STAFFORDSHIRE moorlands DISTRICT COUNCIL
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Staffordshire Moorlands District Council
Moorlands House, Stockwell Street, Leek
Staffordshire Moorlands, ST13 6HQ
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Application for a Lawful Development Certificate for a Proposed use or development. Part one
Town and Country Planning Act 1990: Section 192, as amended by section 10 of the Planning and Compensation act 1991. Town and Country Planning (General Development Procedure) Order 1995

ublication of planning applications on council web sites
lease note that with the exception of applicant contact details and Certificates of Ownership, the information provided on this application forr
nd in supporting documents may be published on the council's website.
any other information that is provided as part of the application which falls within the definition of personal data under the Data Protection
ct and is not to be published on the council's website, please contact the council's planning department.

1. Applicant Name, Address and Contact Details

Title: Mr First name: Gary Surname: Goldstraw

Company name:

Street address: Brae Side
Ashbourne Road
Bradnop
Town/City: Leek
County:
Country:
Postcode: ST13 7LZ

	Country Code	National Number	Extension Number
Telephone number:			
Mobile number:			
Fax number:			

Email address:

Are you an agent acting on behalf of the applicant? (●) Yes ( ) No

2. Agent Name, Address and Contact Details

Title: Mr First Name: David Surname: Henson

Company name: Moorland Architectural Services

Street address: 4
Meigh Road
Werrington
Town/City: Stoke on Trent
County: Staffordshire
Country: UK
Postcode: ST9 0JY

	Country Code	National Number	Extension Number
Telephone number:	01782	302021	
Mobile number:			
Fax number:			

Email address: dave.henson@ntlworld.com

08/01103/ ELTRO 1 JUN 2008 - SMD

3. Site Address Details

Full postal address of the site (including full postcode where available)

House: 0 Suffix:

House name: Braeside

Street address:

Bradnop

Town/City: LEEK

County:

Postcode: ST13 7LZ

Description of location or a grid reference
(must be completed if postcode is not known):

Easting: 400429

Northing: 355463

Description:

4. Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application? (●) Yes ( ) No

If Yes, please complete the following information about the advice you were given (this will help the authority to deal with this application more efficiently):

Officer name:

Title: Mrs First name: T Surname: Critchlow

Reference: none

Date (DD/MM/YYYY): 02-06-2008 (Must be pre-application submission)

Details of the pre-application advice received:

Pre app discussions were held between Mrs T Critchlow whereby she stated that the previous application was considered to be ambiguous due to the reference to the "multi purpose recreational room". It was agreed that any further application should be specific with regard to the actual use of the building and that sufficient evidence be provided to demonstrate that the proposal was "reasonably required" and incidental to the enjoyment of the main dwelling"

5. Interest in Land

Please state the applicant's interest in the land: (●) a) Owner ( ) b) Lessee ( ) c) Occupier ( ) d) Other

If No to a), b), or c), please give the names and addresses of anyone who has an interest in the land and state the nature of their interest (if known):

Have they been informed of the application? ( ) Yes ( ) No

If No, why have they not been informed?

6. Council Employee / Member

Is the applicant or agent related to any member of staff or elected member of the council? ( ) Yes (●) No

7. Grounds for Application

Information about the existing use(s)

Please explain why you consider the existing or last use of the land is lawful, or why you consider that any existing buildings, which it is proposed to alter or extend are lawful:

N/A

Please list the supporting documentary evidence (such as a planning permission) which accompanies this application:

N/A

If you consider the existing or last use is within a 'Use Class' in the Town and Country Planning (Use Classes) Order 1987 (as amended) state which one:

If you consider the proposed use is within a 'Use Class' in the Town and Country Planning (Use Classes) Order 1987 (as amended), state which one:

Is the proposed operation or use: (•) Permanent ( ) Temporary

Why do you consider that a Lawful Development Certificate should be granted for this proposal?

The proposed building is to be used by the applicant for his and his families personal enjoyment which will be ancillary and incidental to the enjoyment of the dwellinghouse and is considered to be compliant with the criteria set down in the The Town and Country Planning (General Permitted Development) Order 1995 - DEVELOPMENT WITHIN THE CURTILAGE OF A DWELLINGHOUSE - Class E, E.1 & E.2. A full extract of the Permitted Development criteria has been provided on the attached drawing ref 821-08-01a.
The attached statement entitled "Goldstraw LDC Support Statement" forms part of the application and should be read in conjunction with the plan nod 821-08-01a

8. Description of Proposal

Does the proposal consist of, or includes the carrying out of building or other operations? (•) Yes ( ) No

If Yes, please give detailed descriptions of all such operation and indicate on your plans (includes describing any proposal to alter or create a new access, layout or any new street; construct any associated hardstandings; means of enclosure; or draining the land/building)

