

DELEGATED DECISION REPORT

HPK/2022/0374
Valid 11/08/2022

36A CHAPEL ROAD
WHALEY BRIDGE
DERBYSHIRE
SK23 7JZ

**APPLICATION FOR A LAWFUL
DEVELOPMENT CERTIFICATE
FOR A PROPOSED REMOVAL
OF AN AREA OF THE
EXISTING BOUNDARY WALL
TO CREATE A VEHICLE
ACCESS WITH ASSOCIATED
RELAY OF HARDSTANDING
TOGETHER WITH A LEAN
TOO OPEN PORCH TO THE
SOUTHERN ELEVATION
(CERTIFICATE OF
LAWFULNESS – PROPOSED)**

MAIN ISSUES

Whether the proposed development complies with the relevant parameters of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. In this instance the relevant parts are:

Schedule 2, Part 1, Class D
Schedule 2, Part 1, Class F
Schedule 2, Part 2, Class A
Schedule 2, Part 2, Class B

DESCRIPTION OF SITE

The application dwelling is a part two storey, part single storey end terraced property which lies within the settlement boundary for Whaley Bridge as defined by the Local Plan policies map. The dwelling is located on a corner plot which lies at the junction of Chapel Road and Rock Bank. It appears as though the dwelling may have been created by virtue of the 36 Chapel Road being sub-divided and/or land swapping occurring. There is no planning history for site and the origins of the dwelling and planning unit as presented in the application is unclear.

PROPOSAL

The application seeks a Lawful Development Certificate for the construction of an open porch and the removal of existing boundary wall to create a vehicular access from Rock Bank and the laying of an area of hardstanding. It is suggested within the submission that the proposed development satisfies the criteria set out under Schedule 2, Part 1, Class D and F of the General Permitted Development Order (GPDO).

The submitted plan also detailed alterations and construction of new boundary treatment which are considered also.

Given the nature of the proposals, as detailed in the application the parameters of Schedule 2, Part 2, Class A and B of the General Permitted Development Order (GPDO) are therefore also relevant.

OFFICER COMMENTS

Lawfulness of Dwelling

The existing dwelling is a part two storey and part single storey property. The two storey element is located to the rear and side of No.36 while the single storey element projects forward and to the side of this. There is an adjacent attached garage, accessed off Rock Bank, which falls outside of the planning unit detailed in the application. There is no planning history relating to the site to establish the extent of the original dwelling. However, OS Mapping data appears to show a different site configuration compared to the planning unit indicated on the submitted plans as detailed below.



It is not known when the dwelling and extent of curtilage evolved to its current layout and, indeed, whether the dwelling is lawful. The existing single storey addition to the front of No.36A appears to be a later addition, and also appears to correspond with built form previously part of No.36 according to the OS data. If this has indeed been transferred to No.36A then this would not have formed part of the original dwelling (if post 1948). The extent of the original dwelling cannot therefore be reliably determining.

The GPDO, at Article 3(5)(c) states that, *“The permission granted by Schedule 2 does not apply if – in the case of permission granted in connection with an existing use, that use is unlawful”*.

Given the lack of certainty surrounding the existing dwelling in its current layout and the overall lawfulness of the dwelling, the LPA cannot be confident that PD rights are extant.

There is therefore insufficient evidence provided to demonstrate that the dwelling benefits from permitted development rights authorised by the GPDO and as such a positive certificate cannot be issued in the first instance. As confirmed by Planning Practice Guidance, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented. The extent of and lawfulness of the dwelling could be established through a Certificate of Lawfulness of Existing Use.

Notwithstanding the above, an assessment against the relevant criteria of the GPDO has been carried out below.

Whether the proposed development complies with the relevant parameters under Schedule 2, Part 1, Class D of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

Schedule 2, Part 1 of the GPDO refers to development that lies within the domestic curtilage of a residential dwellinghouse. Specifically, Class D allows for the erection of a porch outside any external door of a dwellinghouse, subject to compliance with all criteria Paragraph D.1.

An assessment of the proposed development against this criteria is carried out below:

D. The erection or construction of a porch outside any external door of a dwellinghouse. Development is not permitted by Class D if –

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);

The dwelling has not been subject to a change of use under the GDPO. The development complies.

(b) the ground area (measured externally) of the structure would exceed 3 square metres;

The ground area of the porch would measure 2.08sqm. The development complies.

(c) any part of the structure would be more than 3 metres above ground level;

No elevation details have been provided to demonstrate the height of the porch. Insufficient information has therefore been provided to demonstrate that the porch would be lawful.

(d) any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway;

The porch would not be within 2m of a highway. The development complies.

(e) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)

Not applicable. The development complies

Whether the proposed development complies with the relevant parameters under Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

Schedule 2, Part 1, Class F allows for the construction hard surfaces incidental to the enjoyment of a dwellinghouse, subject to compliance with all criteria set out in Paragraph F.1 and the conditions at F.2.

An assessment of the proposed development against this criteria is carried out below:

Class F allows for the 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; or**
- (b) the replacement in whole or in part of such a surface.**

The proposal seeks the construction of a hardsurfaced area to be used for parking. This is considered to be incidental to the enjoyment of the dwellinghouse.

