

DELEGATED DECISION REPORT

SMD/2024/0473
Valid 22/10/2024

MAY COTTAGE
COMMONSIDE
BOUNDARY

CERTIFICATE OF
LAWFULNESS FOR AN
EXISTING GARDEN ROOM

(CERTIFICATE OF
LAWFULNESS - EXISTING)

MAIN ISSUES

Was the development, already carried out, lawful on the date of the application? Specifically, with relation to that question, was the Council out of time to take action against the development or prevented from taking action because the development was permitted by the GPDO.

DESCRIPTION OF SITE

May cottage is the end cottage in a row of four terrace dwellings. Each dwelling has a long slim garden plot that slopes down at the rear.

PROPOSAL

The application makes the claim that a detached single storey prefabricated unit, provided as a garden room and home office, is lawful.

The unit is a steel framed box like structure with a flat roof height of 2.5m, a length of 5.14m, and a width of 2.7m. The unit sits within an obvious area of the dwelling's curtilage and replaces an old shed. Positioned on sloping ground the back edge of the unit sits directly on the ground level while the front, where the ground falls, is propped by some 0.2 -0.3m by adjustable supports.

The applicant makes the case that the development would on the date of the application have been permitted by the terms of Class E, Part 1, Sched 2 of the GPDO 2015. It is also stated that the development was in place more than 4 years ago.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

None relevant

CONSULTATIONS

Publicity

Site Notice expiry date: 17th Dec 2024

Neighbour consultation period ends: 17th Dec 2024

Press Advert: N/A

Public Comments

Objection from the immediate neighbour, following comments submitted:

- The building can not be permitted by the GPDO because it is within 2m from the boundary and exceeds 2.5m in height to the front where the ground slopes away.
- The structure has also been placed forward of the existing curtilage buildings demarked on HM land registry and advances over and in front of garden elevations belonging to adjacent properties. It is totally out-of-scale and character to the narrow cottage gardens
- building operations including electrical utility installation were not substantially completed until 2021
- The building is used for business purposes as home office/workspace.
- The structure is less than 1 metre from my boundary which impacts on my right to light and casts shadow across the top of my lawn.

One comment of support from a neighbour

Town / Parish Comments

Forsbrook PC: Awaited

OFFICER COMMENTS

Class E, Part 1, Sched 2 of the GPDO 2015 permits within the curtilage of the dwellinghouse the provision of any building required for a purpose incidental to the enjoyment of the dwellinghouse.

The unit in this case is provided in an area that appears to be an obvious part of the dwelling's curtilage (it replaces an old garden shed, is within one area of enclosure that includes the dwelling and is cultivated as garden). As a home office and garden room it is provided for purposes that can be considered incidental to the enjoyment of the dwellinghouse.

At E.1 of the class, development is not permitted by Class E if -

- the total area of ground covered by buildings within the curtilage would exceed 50% of the total area of the curtilage;
- any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse; or
- the height of the building, enclosure or container would exceed 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 total area of ground covered by buildings does not exceed 50% of the dwelling's curtilage. The unit is to the rear of the dwellinghouse and is not forward of its principal elevation.

The unit has been positioned within 2m of the boundary and has a height dimension, from bottom to top edge, of 2.5m. This means that where the bottom edge of the unit's rear elevation sits on the ground it does not exceed 2.5m in height. However, as the objecting neighbour points out, the unit is on sloping ground and it is propped by supports at the front meaning that the top edge of the front elevation is at least 2.7m

above the falling ground level. In a circumstance such as this the Government's technical guidance that relates to the permitted development rights for householders assists. The guidance makes it clear, where class E is concerned, that "*the height of the building, enclosure or container should be measured from the highest ground level immediately adjacent to the building, enclosure, or container to its highest point*".

The highest ground level immediately adjacent to the building is of course that to the back edge of the unit where it sits directly on the ground. The height of the unit measured from this position does not exceed 2.5m and, as the guidance makes clear, this is to be taken as the height of the building for the purposes of Class E, Part 1 of the GPDO.

The development therefore, is permitted by Class E, Part 1 of the GPDO.

With regard to the matters raised by the objector in respect of the shadowing impact of the structure, as a development which complies with Class E, this matter is not relevant, and cannot be taken into account in the consideration of this certificate.

Section 171B of the Act sets out the time limits for planning authorities to take action against unauthorised development. Operational development that has been substantially complete for 4 years or more would be immune and an authority would be out of time to take action. When enforcement action cannot be taken against unauthorised development then for the purposes of the Act it is considered to be lawful and a certificate should be granted.

Relevant to that, the applicant otherwise makes the claim that the development was carried out more than 4 years ago. He submits an invoice for the unit from Booths Garden Studios dated 2 July 2020 and an electricians installation certificate dated 24th July 2020 confirming that mains electricity had been provided to the unit. This means that on the date of this application, 20th October 2024, the Local Planning Authority would have been out of time to take action.

CONCLUSION / PLANNING BALANCE

The Council is out of time to take action against the development because it has been substantially complete for 4 years or more (s171B of the Act). It is also clear that on the date of the application the development would have been permitted by Class E, Part 1, Sched 2 of the GPDO 2015.

OFFICER RECOMMENDATION : APPROVE

Case Officer: Ben Hurst

Recommendation Date: 07/12/2024

X *J. Colley*

Signed by: Jane Colley Signature

On behalf of Staffordshire Moorlands District Council