



High Peak Borough Council,
Planning Applications,
Buxton Town Hall,
Market Place,
Buxton,
Derbyshire,
GU51 4AE.

27th November 2023

Dear Sir/Madam,

**Retrospective Change of Use to Garden Land and Retention of Detached Garden Outbuilding at 58
Sheffield Road, Glossop, Derbyshire, SK13 8QL**

Please find enclosed a retrospective application in respect of the above development. The application includes the following documents/plans:

- Completed householder application forms;
- Completed ownership and agricultural holding certificates;
- Red & Blue Lined Location Plan at 1:1250 (drg. 89880/01);
- Block Plan at 1:500 (drg. 89880/02);
- Floor Plan, Roof Plan & Elevations at 1:100 (drg. 89880/03).

The application fee of £462 will be paid directly via the Planning Portal.

This application follows recent correspondence between our client (the applicant) and your Compliance & Monitoring Officer Mr Andrew Thomas. It seeks consent to retain a detached garden outbuilding on which construction has already commenced. The application also includes the retrospective change of use to domestic garden of the land on which the outbuilding is sited, as the use of this land as part of the garden to the house has not been regularised at the time of submitting this application.

Notwithstanding the outcome of this full planning application, a separate lawful development certificate application has also been submitted seeking confirmation that the land on which the outbuilding is sited is lawfully part of the domestic garden of no. 58 Sheffield Road, on the basis that it has been used as such for well in excess of ten years. I would ask you to consider this full planning application and the separate lawful development certificate application each on their own merits.

The applicant commenced construction of the garden outbuilding in good faith, believing it to be constructed within his own garden and meeting the criteria to be permitted development under the terms of Class E of Part 1 of Schedule 2 to the Town & Country Planning (General Permitted Development) Order 2015, as amended. Indeed the outbuilding does accord with the technical

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criteria, in terms of heights and position relative to the main house and site boundaries etc, to be considered Class E householder permitted development. Furthermore, as the evidence submitted with the separate lawful development certificate application demonstrates, this land has been used as part of the garden to the property for as long as the applicant has lived there, and for well in excess of ten years.

Although the applicant acted entirely in good faith, in subsequent correspondence the Council has suggested that even if the use of the land as domestic garden can be regularised, either through a lawful development certificate or the grant of planning consent, this part of the garden will remain outside the curtilage of the dwelling and will not therefore benefit from householder permitted development rights, hence the need for this planning application. I would however respectfully suggest that, having regard to recent case law, it can be argued that the new outbuilding does in fact fall within the domestic curtilage of no. 58 Sheffield Road, and it is not absolutely certain that it falls outside.

For instance, the recent High Court case of *Herbert Hiley v SSLUHC (2022)* reaffirms some principles from other case law in considering issues in relation to the extent of curtilage. In particular, the Judge in the Hiley case considered another recent case of *Hampshire CC v SSEFRA (2022)*, referred to as the Blackbushe Airport case, in which the parties agreed that the following (amongst other points) could be distilled:

- The determination of what is the curtilage is a matter of fact and degree for the decision maker, taking into account the relevant considerations.
- There is no prescribed or exhaustive list of relevant factors.
- The three 'Stephenson Factors', arising from a case which considered whether a building was curtilage listed, (namely (i) the physical layout of the listed building and the structure, (ii) their ownership, past and present and (iii) their function, past and present) are factors which may be applied, but they are not determinative.
- The test is not whether the building and land fall within a single enclosure.
- 'Smallness' is not inherent in curtilage. There is no test that a curtilage has to be small.
- The land does not have to be 'ancillary' to the building in order to fall within its curtilage.

The Judge in the Hiley case concluded that the appeal Inspector had made numerous errors in deciding the associated appeal in respect of whether the proposed development came within the curtilage of the building. This included the Inspector erring when he referred to curtilage being 'a feature constrained to a small area about a building' and that the considered land 'must be part of the enclosure' with the building. From this it can only be concluded that it is the wrong approach to simply restrict the concept of curtilage to something small, or that the relevant buildings and land all have to fall within a single enclosure.

