

DELEGATED DECISION REPORT

SMD/2024/0214
Valid 07/05/2024

OAKLEIGH BOUNDARY ROAD
BOUNDARY

LAWFUL DEVELOPMENT
CERTIFICATE FOR A PROPOSED
ERECTION OF A DETACHED
GARAGE AND STORE

(CERTIFICATE OF LAWFULNESS
- PROPOSED)

MAIN ISSUES

- To consider whether the proposal would be permitted by Class E, Part 1 Schedule 2 of the GPDO 2015.

DESCRIPTION OF SITE

The application site is Oakleigh, Boundary Road, Boundary, a detached and previously extended dwelling. There is a single garage on the western side of the dwelling which the applicant(s) propose to demolish and replace with a larger detached garage. A green house and patio area is sited at the rear of the house. Parking is at the front/side of the dwelling.

PROPOSAL

This is a Certificate of Proposed Lawful Development for the erection of a detached garage and store on the western side of a dwelling known as Oakleigh. The works would include the demolition of a flat roof, single garage. The proposed garage building would have a footprint of 8.5m wide and a depth of approximately 8.2m, narrowing to approximately 7.3m due to the shape of the building (projecting gable on the front elevation). Eaves height would be approximately 2.5m with the ridge extending to 4.0m. The plan states the building would be constructed using 'brickwork to match existing,' presumably this would be brickwork to match the existing house. There are no details on the plans concerning roof materials however these would likely be tiles due to the pitched design of the roof. On the rear elevation there would be two horizontally proportioned windows whilst at the front of the building there would be a double width garage door, a pedestrian door, and a single window positioned immediately beside the pedestrian door.

RELEVANT LOCAL AND NATIONAL PLANNING POLICIES

Not relevant in the case of a Certificate of Proposed Lawful Use/Development.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

SMD/2022/0668 Lawful Development Certificate for a Proposed garage and store.
Unlawful (Refusal).

SMD/2019/0068	Proposed roof conversion, porch extension and rear single storey extension. Approved.
00/00136/FUL	Side extension with pitched roof. Approved.

CONSULTATIONS

Publicity

There is no statutory requirement to consult third parties on applications such as this. It is noted that any representations regarding the planning merits (or otherwise) of the application cannot be considered as this application is to be determined based on whether the proposal is lawful.

OFFICER COMMENTS

Class E of Part 1, Schedule 2 of the General Permitted Development Order 2015 allows for *'buildings etc incidental to the enjoyment of a dwellinghouse'* subject to compliance with several provisions. The Permitted Development rite allows the following.

Class E. The provision within the curtilage of the dwellinghouse of—

(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; or

(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

No planning history can be found to show that Permitted Development Rights have been removed.

Relevant to this application is firstly establishing whether the proposed building is sited within the curtilage of the dwellinghouse. If it is concluded that the proposed building sits within the curtilage of the dwelling, then consideration is given to the details/limitations within Class E.

Curtilage

The application is accompanied by Location and Block Plans showing the red edge of the application site, the existing garage footprint and the proposed garage footprint. This application has been submitted following the refusal of application reference SMD/2022/0668 (a certificate of proposed lawful development for the erection of a detached garage). The certificate was refused for the following reason.

'The development would fall outside of the curtilage of the dwellinghouse and therefore fails to comply with Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Accordingly, full planning permission will be required for this particular development.'

The concept of the "curtilage" for the purposes of the GPDO was reviewed by the High Court in *Burford v SSCLG* [2017] J.P.L. 1300 at [32]–[37] per Supperstone J. The judge summarised the relevant factors for determining the curtilage as: (1) the physical layout of the building and

the structure; (2) their ownership, past and present; (3) their use or function, past and present. The application of those factors to a given set of facts is a matter of planning judgment for the decision taker

In *McAlpine v Secretary of State for the Environment* [1994] E.G.C.S 189 from a study of the authorities, the Court identified three relevant characteristics of a curtilage – (a) it was confined to a small area about the building; (b) an intimate association with land that was undoubtedly within the curtilage was required in order to make the land under consideration part and parcel of that undoubted curtilage land; and (c) physical enclosure is not necessary.

The relationship between the main dwelling and the land in question which was relevant when considering function and/or use, *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions* (No.1) [2001] Q.B. 59, [2000] 2 WLUK 950 applied. Determining the curtilage was a question of fact and degree: "curtilage" connoted a building or piece of land attached to a dwelling house and forming one enclosure with it: it was not restricted in size but had to be fairly described as being part of the enclosure of the house to which it referred, *Lowe v First Secretary of State*.

The current submission is accompanied by more information than the previous scheme, therefore allowing fresh consideration of the circumstances of the case. The application now includes a Statement from the Planning Consultant, an aerial photograph (which the applicants state was taken in 2005 and shown below), two sworn affidavits; one from the applicant Ms. Gillian Loftus and the other from Mr. Dominic Brassington (who is understood to be the partner of Ms Loftus). Land level sections have also been provided to show the excavation which would be required when constructing the garage.

