

WELWYN HATFIELD COUNCIL – DEVELOPMENT CONTROL
DELEGATED REPORT

APPLICATION No:	S6/2011/1567/LU
----------------------------	------------------------

CONSTRAINTS:

The site lies within the Metropolitan Green Belt as designated in the Welwyn Hatfield District Plan 2005.

DESCRIPTION OF SITE:

The application site is located to the north west of Kentish Lane. It comprises of a large detached dwellinghouse set within an irregular shaped plot. The external walls of the dwellinghouse are painted white.

The red outline of the site is drawn around the parcel of land accommodating the dwelling and the land to the rear which currently houses a stable block. The applicants also own the parcel of land to the south west of the dwelling (outlined in blue) which has its own vehicular access off Kentish Lane.

DESCRIPTION OF PROPOSAL:

The proposal seeks a certificate of lawfulness for the erection of a two storey rear extension measuring 3m in depth, a single storey rear extension beyond the existing garage measuring 3.6m in height and 8.5m in depth, a single storey side extension measuring 6.4m in width, 3.8m in height, 9.9m in depth and loft conversion.

The dwellinghouse will change from a three bed to a four bedroom dwellinghouse.

The proposal also seeks to create an open air swimming pool to the rear of the dwelling measuring approximately 6.6m x 3.7m. The existing garage to the rear of the dwelling is to be converted into an outbuilding associated with the swimming pool comprising of a pool bar, plant room and changing room.

Towards the rear end of the application site, the existing stable block is to be converted into a double garage with driveway leading up from the existing gravel area to the front of the dwelling along the south western elevation of the dwelling to the proposed garage block.

PLANNING HISTORY:

S6/2003/1687/FP – Erection of single storey side extension and demolition of existing utility room. Granted 9th February 2004

S6/2004/1104/FP – Erection of one new dwelling. Refused 10th September 2004

S6/2006/0641/FP – Replacement of existing small stable block, tack room and hay barn. Granted 11th July 2006

S6/2010/0298/FP – Formation of new crossover and driveway and erection of new boundary wall and gates. Refused 18th May 2010

S6/2010/2281/LU - Certificate of Lawfulness for a proposed rear single storey and first floor extension and side single storey extension and loft conversion incorporating rear dormer and garage conversion. Refused 24th November 2010

S6/2011/0008/LU - Certificate of Lawfulness for a proposed two storey rear and single storey side extension and loft conversion incorporating rear dormer and garage conversion. Granted 17th January 2011

SUMMARY OF DEVELOPMENT PLAN POLICIES:

Not applicable

CONSULTATIONS

Not applicable

TOWN/PARISH COUNCIL COMMENTS

Not applicable

REPRESENTATIONS

Not applicable

DISCUSSION:

The main issues are:

- 1. Whether the proposed works are permitted development by virtue of Schedule 2, Part 1, Class A, B, C and E of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008**
 - 2. Whether the red outline as shown on the Site Location Plan (1:1250) can be considered the residential curtilage of the dwellinghouse**
-
- 1. Whether the proposed works are permitted development by virtue of Schedule 2, Part 1, Class A, B, C and E of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008**

Class A
Permitted Development

A. The enlargement, improvement or other alteration of a dwellinghouse.

Development not permitted

A.1 Development is not permitted by Class A if:-

As a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)

As a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse would not exceed 50% of the total area of the curtilage

(b) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse

The proposal would not exceed the height of the highest part of the roof of the existing dwellinghouse

(c) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse

The height of the eaves of the proposal would not exceed the height of the eaves of the existing dwellinghouse

(d) the enlarged part of the dwellinghouse would extend beyond a wall which:-
(i) fronts a highway, and
(ii) forms either the principal elevation or a side elevation of the original dwellinghouse

Not applicable

(e) the enlarged part of the dwellinghouse would have a single storey and:-
(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or
(ii) exceed 4 metres in height

The existing garage attached to the side elevation of the dwelling is considered part of the original dwelling as the planning history relating to the application site does not suggest otherwise. Therefore the rear wall of the existing garage constitutes part of the rear wall of the original dwellinghouse as illustrated on page 17 of the Communities and Local Government, 'Permitted development for householders: Technical Guidance' (August 2010).

The existing utility room is to be demolished as part of the proposal and therefore the proposed extension on the north eastern side elevation measures 8.5m from the rear wall of the existing garage (original dwelling) which fails to comply with part (e) (i)

The proposed single storey rear extension measures 3.6m in height.

