

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20240723
Location	Sandiacre Gravesend Road Higham Rochester
Proposal:	Application for a Proposed Lawful Development Certificate in respect of demolition of existing outbuilding and erection of single storey outbuilding.
Applicant:	Mr Steven Atherton
Site Visit	17 October 2024

Plans & Documents

Application form for a Lawful Development Certificate for a Proposed Use or Development;
Drawing no. SA-001 Site location plan;
Drawing no. SA 002 Rev. B Proposed layout and elevations;
Drawing no. SA 003 Existing block plan;
Drawing no. SA 004 Rev. A Proposed block plan; and
Drawing no. SA-005 Existing layout and elevations.

Property Type

The property comprises of a detached bungalow accessed via a commercial premises (Higham Garage).

Material Consideration

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Relevant Planning History

Reference	Description	Decision	Decision Date
19910424	Formation of a new vehicular access onto Villa Road to the bungalow at the rear known as Sandiacre	Permitted	06.09.1991
19730423	Toilet accommodation for showroom/workshop Alternative reference: TH/6/73/423	Permitted	14.01.1974
19720763	Compton universal building for car showrooms Alternative reference: TH/6/72/763	No information	No information
19680022	Erection of garage for repair of cars Alternative reference: TH/6/68/22	Permitted	06.05.1968
19640252	Installation of new petrol pumps Alternative reference: TH/6/64/252	Refused	06.01.1965

19600450	Erection of bungalow and garage Alternative reference TH/6/60/450	Permitted	09.02.1961
19590316	Site for erection of house and garage Alternate reference: TH/6/59/316	Permitted	04.12.1959
19520166	Installation of petrol pump for retail sale Alternate reference: TH/6/52/133	Refused	09.09.1952

Officer Assessment

Permitted Developments Rights Restrictions

Article 2 (3) Land (AONB, Conservation Area)	N
Article 4 Direction	N
Permitted Development Rights Removed/Restricted	N

The proposed development comprises of the erection of an outbuilding to be used for storage and as a garage.

Under Class E of Part 1, Schedule 2 of the GPDO, the following development can be permitted development;

Class 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.

For this proposal, only Class E(a) is relevant. The proposed development would be a building but in order to be permitted development, it must be located within the curtilage of a dwellinghouse and be used for a purpose incidental to the enjoyment of that dwellinghouse.

The application property appears to have been built following a grant of planning permission in either December 1958 (reference TH/6/59/316) or February 1961 (reference TH/6/60/450). No details of the approved layout or elevations for the property are available. However, an aerial photograph taken in January 1960 appears to show the current building under construction.

The application property is currently vacant (the applicant confirmed that it has been so for some 4/5 years) and is accessed only via the commercial property located immediately to the west (Higham Garage). It is noted that the submitted site location plan shows Sandiacre to be a separate property with its own access. However, the separate access does not exist on the ground and there appears to be no physical separation between Higham Garage and Sandiacre.

Whilst it is noted that planning permission was granted in September 1991, for the formation of a separate access to Sandiacre (reference 19910424), that permission does not appear to have been implemented. Indeed, that planning application showed Higham Garage and Sandiacre as a single planning unit. Furthermore, information from Google Street View and the case officer's site visit, shows that there has been no separate access to Sandiacre from July 2012 to date.

It is noted that Companies House lists the registered office of Higham Garage Ltd and the correspondence address for both directors of Higham Garage Ltd as Sandiacre. It also lists Sandiacre as the registered office for HG Autos Ltd. This implies a commercial rather than domestic use of the application property.

Aerial photographs show that over time, the area at the front of the application property has been increasingly used for vehicle parking and that between January and August 2022, a grassed area was covered with

hardstanding. At the time of the case officer's visit, the land in front of Sandiacre appeared to have been in use for parking in connection with Higham Garage.

The GBC Revenues Department have set out that Sandiacre has been listed as a domestic property since their records began (01 April 1993). But they cannot confirm how the property has been used or whether it has been residentially occupied over that time.

Therefore, it is questionable whether the application property can be considered to be a dwellinghouse.

The Town and Country Planning Act 1990 (as amended) does not provide a definition of the term 'incidental to the enjoyment of the dwellinghouse', and neither does the GPDO, apart from a general note to Class E of Part 1 which states that '

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.

Case law has determined that incidental uses must be reasonably required and that the assessment of this issue is a matter of fact and degree in each case. The courts have held that, whilst the excessive size of a proposed outbuilding is a relevant factor in determining whether it can be considered as being for a purpose incidental to a dwelling, it cannot be the deciding factor. Rather the courts have ruled that the overriding factor in determining whether the use of a proposed building can properly be regarded as being incidental, is whether it occurs together with something else but nevertheless remains at all times subordinate to it.