Construction of single storey building sub divided into two sections to provide a garage / garden store for the housing of private cars / vehicles, domestic garden equipment and a Games room / dance practice area

Does the proposal consist of, or include, a change of use of the land or building(s)? ( ) Yes (•) No

Has the proposal been started? ( ) Yes (•) No

9. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land? (•) Yes ( ) No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

( ) The agent (•) The applicant ( ) Other person

10. Declaration

I/we hereby apply for a Certificate of Lawfulness as described in this form and the accompanying plans/drawings and additional information. ☒ Date: 11-08-2008

Planning Statement

Applicant: **Mr G Goldstraw**

Site address: **Braeside, Ashbourne Road, Bradnop, Staffordshire Moorlands ST13 7LZ**

Proposal: **Application for a Lawful Development Certificate for a proposed detached ancillary outbuilding**

1. Introduction

1.1. This statement accompanies a resubmission of an application for a Lawful Development Certificate for a proposed use.

1.2. The previous application was deemed unsatisfactory by the LPA due to a lack of evidence which clearly demonstrated that the proposed building was reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

1.3. This statement therefore seeks to clarify and define the precise use of the proposed building thus demonstrating the building is in fact, on the balance of probabilities "reasonably required for a purpose incidental to the enjoyment of the dwellinghouse".

1.4. The application seeks confirmation that the construction of a single detached building as shown on drawing no 821-08-01A, within the curtilage of the property known as Braeside, Ashbourne Road, Bradnop, is development permitted by Class E of Schedule 2 to the Town and Country Planning (General Permitted Development Order) 1995. Accordingly the development as proposed would not require planning consent prior to its construction.

1.5. Reference is made to the following documentation in support of application:

1.5.1. Class E of Schedule 2 to the Town and Country Planning (General Permitted Development Order) 1995.

1.5.2. Case of Emin v Secretary of State for the Environment and Mid Sussex District Council.

1.5.3. Planning and Compensation Act 1991 (section 10).

1.5.4. Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements and procedural requirements: Annex 8.

2. Assessment

2.1. The site is situated on the A523 that runs from Leek to Ashbourne at Bradnop. The proposed siting of the new building is set behind the main dwellinghouse.

2.2. A public footway runs along the Western boundary of the site.

2.3. The existing house is understood to have been constructed in 1929 and has been extended only once since, this being a two storey side extension - application 02/00487/FUL, approved on the 18th June 2002, which has subsequently been implemented.

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3. Proposal

3.1. The proposal is for the construction of single storey detached building which is to be separated into two parts to form a domestic garage and games room / dance practice area.

3.2. The new building is to be constructed within the curtilage of the main house known as Braeside, Ashbourne Road, Bradnop. The siting, layout and appearance of the building is shown on the accompanying drawing no 821-08-01A.

3.3. It is considered that the proposed development is permitted development in accordance with Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development Order) 1995 which sets out the nature and scale of development that can be carried out without the need for planning permission, which is as follows:

Class E Permitted development

E. The provision within the curtilage of a dwellinghouse of 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.

Development not permitted

E.1 *Development is not permitted by Class E if—*
(a) it relates to a dwelling or a satellite antenna;
(b) any part of the building or enclosure to be constructed or provided would be nearer to any highway which bounds the curtilage than—
(i) the part of the original dwellinghouse nearest to that highway, or
(ii) any point 20 metres from that highway,
whichever is nearer to the highway;
(c) where the building to be constructed or provided would have a cubic content greater than 10 cubic metres, any part of it would be within 5 metres of any part of the dwellinghouse;
(d) the height of that building or enclosure would exceed—
(i) 4 metres, in the case of a building with a ridged roof; or
(ii) 3 metres, in any other case;
(e) the total area of ground covered by buildings or enclosures 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); or
(f) in the case of any article 1(5) land or land within the curtilage of a listed building, it would consist of the provision, alteration or improvement of a building with a cubic content greater than 10 cubic metres.

Interpretation of Class E

E.2 *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.

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3.4 It can be seen that none of the exclusions of Class E apply in this case i.e.:

- The development relates to the provision of an outbuilding: it is not an extension to the existing dwelling nor does it relate to the provision of a satellite antenna.
- The proposed development would not be forward of the forward most point of the dwelling and would not be closer to the public footway (highway) than any part of the original dwellinghouse nearest to that highway, as stated on the enclosed drawing 821-08-01A.
- The building would be located more than 5 metres away from the dwelling at its nearest point.
- The height of the building (which would have a ridged roof) would be no more than 4 metres.
- The curtilage of the dwelling is extensive and more than 50% of the total area (minus the footprint of the dwelling) would remain undeveloped following construction of the building.
- The property is not within Article 1(5) land nor is it a listed building.