- (f) the enlarged part of the dwellinghouse would have more than one storey and:-
- (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or
 - (ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse

As part of the proposals, many of the internal walls are to be removed. However, for the purposes of this assessment, the proposed rear extension which would extend beyond the rear walls of the existing kitchen, WC, hallway and living room on the ground floor and bedroom 3, WC, bathroom and ensuite on first floor as shown on drawing 11015/2 would measure 3m in depth.

The proposed two storey rear extension measures more than 7 metres of any boundary of the curtilage.

- (g) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres

The single storey extension on the north eastern elevation measures within 2 metres of the boundary. However, the height of the eaves do not exceed 3 metres.

- (h) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would:-
- (i) exceed 4 metres in height,
 - (ii) have more than one storey, or
 - (iii) have a width greater than half the width of the original dwellinghouse

The proposed extension on the south western side elevation measures 6.5m from the side elevation of the existing dwellinghouse and would not exceed 4m in height.

However, the proposed side extension would have a width greater than half the width of the original dwellinghouse when considered in combination with the proposed rear extension which will effectively create a 'wrap around' extension. Page 26 of the Technical Guidance referenced above under part (e) shows examples where an extension fills the area between a side elevation and a rear wall. In this instance, part of the single storey side extension connects with the proposed two storey rear extension. The ground floor element of the rear extension when combined with the proposed side extension will extend more than half the width of the existing dwellinghouse.

(i) it would consist of or include:-

- (i) the construction or provision of a veranda, balcony or raised platform,
- (ii) the installation, alteration or replacement of a microwave antenna,
- (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
- (iv) an alteration to any part of the roof of the dwellinghouse

The proposal does not include the construction or provision of a veranda, balcony or raised platform. Neither does it include the installation, alteration or replacement of a microwave antenna, chimney, flue or soil and vent pipe.

The proposal does incorporate an alteration to part of the roof of the dwellinghouse. However, the alterations to the existing roof of the house will need to be considered under the requirements of Class B and if they adhere to Class B then the non compliance with Class A (i) (iv) will become void.

A.2 In the case of a dwellinghouse on article 1(5) land, development is not permitted by Class A if:-

(a) it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;

(b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse;

(c) the enlarged part of the dwellinghouse would have more than one storey and extend beyond the rear wall of the original dwellinghouse

Not applicable

A.3 Development is permitted by Class A subject to the following conditions:-

(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse

The application forms have not clearly indicated that the development would be constructed from materials matching those of the existing dwellinghouse. However this is a condition attached and applicable to any approval and must be complied with in order to be lawful.

(b) any upper-floor window located in a wall or roof slope forming a side elevation of the dwelling house shall be:-

- (i) obscure-glazed, and
- (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed;

The application drawings have not shown the windows proposed on the upper floor side elevation to be obscured glazed and non opening below 1.7 metres. However this is a condition attached and applicable to any approval and must be complied with in order to be lawful.

(c) where the enlarged part of the dwellinghouse has more than one storey, the roof pitch of the enlarged part shall, so far as practicable, be the same as the roof pitch of the original dwellinghouse

The roof pitch of the proposal will match the roof pitch of the existing dwellinghouse.

Class B

Permitted Development

B. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

Development not permitted

B.1 Development is not permitted by Class B if:-

(a) any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof

As a result of the works, the dwellinghouse would not exceed the height of the highest part of the existing roof

(b) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway

No part of the proposal will extend beyond the existing roof slope forming the principal elevation

(c) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than:-

- (i) 40 cubic metres in the case of a terrace house, or
- (ii) 50 cubic metres in any other case

The applicant has not submitted roof volume calculations or roof plans as part of the proposal and therefore the calculations are approximate.

Rear elevation gable: 10m³

Side elevation gables: 18.8m³

Roofspace above two storey rear extension: 105m³

Roofspace above single storey side extension: 48m³

Roofspace above single storey rear extension: 28.6m³

Total additional roofspace: 210.4m³

The proposal therefore fails to comply with Class B (c) by virtue of the additional volume of the roofspace exceeding 50m³ upon the roofspace of the original dwelling

(d) it would consist of or include:-

- (i) the construction or provision of a veranda, balcony or raised platform, or
- (ii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe

The proposal does not include the construction or provision of a veranda, balcony or raised platform. Neither does it include the installation, alteration or replacement of a microwave antenna, chimney, flue or soil and vent pipe.

