

On Behalf of Hopwood Homes Ltd

Section 192 of the Town and Country Planning Act 1990

Application for a Certificate of Lawfulness for Proposed Development -
Construction of Single Garage, Hardsurface, and Vehicular Access from
Adjacent Highway.

No.8, Kiln Close, off Walker Brow, Dove Holes, SK17 8FQ

PLANNING STATEMENT

This Planning Statement addresses the following issues:

1.0 Background

2.0 Lawfulness of the Proposal

3.0 Conclusions

1.0 Background

1.1 This application seeks to confirm the lawfulness of a proposal to construct, within the residential curtilage associated with the dwelling, a single garage and hardsurface, to be served by an access to the adjacent highway.

1.2 The dwelling is shown edged red on the submitted site location plan reference L558 / 76. It has been recently completed / occupied and has an allocated postal address of No.8 Kiln Close. It is part of an ongoing approved residential development of 102 dwellings off Walker Brow, and was identified as 'plot 22' during the applications process (see drawing reference L558 / 66 Rev G approved under HPK/2016/0488 and already in the Council's possession).

1.3 The site detail is shown on the submitted block plan reference L558 / 74RevA

1.4 The detail of the plan and elevations of the proposed garage is shown on submitted drawing reference L558 / 74RevB, measuring 5.6m x 3.2m x 2.5m flat roof height, with 'up and over' style front door which will not overhang the adjacent pavement during operation.

1.5 The dwelling has been constructed under outline planning permission HPK/2013/0319; as varied on appeal by HPK/2013/0625 to increase the number of dwellings on the whole site; as varied by HPK/2018/0526 to allow a phased development and discharge of conditions; and reserved matters approval HPK/2016/0488 for phases two and three. The dwelling is part of phase two, the phase one development of 21 dwellings having been completed.

1.6 The conditions precedent attached to the outline and reserved matters consents have been discharged by various letters from the Council under reference DOC/2016/0052.

1.7 There are currently two final conditions, relating to phase two highways matters, which are the subject of discharge application DOC/2020/0061 which was due for determination by the Council by 21 October 2020. The necessary agreement under S38 of the Highways Act 1980 on technical highways details was signed by the applicant and local highway authority, Derbyshire County Council, on 30 July 2020, and includes payment of the related financial bond. The terms of the two remaining conditions can therefore be considered to have been met to the satisfaction of DCC. High Peak Borough Council is thus able to formally discharge these remaining conditions as per the outstanding application. Phase three highways conditions will need to be discharged in due course but that has no bearing on this application for a Certificate of Lawfulness.

2.0 Lawfulness of the Proposal

2.1 Section 192(2) of the Town and Country Planning Act 1990 allows the Council to issue a Certificate of Lawfulness for Proposed Development if

satisfied that the operations described in this application would be lawful at the time of the application. The purpose of this Planning Statement is to provide the Council with the evidence it will need to issue the Certificate.

2.2 The evidence relates to the availability of permitted development rights for this dwelling, which enable the proposed developments to be undertaken without the need for express planning permission.

2.3 Permitted development rights to undertake a wide range of prescribed works, including householder related developments, without the need for express planning permission are available under SI 2015 596 The Town and Country Planning (General Permitted Development) (England) Order 2015. Any of these rights can however be removed by a Local Planning Authority either for a specific area under Article 4 of the Order, or by condition attached to a grant of planning permission. In this case there is no such Direction or condition on any relevant planning permission, meaning these rights are available to the dwelling as explained below.

2.4 There are three elements to the proposal – garage, hardsurface and access to the highway. The relevant provisions of the Order are reproduced in full below with commentary added in, **orange**, where appropriate, to illustrate how each element of the proposal satisfies the Order:

Schedule 2 Part 1 Class E – buildings etc incidental to the enjoyment of a dwellinghouse.

Permitted development

E. The provision within the curtilage of the dwellinghouse of— **The proposed garage building will serve the dwelling at No.8 Kiln Close and is entirely contained within its curtilage.**

(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; the proposed garage building will serve the dwelling at No.8 Kiln Close.

or

(b)a container used for domestic heating purposes for the storage of oil or liquid petroleum gas. Not applicable.

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 M, N, P or Q of Part 3 of this Schedule (changes of use); Not applicable.

(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); Limit not exceeded .

(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; Proposed building located to rear of dwelling and not forward of principal elevation ie front elevation facing the cul de sac in which the front door to the dwelling is located. (as defined by Ministry of Housing, Communities & Local Government 'Permitted Development Rights for Householders' Technical Guidance, page 7).

(d)the building would have more than a single storey; Proposal is 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, Not applicable

(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, The proposed building stands within 2m of the rear and side boundaries of the plot and height will be 2.5m to flat roof level (see annotation on submitted drawing).

or

(iii)3 metres in any other case;

- (f) the height of the eaves of the building would exceed 2.5 metres; **The proposed roof is flat and the eaves height is just under 2.5m (see annotation on submitted drawing).**
- (g) the building, enclosure, pool or container would be situated within the curtilage of a listed building; **Not applicable.**
- (h) it would include the construction or provision of a verandah, balcony or raised platform; **Not applicable.**
- (i) it relates to a dwelling or a microwave antenna; **Not applicable.**

or

- (j) 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) 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. **Not applicable.**

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.

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.

The proposed building is for the parking of the private vehicle used by the occupier of the dwelling at No.8 Kiln Close.

Schedule 2 Part 1 Class F – hard surfaces incidental to the enjoyment of a dwellinghouse.

Permitted development

F. Development consisting of—

(a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; the proposed hard surface is contained entirely within the curtilage of the dwelling, to be used for vehicular access between the proposed garage and the adjacent highway.

or

(b) the replacement in whole or in part of such a surface. Not applicable.

Development not permitted

F.1 Development is not permitted by Class F if permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use). Not applicable.

Conditions

F.2 Development is permitted by Class F subject to the condition that where—

(a) the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, Not applicable.

and

(b) the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres, **Not applicable.**
either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse. **Not applicable**

Schedule 2 Part 2 Class B – means of access to a highway.

Permitted development

B. The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part).

The proposed vehicular access will be to an internal estate road which will be constructed by the developer for adoption by the local highway authority Derbyshire County Council. An agreement under Section 38 of the Highways Act 1980 between the applicant and DCC was signed on 30 July 2020, including financial bond, for the construction of the road as part of the phase two development. Similar arrangements for phase one were agreed and implemented some time ago. The proposed access therefore meets the requirements for permitted development status under Schedule 2 Part 2 Class B of the Order as it will not be to a trunk road or classified road, and is required in connection with the proposed hard surface and garage building which themselves both enjoy permitted development status as set out above.

An application will need to be made to Derbyshire County Council as local highway authority for consent to install a dropped kerb and pavement crossing, to access the garage from the highway. However that is a separate technical matter that has no bearing on this application to establish the lawfulness of the proposal.

3.0 Conclusions

3.1 S192(2) of 1990 Act requires the Council to issue a Certificate if satisfied that the operations described in this application would be lawful at the time of the application. The onus is on the applicant to provide evidence of sufficient clarity and precision.

3.2 The dwelling is lawfully constructed and there is no removal of the relevant permitted development rights in relation to a garage, hardsurface and access to the highway either by condition or Article 4 Direction.

3.3 The submitted details of each element of the proposal fully meet the relevant permitted development provisions of the 2015 Order and, as such, express planning permission is not required. The evidence in this Planning Statement is sufficient for the Council to be satisfied that the proposal would be lawful at the date of this application and warranting the issue the Certificate of Lawfulness as requested.

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