So the fact that the application site in this case is located to the south and side of what can be

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considered the original long strip of garden immediately to the south of the main house, and a line of planting partly separates the original garden from the application site containing the extended garden area, is not determinative in itself as to whether the application site falls within the residential curtilage of the dwelling. More relevant is the fact that the land has long been used and maintained as domestic garden by the occupiers of the dwelling, and that it is clearly an extension of the garden area and maintains a clear established functional and visual relationship with the dwelling, obviously separate to the neighbouring gardens which surround it, and easily accessed from the house it serves. The land is clearly connected to the dwelling in a useful and functional way.

To further emphasise the point, I would direct you to a recent appeal decision which considered another case of an incidental outbuilding proposed on a parcel of land to the side of a dwelling, where the Council in that case considered it to be outside of its curtilage (appeal ref. APP/R0660/X/19/3239458). That appeal case involved a parcel of land entirely separated from the main house by a hedge. In paragraphs 23-25 of her decision letter the Inspector noted that the land had long been associated with the dwelling, was mown and had evidence of garden outbuildings. Although relatively large and separated from the dwelling by a hedge and driveway, the Inspector concluded that size was not a critical factor and physical separation did not dissociate the land from the dwelling, as it was clear the land had been used for residential purposes by the occupiers of the house for some time, and it served the house and was functionally associated with it.

So it can only be concluded that there is an arguable fallback position that the application site does in fact fall within the curtilage of no. 58 Sheffield Road and therefore it was not unreasonable for the applicant to believe he was carrying out development permitted under Class E of Part 1 of Schedule 2 to the General Permitted Development Order. If the development under consideration here, or a similar form of development, can be considered permitted development anyway then that is a material planning consideration.

Notwithstanding the above, with regards to the planning merits of the proposal, the application site has been used as garden associated with no. 58 Sheffield Road for some considerable time now without, as far as the applicant is aware, causing any harm. So the regularisation of this use would not continue any known problems. The use of the land as domestic garden simply reflects neighbouring land uses and brings the length of the rear garden to no. 58 in line with the neighbouring dwellings to the east. The application site is a privately owned parcel of land that is not accessible to the public. If not allowed to be maintained as domestic garden then there are unlikely to be any other suitable uses for it, which could lead to lack of maintenance and problems from the land becoming unkempt and overgrown.

The site lies within the built-up area of Glossop as defined in the adopted High Peak Local Plan and falls beyond the area of high flood risk associated with the water course to the south. It is surrounded by existing residential dwellings and is therefore an appropriate site in principle for uses associated with residential development.

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The garden outbuilding, once completed, will be a single storey structure not visible from Sheffield Road and sited away from the boundary with the nearest neighbouring property by over 6m. In terms of the pattern of surrounding development the houses along Brook Meadow to the west have already spread development to the south of Sheffield Road and beyond the rear line of the houses which front it. The new outbuilding is not sited as far south as the Brook Meadow development.

The new outbuilding will have no windows which directly overlook any neighbouring building. The outbuilding has an open plan layout internally and is intended to be used as a garden summerhouse and space to entertain friends and family. The new outbuilding will not create any noise or disturbance beyond that which would be expected anyway from the use of the garden by the occupiers of the main house.

If, having considered the application and the contents of this letter further, the Council has any concerns over a potential proliferation of outbuildings within the extended garden area, the applicant is prepared to accept a condition on any consent, if considered necessary, restricting future permitted development rights for outbuildings within Class E of Part 1 of Schedule 2 to the General Permitted Development Order.

I trust you have sufficient information to be able to register and validate this application. However please do not hesitate to contact me if there is any further information you require.

Yours faithfully,

Jonathan Stackhouse BSc(hons), MA, MRTPI
Head of Planning for Prime Oak.

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