(e) the dwellinghouse is on article 1(5) land

Not applicable

B.2 Development is permitted by Class B subject to the following conditions:-

(a) the materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse

The application forms have not clearly indicated that the development would be constructed from materials matching those of the existing dwellinghouse. However this is a condition attached and applicable to any approval and must be complied with in order to be lawful.

(b) other than in the case of a hip-to-gable enlargement, the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 20 centimetres from the eaves of the original roof

Not applicable

(c) any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse shall be:-

- (i) obscure-glazed, and
- (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed

The application drawings have not shown the windows proposed on the upper floor side elevation to be obscured glazed and non opening below 1.7 metres. However this is a condition attached and applicable to any approval and must be complied with in order to be lawful.

Interpretation of Class B

B.3 For the purposes of Class B “resulting roof space” means the roof space as enlarged, taking into account any enlargement to the original roof space, whether permitted by this class or not.

Class C

Permitted Development

C. Any other alteration to the roof of a dwellinghouse

Class C relates to the rooflights proposed on the front, rear and north eastern side elevation of dwellinghouse

Development not permitted

C.1 Development is not permitted by Class C if:-

(a) the alteration would protrude more than 150 millimetres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof

The proposal would not protrude more than 150 millimetres beyond the plane of the original roof slope

(b) it would result in the highest part of the alteration being higher than the highest part of the original roof; or

The proposal would exceed the height of the highest part of the original roof

(c) it would consist of or include:-

(i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or

(ii) the installation, alteration or replacement of solar photovoltaics or solar thermal equipment

The alteration to the roof does not consist of the above

C.2 Development is permitted by Class C subject to the condition that any window located on roof slope forming a side elevation of the dwellinghouse shall be:-

(a) obscure-glazed; and

(b) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.

The application drawings have not shown the windows proposed on the upper floor side elevation to be obscured glazed and non opening below 1.7 metres. However this is a condition attached and applicable to any approval and must be complied with in order to be lawful.

Class E

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

Class E relates to the proposed swimming pool and the conversion of the existing garage to a pool bar/plant room/changing room

Development not permitted

E.1 Development is not permitted by Class E if:-

(a) 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);

The proposal would not exceed 50% of the total area of the curtilage.

(b) 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;

The proposal would be to the rear elevation of the dwellinghouse

(c) the building would have more than one storey

None of the outbuildings proposed are more than one storey

(d) 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;

The proposed double garage has a dual pitched roof and measures no more than 4 metres in height

The proposed pool bar/changing facilities is a conversion of an existing outbuilding with no changes proposed to the height.

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

The height of the eaves of the proposed double garage would not exceed 2.5m

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

Not applicable

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

Not applicable

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

Not applicable

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

Not applicable

E.2 In the case of any land within the curtilage of the dwellinghouse which is within:-

- (a) a World Heritage Site,
- (b) a National Park,
- (c) an area of outstanding natural beauty, or
- (d) the Broads

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.

Not applicable

E.3 In the case of any land within the curtilage of the dwellinghouse which is article 1(5) 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.

Not applicable

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.

2. Whether the red outline as shown on the Site Location Plan (1:1250) can be considered the residential curtilage of the dwellinghouse

The red outline on the submitted Site Location Plan (1:1250) is shown to be the land containing the dwellinghouse and land to the rear of the dwellinghouse containing the existing stable block. The parcel of land to the south west of the dwellinghouse is outlined in blue which is in the ownership of the applicant but is not considered by the applicant to be the residential curtilage of the dwellinghouse.

Previous planning applications and lawful development certificates (LDC) which have been submitted by both the applicant and others have site location plans which show differing red outlines. Most notably, LDC application reference S6/2010/2281/LU originally showed the red outline around all three parcels of land. However, during the application process the applicant was advised to resubmit the site location to only show the parcel of land containing the dwellinghouse to be outlined in red and an amended site location plan was submitted. The site location plan submitted as part of the subsequent LDC application, reference S6/2011/0008/LU, showed just the parcel of land containing the dwellinghouse to be outlined in red.

During the validation process for the current lawful development certificate the agent confirmed that the site location plans for the previous two lawful development certificates were incorrect. Therefore, it is the purpose of this lawful development certificate to assess whether the red outline shown on the current Site Location Plan is in fact the residential curtilage of No.45 Kentish Lane.