The affidavits (countersigned by a solicitor) provide the following information:

- Lived at Oakleigh since March 2022.
- Since March 2022 the area outlined in red (plan accompanying affidavit) has been utilised as domestic garden, land maintained as garden and have used the land for social and domestic purposes as part of the wider garden area.
- Before March 2022 the property was occupied by family members from 1965 – 2018. Can confirm that the land was used as domestic garden, initially as a vegetable patch and then in later years as shrub planting and more recently as a lawn.
- Family member passed away in 2018, applicant and partner visited the property on a daily basis and maintained the lawns and gardens weekly from the late 1990's.
- Continued to maintain the area as domestic garden following the passing of relatives, during renovation of the house and prior to applicant moving into the house.

In this case, the development would be carried out on an area of land to the west of the dwelling that was not shown as part of the site on Ordnance Survey Plan SJ9842 (revised January 1957) and has not always been included within the red edge of previous planning applications. Over time, aerial photographs have shown that the land has been mowed, tended to and been used, as per the affidavit information. The application submission provides a photograph of the area complete with ornamental planting. The affidavits provide information on how the land in question has been used over the years. What is clear is that the site is readily identifiable as land associated with the Oakleigh dwellinghouse. The land in question is not a vast area, it has a degree of intimacy and is located immediately beside the dwellinghouse. The affidavits inform of the 'functional' purpose of the land and its relationship with the dwelling house. On balance it is reasonable to conclude that this area of land should be considered part of the curtilage.

Part 1, Class E allows for '*buildings etc incidental to the enjoyment of a dwellinghouse.*' It is quite clear that the building the subject of this application, is incidental. The plans show a

double garage with storage area. At its largest, the footprint measures 8.5m x 8.2m with a maximum ridge height of 4m. These are not excessive measurements for a domestic outbuilding and there is a close relationship with the dwellinghouse with easy access between the two buildings.

In terms of whether the proposal would constitute an engineering operation, the agent comments that *'The GPDO envisages that buildings can be constructed on sloping ground, and that as a result their height above existing ground level may not be uniform. This height difference is usually accounted for by a raised plinth or slab; it is not considered that it constitutes a separate act of substance. In this instance the base would be supported by the masonry walls. These walls would require foundations, in common with many other buildings permitted by the GPDO. The foundations are quite clearly not a separate engineering operation in their own right but are part and parcel of constructing the structure.'* The agent continues to state that *'as a matter of planning judgement, it is therefore concluded that the garage would comprise a single operation which would benefit from the deemed planning permission granted under Article 3 and Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).'*

The construction of the garage will require some alterations to land levels; the applicant has provided section drawings. The sections show that much of the new garage would be situated on land which would not require land level alterations. The grassland to the west does have a gradual upwards slope and it is within this area that some excavation would be needed. The levels plan shows that at its greatest, a depth of 85cm would be required for the depth of the garage. It is considered that the extent of the land which would need to be excavated, is minimal, and would not involve an extensive area, or result in an engineering operation. The assessment of what constitutes an engineering operation does vary, and each site must be assessed on its merits and the extent of the works required. In this case, it is concluded that the land excavations works are minimal and

Assessment of Schedule 2, Part 1, Class E is as follows.

E.1

- (a) Complies. Permission for use of the dwelling as a dwelling has not been through the Part 3 changes of use route.
- (b) Complies. Total area of ground does not exceed 50% of the curtilage.
- (c) Complies. Amended plan received to demonstrate no projection of the garage building beyond the principal elevation of the dwelling.
- (d) Complies. The building does not have more than one storey.
- (e) i. Complies. The building is not more than 4.0m high.
 - ii. Plan demonstrates the building is greater than 2.0m away from the boundary
 - iii. Complies. Eaves height does not exceed 2.5m.
- (f) Complies. Eaves do not exceed 2.5m in height.
- (g) Complies. Building is not within the curtilage of a listed building.
- (h) Not applicable. Does not include a verandah, balcony or raised platform.
- (i) Not applicable. Does not relate to a radio antenna.
- (j) Not applicable. Does not relate to a container.
- (k) Not applicable. The dwelling is not built under Part 20

E.2 Not applicable. The site is not within an AONB, the Broads, a National Park or a World Heritage Site.

E.3 Not applicable as the property is not within a Conservation Area.

E.4 Interpretation of Class E noted.

CONCLUSION / PLANNING BALANCE

It is considered that the additional information contained within this submission, together with case law assessment, results in the applicants satisfactorily demonstrating that the building would be provided within the curtilage of the dwelling and that the scheme complies with the Class E criteria.

OFFICER RECOMMENDATION : Approve.

Case Officer: Lisa Jackson

Recommendation Date: 15.07.2025

X 

Signed by: Jane Colley Signature

On behalf of Staffordshire Moorlands District Council