that are to be located within the main dwellinghouse. No evidence has been supplied to suggest why the extra space is required for such facilities in the proposed outbuilding when they are likely catered sufficiently within the main dwelling. The wetroom in particular is of a size that presents a main bathroom use with the ability for one to shower and use the toilet. Overall the internal arrangement and fitout further infers to the LPA that the proposal would not be used incidentally to the main dwelling but could itself be adapted to be used as an independent dwelling.

Conclusion

Cumulatively an outbuilding of this size and for the uses proposed internally infer that the building will not be incidental to the main dwellinghouse and shall not constitute a secondary set of facilities that will benefit the occupants of the existing dwelling in a manner that would prevent a planning application being required. The LPA believe that the submission of this Lawful Development Certificate is an insincere attempt to overcome the issues raised under 2019/1218 which resulted in a refused planning permission. Nevertheless, the LPA have not factored this previous application into their assessment of this Lawful Development Certificate and have instead reviewed the proposal in line with the legislative requirements it would need to meet to be considered lawful permitted development. On this basis, and for the reasons discussed above, the development proposal would not be lawful as it would be contrary to the incidental test required by Class E while also being located clearly within the historic curtilage of a Grade I listed asset.

Recommendation

Refuse issue of Certificate

Reasons for Refusal:

1. In the opinion of the Local Planning Authority the proposed outbuilding is excessive in size and inappropriate in its residential use so as to 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.
2. In the opinion of the Local Planning Authority the proposed outbuilding does not benefit from permitted development rights and consequently cannot be granted a lawful development certificate by reason of Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Sch. 2 Part 1 Class E.1 (g) where outbuildings cannot be permitted development within the curtilage of a listed building.

3. 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.