Development Control Practice states, 'Permitted development rights apply within lawfully created curtilages of domestic or industrial land and therefore definition may be of critical importance in determining whether planning permission is required for development..... In most cases curtilage definition does not cause much controversy as, although ownership is not on its own a determining factor, the boundary of a private garden or the extent of the land surrounding a factory or warehouse is normally defined on the ground and by function as a matter of fact and degree. However, particularly in areas of sporadic or low density housing development, there may be difficulties where parts of gardens are detached, where there is no physical definition at all or where there are paddocks on small fields adjoining dwellings, perhaps used for horses or quasi-agricultural purposes'.

The parcel of land in question relates to that which currently houses the existing stable block. It is understood that the stable block has been in existence for some time taking into consideration the previous planning application (ref: S6/2006/0641/FP) for the 'replacement of existing small stable block, tack room and hay barn' which was granted planning permission on 11th July 2006.

The area of land immediately adjacent to the rear of the dwelling is laid to lawn and is maintained as such with a mixture of shrubbery and flowers typical of residential rear gardens. The boundary between this parcel of land and the land to the rear which houses the stable block, comprises a line of shrubbery and

small trees which provides a natural landscape buffer with a small opening allowing access to land to the rear along with a number of concrete posts measuring approximately 1 metre in height which presumably were once used for fencing or border separation. The parcel of land to the rear is very similar in characteristic to the parcel of land to the south west of the dwelling taking into consideration the large number of trees and shrubbery which surround the site and the slightly uneven nature of the ground. It is noted that a separate access point exists to the south west of the application site from Kentish Lane which leads up to the parcel of land to the rear providing a separate access point for the purposes of the stable use. The site visit confirmed that the stables are no longer in use.

Along the south western extent of the parcel of land containing the dwellinghouse is fencing which further seeks to separate the parcels of land. Evidence has not been put before me which suggests that the parcel of land to the rear can be considered as part of the residential curtilage taking into consideration the above. Whilst the stables have ceased use, the two parcels of land in question remain defined by existing boundary treatments and it is considered that the parcel of land to the rear does not constitute part of the residential curtilage. Therefore, the proposed extension and conversion of the existing stable block to a double garage cannot be considered under permitted development.

CONCLUSION:

1. The proposed development fails to comply the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, Schedule 2, Part 1:
 - Class A (e) (i) by virtue of the proposed extension on the north eastern side elevation measuring more than four metres from the rear wall of the existing garage (original dwelling),
 - Class A (h) by virtue of the proposed side extension having a width greater than half the width of the original dwellinghouse when considered in combination with the proposed rear extension which will effectively create a 'wrap around' extension,
 - Class B (c) by virtue of the additional volume of the roofspace exceeding 50m³ upon the roofspace of the original dwelling,
2. Evidence has not been put before me which suggests that the parcel of land to the rear which accommodates the stable block, as outlined in red on the Site Location Plan (1:1250), can be considered as part of the residential curtilage. Whilst the stables have appeared to cease use, the two parcels of land in question remain defined by existing boundary treatments and it is considered that the parcel of land to the rear does not constitute part of the residential curtilage. Therefore, the proposed extension and conversion of the existing stable block to a double garage cannot be considered under permitted development.

It is therefore recommended that a certificate of lawfulness be **REFUSED** for this development.

RECOMMENDATION:

1. The proposed development fails to comply the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, Schedule 2, Part 1:
 - Class A (e) (i) by virtue of the proposed extension on the north eastern side elevation measuring more than four metres from the rear wall of the existing garage (original dwelling),
 - Class A (h) by virtue of the proposed side extension having a width greater than half the width of the original dwellinghouse when considered in combination with the proposed rear extension which will effectively create a 'wrap around' extension,
 - Class B (c) by virtue of the additional volume of the roofspace exceeding 50m³ upon the roofspace of the original dwelling,
2. Evidence has not been put before me which suggests that the parcel of land to the rear which accommodates the stable block, as outlined in red on the Site Location Plan (1:1250), can be considered as part of the residential curtilage. Whilst the stables have appeared to cease use, the two parcels of land in question remain defined by existing boundary treatments and it is considered that the parcel of land to the rear does not constitute part of the residential curtilage. Therefore, the proposed extension and conversion of the existing stable block to a double garage cannot be considered under permitted development.

REFUSED DRAWING NUMBERS:

11015/5A & 10015/3 & 11015/9 & 11015/7 received and dated 8th September 2011

Signature of author.....

Date.....