

WELWYN HATFIELD COUNCIL – DEVELOPMENT CONTROL
DELEGATED REPORT

APPLICATION No:	S6/2012/0348/LUP
APPLICATION Site:	45 Kentish Lane, Brookmans Park

NOTATION:

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 application seeks a certificate of lawfulness to replace the existing stable block to the rear of the application site with a double garage measuring 4m in height, 11m in width and 7.8m in depth.

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

S6/2011/1567/LUP - Certificate of lawfulness for the erection of two storey rear extension, single storey side and rear extension, loft conversion, garage conversion, swimming pool and garage. Refused 3rd November 2011

S6/2011/1999/LUP - Certificate of lawfulness for the erection of the erection of two storey rear extension, single storey side and rear extension, loft conversion, garage conversion, basement, swimming pool and new garage. Refused 3rd November 2011

SUMMARY OF 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 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
3. Whether the outbuilding can be considered incidental to the enjoyment of the dwellinghouse

1. Whether the proposed works are permitted development by virtue of Schedule 2, Part 1, Class 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 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

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

The proposal is not 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

(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.

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.

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. Two further lawful development certificates were submitted (ref: S6/2011/1567/LUP and S6/2011/1999/LUP) both of which showed the same red outline as that submitted under the current application.

In reference to the current application, a statement has been submitted in respect of the matter of the curtilage. Paragraph 9 of the statement states, “Although the LPA claims that *‘the two parcels of land in question remain defined by existing boundary treatments’* in fact there are only very limited remains of a fence between the immediate garden and the land to the rear. There is in fact no visual or physical boundary between the two parcels of land, and they are both used as a domestic garden”. Whilst the stables have ceased use, the council is still of the opinion that 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 taking into consideration the boundary treatment discussed above. The statement also refers to a number of case law in respect of the matter of curtilage. However, none of which make direct comparison to the application site. Therefore, the proposed double garage cannot be considered under permitted development as its location fails to form part of the residential curtilage of the dwellinghouse.

3. Whether the outbuilding can be considered incidental to the enjoyment of the dwellinghouse

Further to the issue of the residential curtilage is whether the proposed outbuilding is incidental to the enjoyment of the dwellinghouse as such.

The Courts have held that in the overriding factor in deciding the question as to whether the use of the proposed buildings can properly be regarded as incidental to the enjoyment of the dwellinghouse must concern the incidental use, which in that context must be a use which occurs together with something else but nevertheless remains at all times subordinate to it. Furthermore, the correct approach should have regard to the proposed use and to the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse.

For development to be permitted by the provisions of Class E, it must also be “...*required for a purpose incidental to the enjoyment of the dwellinghouse as such*”. The Courts have held that “required” should be interpreted as meaning “reasonably required”.

In relation to the location, the proposed double garage will measure approximately 53 metres from the rear wall of the existing dwellinghouse. A garage of this size is not an uncommon feature within a residential curtilage. However, it is considered that the sheer distance from the dwellinghouse to the proposed double garage would not make the proposed double garage appear incidental. In effect this outbuilding would be isolated away from the host building and its relationship with 45 Kentish Lane would be inconsistent with a building that is proposed to be incidental to the enjoyment of the dwellinghouse as such.

No evidence has been submitted with the application to show why the proposed double garage cannot be situated closer to the dwellinghouse. It is therefore considered that the proposed garage is of a distance not to be considered incidental to the dwellinghouse.

CONCLUSION:

1. Sufficient 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 double garage cannot be

considered under permitted development as its location fails to form part of the residential curtilage of the dwellinghouse.

2. The proposed double garage would be isolated away from the host building and its relationship with 45 Kentish Lane would be inconsistent with a building that is proposed to be incidental to the enjoyment of the dwellinghouse as such. It is therefore considered that the proposed garage is of a distance not to be considered incidental to the dwellinghouse.

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

RECOMMENDATION: REFUSAL AND REASON (S)

1. Sufficient 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 double garage cannot be considered under permitted development as its location fails to form part of the residential curtilage of the dwellinghouse.
2. The proposed double garage would be isolated away from the host building and its relationship with 45 Kentish Lane would be inconsistent with a building that is proposed to be incidental to the enjoyment of the dwellinghouse as such. It is therefore considered that the proposed garage is of a distance not to be considered incidental to the dwellinghouse.

REFUSED DRAWING NUMBERS:

11015/14 & 11015/13 & 11015/11 received and dated 20 February 2012

Signature of author..... **Date**.....