

Applicant	Proposal	Plan Ref.
Mr D Sikham	Application for a Certificate of Lawful Proposed Development for a Two Storey Rear Extension and detached garden store at 2 Thicknall Rise, Hagley	20/00739/CPL

RECOMMENDATION:

That the Certificate of Lawful Proposed Development for a Two Storey Rear Extension and Detached garden store at 2 Thicknall Rise, Hagley, which was issued on 13th November 2020, reference 20/00739/CP, is **REVOKED**

BACKGROUND:

The assessment of applications for Lawful Development Certificates are based on the accuracy of the information supplied by the applicant. In this case the applicant submitted a Certificate of Lawfulness for a Proposed Use or Development (CLOPUD) (“the Certificate”) and certified that he owned all the land edged red on the submitted site locations plan. The red line boundary encompassed all of the land to the side of the enclosed rear garden to No. 2 Thicknall Rise which fronts both Thicknall Rise to the west and Newfield Road, to the south and is on the east side of the junction of these two roads. The Certificate decision and report on which it was based area attached as Appendix 1.

Since issuing the Certificate, evidence emerged from members of the public that the applicant for the above application may not own the whole of the land edge red on the location plan accompanying the Certificate application. It was confirmed via Land Registry Search that a triangular shaped piece of land, probably forming the visibility splay of the junction of Thicknall Rise with Newfield Road, was not owned by the applicant. Broadly, the northern alignment of this triangular piece of land until the last couple of years was marked by a low picket fence. The applicant’s planning professional adviser states that the site location plan was submitted in ‘good faith’ based on what was understood to be land within the applicant’s ownership and was a ‘simple oversight’ and not a deliberate attempt to provide false information or to mislead the Council.

In the light of these facts the proposed detached garden store, with a 4-metre-high ridged roof, would be less than 2 metres from the southern ownership boundary, and therefore not fall with the tolerances within Schedule 2, Part 1, Class E.1(e)(ii) of the Town and Country Planning (General Permitted Development (Amendment) (England) Order 2015 (GPDO).

Whatever is the extent of the curtilage outside the rear garden enclosed by a fence, it is not considered that this triangular shaped land can be curtilage because its use would be limited due to fact that the applicant’s right to use can be challenged. Therefore, had the applicant declared his ownership boundary, accurately, it would have been determined that the proposed outbuilding would not be permitted development under the GPDO and that therefore the application for the Certificate of Proposed Development would have been refused.

The applicant has since submitted a new application for a CLOPUD this time with the proposed detached garage in the same position, but with a maximum height of 2.5 metres, reference 21/00679/CPL. This application is under consideration.

REVOCATION MERITS AND PROCESS

The basis for revocation is that a document submitted in support of the application, namely the ownership certificate, was false or misleading in a material particular, or material information was withheld. Therefore, whilst the applicant may have felt that information or material was unnecessary, since it was material to the consideration of the decision then the Certificate is capable of being revoked.

Although the applicant is trying to remedy the false information by submitting an alternative proposal, if the original Certificate is not revoked, he could simply revert to implementing the proposed development reference 20/00739/CPL.

The procedure for revocation of a notice is given by Article 35(15-17) of the Town and Country Planning (Development Management Procedure) Order 2010.

- This requires a notice to be given on the owner, occupier and any other person, in the opinion of the local authority, affected by revocation.
- All those served with a notice must be given 14 days to make representations on the proposal to the local authority.
- Final notice of any revocation must be given to those notified.

The applicant, the local member and Hagley Parish Council have all been informed of the intention to revoke the Certificate. There has been no substantive representation about the merits of revocation.

There is no appeal to the Secretary of State against an authority's decision to revoke a certificate. But the decision may be contested in the High Court on the ground that the authority acted unreasonably in making the decision.

CONCLUSION

The process of revocation followed by the Local Planning Authority would be in accordance with the relevant legislation. There remains a risk of legal challenge however appropriate advice has been taken throughout in respect of the correct procedures and soundness of approach being undertaken. Therefore, it is considered appropriate to recommend the proposed revocation.

RECOMMENDATION

That the CLOPUD for a Two Storey Rear Extension and Detached garden store at 2 Thicknall Rise, Hagley, which was issued on 13th November 2020, reference 20/00739/CP, is **REVOKED**

Case Officer:

David Edmonds

david.edmonds@bromsgroveandredditch.gov.uk

01527 881345

Appendix 1: Certificate of Lawful Proposed Use or Development

BROMSGROVE DISTRICT COUNCIL

Mr D Sikham
C/O Mr Steven Greybanks
Central Building Design Ltd
Woodland View
Stone Meadow, Butts Lane
Stone
Kidderminster
DY10 4BH
United Kingdom

Approval of Certificate of Lawfulness for a Proposed Use or Development

APPLICATION REFERENCE:	20/00739/CPL
SECOND SCHEDULE:	2 Thicknall Rise, Hagley, Stourbridge, Worcestershire DY9 0LQ
FIRST SCHEDULE:	Two Storey Rear Extension and Detached garden store as shown of drawing 3697-02A, submitted on 24th August 2020
DECISION DATE:	13th November 2020

Bromsgrove District Council **HEREBY CERTIFIES** that on **24th August 2020** the operations described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in black and red on the plan attached to this certificate was lawful within the meaning of section 192 of the Town and Country Planning Act 1990 as amended, for the following reason:

Reasons

It is evident from the Old Maps webs site, that Thicknall Rise was developed between 1969 and 1972. It is also evident from the planning history of the site, which includes an appeal decision for application reference 10/0206, that permitted development rights were not removed on the original application for Thicknall Rise. It is noteworthy that from this planning history that in 2010 the existing dwelling was the same as depicted as existing dwelling in the current application. Moreover, there is no evidence from aerial photos that the dwelling has been previously extended.

In the above context, the main issue is whether the proposed developments fall within the permitted development tolerances of the Town and Country Planning (General Permitted Development) (England) Order 2015, (GPDO), Schedule 2 Part 1,

Class A (in respect of the proposed rear extension) and Class E in respect of the proposed outbuilding.

In respect of the proposed rear extension the positioning and size would fall within all the tolerances with Class A1. Of particular note, with reference to A.1(h), it would be more than single storey but not extend beyond the rear wall of the original house by more than 3 metres and no part of the proposed extension would be within 7 metres of the curtilage boundary opposite the rear wall of the dwellings. In terms of the conditions set out in Class A.2 the use of facing brick to match the existing walls of the house and substantially the same roof plane of the existing house and in respect of the amended scheme - drawing no 3967-02A the fenestration includes reasonable size window openings which would all comply with the three conditions.

Turning to the proposed outbuilding it is accepted it would be used in a manner incidental to the enjoyment of the dwellinghouse, to fall within Class E. Moreover, since it is likely that the existing garage and canopy was built at the same time as the house and the proposed outbuilding would not project in front of this part of the principal elevation, it would be within the tolerance set out in Class E.1.(c). Furthermore, since the proposed dual pitched roof would be 4 metres and it is evident it is not within 2 metres of the side curtilage boundary it would fall within the tolerances of Class E.1(e). Also, it would fall within all the other tolerances Class E.



Ruth Bamford
Head of Planning and Regeneration

Notes

- 1) This certificate is issued solely for the purpose of section 192 of The Town & Country Planning Act 1990 (as amended).
- 2) This certificate applies only to the extent of the use/operations/matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter which is/are materially different from that/those described or which relate/s to other land and are unauthorised may render the owner or occupier liable to enforcement action.
- 3) The effect of the certificate is also qualified by the proviso in section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.