Development is not permitted by Class F if –

F.1 (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);

The dwelling has not been subject to a change of use under the GDPO. The development complies.

F.1 (b) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)

Not applicable. The development complies

F.2 Conditions

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, and**
- (b) the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres,**

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.

The land exceeds 5sqm in hardsurfaced area. The application indicates that this would fall between the principal elevation and the highway. The submitted plans indicate that the parking area would be drained to an existing soakaway while the application form indicates that the hardsurfacing would be made from porous materials. This may refer to the new patio to be laid between the dwelling and Chapel Road. Both measures for surface water drainage would comply with the condition.

Whether the proposed development complies with the relevant parameters under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

Schedule 2, Part 2, Class A relates to gates, fences, walls etc, and is subject to compliance with all criteria set out in Paragraph A.1.

Class A allows for development consisting of the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

Development is not permitted by Class A if –

- (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—**
- (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons;**
 - (ii) in any other case, 1 metre above ground level;**

The application proposes the removal of part of an existing wall which is adjacent to a highway. The removal of the wall does not fall under this class, however the submitted details indicate that the wall will be extended into the site which does fall into this category. The submitted plan indicates that the wall would match the height of the existing wall. The existing wall from which the new wall would be constructed exceeds 2m in height and would also be adjacent to the highway as there would be no intervening land/structure.

Based on the commentary within the submitted application, and site observations the proposals would fail to comply with Part 2, Class A(a) in this regard. No plans have been provided to demonstrate the wall would fall into the definition of permitted development.

- (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level;**

As above. The proposal would fail to comply with this criteria as the existing wall appears to exceed 2m and as such a new extension to the wall which matches the existing would not meet this criteria.

(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater;

The proposal includes the infilling of the existing gate from Rock Bank in materials to match the existing wall. This would represent an alteration to the wall but would not exceed the existing height.

(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building

The application dwelling is not a listed building and the land does not fall within the curtilage of a Listed Building.

Whether the proposed development complies with the relevant parameters under Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

Schedule 2, Part 2, Class B relates to the means of access to a highway

Class B allows for 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 means of access will be provided from Rock Bank which is not a trunk road or classified road as confirmed by DCC Highways mapping. Therefore, the proposal would comply with this criteria.

Notwithstanding this, the proposed access creation is required in connection with works purporting to be done under Class A of Part 2 and as such would not be permitted development under Class B.

Furthermore, Article 3(6) states that Schedule 2 does not *“authorise any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road, or creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons”*.

The application proposals seek to create an off street parking space which is parallel to Rock Bank which is a highway used by vehicular traffic. The new access would be sited close to the junction of Rock Bank and Chapel Road. Given the height of the wall to the south and building to the north, both of which lie immediately adjacent to the highway, it is considered that the access would have poor visibility in both directions for vehicles egressing the site. In this context, the space available to

manoeuvre into and out of the site would be insufficient and may also result in some blocking or obstruction of the highway which, given its proximity to the junction with Chapel Road, would represent an unacceptable arrangement. It is therefore considered that the proposed development would create an obstruction to the view of persons using the highway, including future users arising from the development, and is likely to cause danger to such persons. Such an arrangement therefore would not be permitted development as confirmed by Article 3(6) of the GPDO.

CONCLUSIONS

There is insufficient evidence, in the configuration presented in the application, for the LPA to be certain of the extent of the original dwelling and whether the dwelling detailed within the application is lawful. The extent of the original dwelling, for the purposes of the GPDO, cannot be ascertained. Should the dwelling be unlawful then development permitted by the GPDO do not exist as confirmed by Article 3(5) of the GPDO.

Had the LPA been satisfied that the dwelling is lawful, then it is considered that the development would not be permitted development as authorised by the GPDO for the following reasons.

Due to lack of elevations, there is insufficient information to determine whether the proposed porch complies with all criteria of Schedule 2, Part 1, Class D. As such it cannot be demonstrated that the proposed porch is lawful.

Insufficient information has been provided to demonstrate that the proposed wall detailed within the application would comply with Schedule 2, Part 2, Class A. The existing wall appears to exceed 2m in height and any new wall which would “match the height of the existing” would exceed the limitations of Part 2 Class A.1(a) and (b). As such it cannot be demonstrated that the proposed boundary treatment is lawful.

The proposed access from Rock Bank, includes works to the existing boundary wall as part of the proposed development. Permitted Development under Schedule 2, Part 2, Class B does not exist where they are required in connection with Development Permitted under Class A of that Part. As such the access from Rock Bank would not be lawful.

The proposed access by reason of its configuration and proximity to existing high structures would result in an obstruction to users of the highway, including future users at the site. As confirmed by Article 3(6) of the GPDO, Schedule 2 does not authorise development which results in the obstruction to the view of persons using the highway, so as to likely cause danger to such persons.

OFFICER RECOMMENDATION : Refuse Certificate

Case Officer: Declan Cleary

Recommendation Date: 05/10/2022

X *J. Colley*

Signed by: Jane Colley Signature

On behalf of High Peak Borough Council