The proposed outbuilding would be of substantial size, providing storage and garaging. Indeed, it is noted that Sandiacre has an existing footprint of some 173 square metres, which would reduce to some 136 square metres as a result of the proposed development (following the demolition of an existing extension). The proposed outbuilding would have a footprint of 211 square metres, which would be larger than Sandiacre, whether it is reduced in size or not. As such, the building would not be subordinate in size to the main building at the application site

The submitted plans show storage in two areas and garaging as the proposed uses. These uses could be incidental to a dwelling but in order to determine this, the scale of each use and the requirements of the occupier are relevant considerations.

The applicant has provided little information regarding the proposed uses for the outbuilding or a justification for its excessive size. At the site visit, the applicant stated that it would be used to store his motorcycles and that his daughter might occupy the property.

The proposed storage has floor areas of 59 and 10 square metres respectively and the garage has a floor area of 130 square metres. The application property would appear to be a three or four bedroom property with a garden of some 670 square metres. Although the garden is relatively large, it is considered that the proposed storage would be considered excessive in such a domestic setting.

According to the Borough Council's adopted Vehicle Parking Standards, a three bedroom dwelling should have a maximum of two vehicle parking spaces and a four bedroom dwelling, a maximum of three spaces. The document states that the preferred internal dimensions for a single garage are 5.5 metres (length) by 3.6 metres (width) and a double garage are 5.5 metres (length) by 6 metres (width). Therefore, the garage could accommodate significantly more vehicles than that required for a domestic property.

It is noted that, as a vacant property, there are no occupiers who can justify the need for such a large outbuilding. The storage of motorcycles by the applicant, who does not occupy the dwelling would not be an

incidental use. Furthermore, the possibility of occupation by a relative, does not evidence a need for the levels of storage and garaging proposed in the outbuilding.

In light of the above, it is concluded that the size and use of the proposed outbuilding would go beyond that which would reasonably be considered as being incidental to a dwellinghouse.

Overall, it is considered that the proposed development would not meet the definition of development set out in Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

It should be noted that if the proposed use of the outbuilding had been considered to be incidental to a dwelling at the application site, then the applicant would have been asked to provide information regarding the lawful use of the bungalow. However, as the proposed outbuilding use would not be incidental, then this information has not been sought.

Notwithstanding the findings above, the following table shows that the proposed development would meet all the size and design criteria set out in paragraph E.1 of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

E.1	Development is not permitted by Class E if –	Y/N
(a)	Permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (changes of use);	N
(b)	The total area of ground covered by building, 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);	N
(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;	N
(d)	The building would have more than a single storey;	N
(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 dwellinghouse, or (iii) 3 metres in any other case;	N/A N (0.9m from boundary, height of 2.4m) N/A
(f)	The height of the eaves of the building would exceed 2.5 metres;	N (2.4m)
(g)	The building, enclosure, pool or container would be situated within the curtilage of a listed building;	N
(h)	It would include the construction or provision of a verandah, balcony or raised platform;	N
(i)	It relates to a dwelling or a microwave antenna; or	N

(j)	The capacity of the container would exceed 3,500 litres	N/A
(k)	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	N
E.2	In the case of any land within the curtilage of a dwellinghouse which is within – (a) An area of outstanding natural beauty; 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.	N/A
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.	N/A

It is noted that the proposed development would involve the demolition of an outbuilding and extension located to the south of the property known as Sandiacre. Despite the applicant's illustration on the proposed block plan, the following images illustrate that the outbuilding is in fact attached to the extension of the main building that it is proposed to demolish;



Under Class B, Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the demolition of a building can be permitted development subject to a number of criteria. However, before the demolition commences the developer must apply to the Local Planning Authority for prior approval, as to the method of demolition and any proposed restoration of the site.

It is noted that the definition of a building for the purposes of the GPDO is as follows;

“building”—

- (a) includes any structure or erection and, except in Class F of Part 2, Classes P and PA of Part 3, Class B of Part 11, Classes A to I of Part 14, Classes A, B and C of Part 16 and Class T of Part 19, Class T of Part 19 and Class ZA of Part 20, of Schedule 2, includes any part of a building; and
- (b) does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, does not include any gate, fence, wall or other means of enclosure;

This definition specifically excludes ‘any part of a building’ from the definition of a building for the purposes of Class B of Part 11. Therefore, the demolition of part of a building, would require planning permission.

In this instance, the proposed demolition works would affect part of the application property and as such, would require planning permission in their own right. This information can be brought to the attention of the applicant using an informative on any lawful development certificate decision made regarding this application.

Conclusion

The proposed outbuilding may not be located within the curtilage of a dwellinghouse and by virtue of its size and use, it would not be for purposes incidental to the application property. As such, the proposed development would not meet the definition of development set out in Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and planning permission would be required.

Recommendation: <u>Refuse</u> Lawful Development Certificate

Case Officer:	Mrs Kelly Joyce	Team Leader:	Richard Hart
Signed:	<i>K Joyce</i>	Signed:	<i>R Hart</i>
Dated:	24th October 2024	Dated:	24 th October 2024