3.5. It is therefore adjudged that the proposed building complies with the criteria set out in Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development Order) 1995.

4. Use

4.1. As stated above the use of the proposed building will be subdivided into two parts, these being;

4.2. Domestic garage / garden store – To be used to house private motor cars and for the storage of garden / household tools, equipment (lawn mowers, strimmers, scarifiers, wheelbarrows etc) and garden furniture.

4.3. Games room / Dance practice area – This area is intended to provide a recreational area for use by Mr Goldstraw and his family for playing games (snooker, pool, darts, etc). It would also be utilised by Mr Goldstraw's teenage daughter as a private dance / exercise area. At present she attends a local dance school / studio several times a week and is currently studying for dance examinations and awards. The use of the room will enable her to practice privately every day as well as attending her normal classes. A pre requisite for such a dance area is plenty space and natural ventilation, consequently the covered area (which as you will see has been reduced by half from that originally proposed) is intended to provide a protected area adjacent to the doors whereby the doors can be left open whilst using the room, without the floor becoming slippery or damaged due to inclement weather. A snooker table has been shown within the proposed Games / dance practice area in order to demonstrate space requirements for such a use.

4.4. By virtue of the above, the use of the building would be "incidental" to the use of the dwelling house.

4.5. The case of Emin v Secretary of State for the Environment and Mid-Sussex District Council addressed the issue of what uses are incidental to a dwelling. Two issues were identified:

- The physical size of the building; and
- The proposed uses

4.6. It was found that the size of the building alone could not be a determining factor as the only constraints on physical size were those set out in the GPDO 1995 (paragraphs (c) and (d)). If it had been

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intended that other considerations should affect the permitted size of a building, further limitations would have been set within the Order. Under the GPDO, the only size constraints relate to the height of the building and the proportion of the curtilage of the dwelling covered by buildings or enclosures.

4.7. The size details for the proposed development meet these criteria. It therefore remains to demonstrate that the proposed accommodation is required for purposes incidental to the enjoyment of the dwelling house.

4.8. The Emin case goes on to state that:

> *"The Secretary of State had then gone on to consider the provision of accommodation for a hobby or pursuit such as pottery billiards or table tennis could normally be regarded as incidental to the enjoyment or a dwelling house. A hobby in this respect would be defined as being a favourite occupation pursued for amusement and would be for the domestic enjoyment of the occupants of the dwelling house."*

4.9. Circular 10/97: Enforcing planning control: legislative provisions and procedural requirements and procedural requirements: Annex 8 states that:

> ***"The relevant test of the submitted evidence***
> ***8.15*** *In appeals to the Secretary of State which raise "legal issues" (for example, enforcement appeals on grounds (b) to (e) in section 174(2)), where the burden of proof is on the appellant, the Courts have held that the relevant test of the evidence on such matters is "the balance of probability". As this test will accordingly be applied by the Secretary of State in any appeal against their decision, a LPA should not refuse a certificate because the applicant has failed to discharge the stricter, criminal burden of proof, namely "beyond reasonable doubt". Moreover, the Court has held (see F W Gabbitas v SSE and Newham LBC [1985] JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability". The LPA should proceed on the basis that neither the identity of the applicant (except to the extent that he or she mayor may not be able personally to confirm the accuracy of any claim being made about the history of a parcel of land), nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application."*

> **paragraph 8.34** goes on to state *"that any views on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant. (As explained in paragraphs 8.15 and 8.45, planning merits are not considered at any stage in the LDC application or appeal process"*

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4.10. In determining the application, a judgment has to be made as to whether the activities being carried out within the proposed building are incidental or conducive to the condition of living in the dwelling, both in terms of the uses proposed and the scale of accommodation proposed for those uses.

4.11. The scale of accommodation proposed is entirely reasonable and justified and does not go beyond what could be considered to be incidental to the enjoyment of the dwelling and as such accords with development that is permitted by Class E of the Town & Country Planning (General Permitted Development) Order 1995 which describes permitted development as being;

> *"The provision within the curtilage of a dwellinghouse of 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."*

4.12. The main house itself provides all the main living elements of the site and the accommodation within the proposed outbuilding would remain subordinate to that provided in the main house. The size of the building is commensurate with its proposed use and reasonable when seen against the requirements of the dwelling and the occupiers of the dwelling. The proposed accommodation does not constitute primary living accommodation.

4.13. A games room / dance exercise area is not a room normally found in a main dwelling and would cater for leisure and recreation activities for the applicant and his family, which are normally considered to be part of everyday living requirements. Rather they are facilities that are incidental to the enjoyment of the dwelling and in terms of scale are appropriate for family use.

5. Conclusion

5.1. The accommodation to be provided would be incidental to the enjoyment of, and would remain ancillary or subordinate to the main use of the property as a dwelling-home in terms of its scale and purpose and in a way that would be both reasonable and appropriate.

5.2. It is therefore considered that the proposed outbuilding shown on drawing no 821-08-01A that accompanies this application is permitted by virtue of Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development Order) 1995. Express planning consent is therefore not required. A Certificate of Lawfulness of Proposed Use or Development should therefore be granted in respect of the proposed development.

This statement has been prepared by Moorland Architectural Services on behalf of myself Mr Garry Goldstraw. I confirm its full content as being accurate and true.

Signed G. Goldstraw Date 6/6/08

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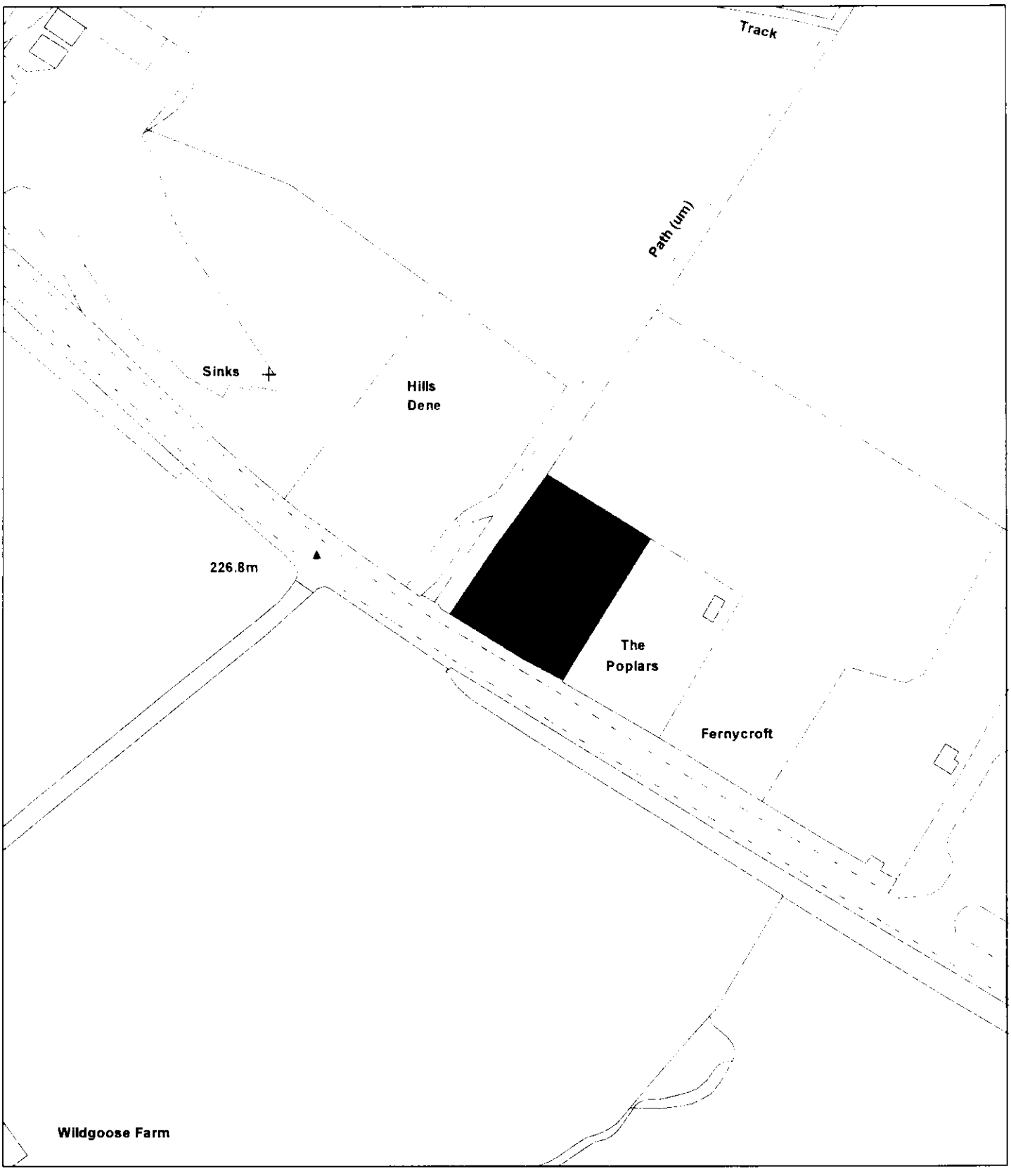

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Organisation	SMDC
Department	PLANNING
Description	Not Set