

Delegated Report

Planning Ref: 25/01196/CLP
Applicant: Mr And Mrs Angus
Ward: Ambien



Site: The Bothy Barr Lane Higham On The Hill

Proposal: Certificate of proposed lawful development for the erection of a domestic garage

Case Officer: Zahra Jam-Rotbeh (Planning Officer)

Recommendations

1.1. Grant Certificate of Lawful Proposed Development

2. Planning Application Description

- 2.1. This application seeks to obtain a certificate of lawful development for a single-storey garage/storage outbuilding. The existing property does not benefit from any garaging within the curtilage. The development is proposed at The Bothy Barr Lane Higham On The Hill.
- 2.2. The proposed garage would measure 12.14 metres in width and 6.4 metres in depth. It would comprise a gabled roof form, with a maximum ridge height of 3.8m metres and an eaves height of 2.5m.
- 2.3. The proposed garage would feature matching materials to the main dwelling.

3. Description of the Site and the Surrounding Area

- 3.1. The application site is situated on the south-western side of Barr Lane to the southeast of, but outside of the settlement boundary of, Higham on the Hill in the designated open countryside. Barr Lane comprises of a small number of detached dwellings each occupying large plots within the open countryside.
- 3.2. The previous application for a Lawful Development Certificate (25/00934/CLP) was refused as at the time the property was yet to be occupied and therefore did not benefit from Permitted Development Rights. Furthermore the applicant failed to demonstrate that the development by virtue of its scale and proposed use was required solely for a purpose incidental to the enjoyment of the dwellinghouse.
- 3.3. Following the case officer site visit and agent confirmation, the site is now occupied by the applicant and the first ground for refusal has been overcome. An assessment as to the incidental nature of the garage is carried out below.

4. Relevant Planning History

- **22/00888/OUT**
 - Erection of a single dwelling (outline access to be considered only)
 - Withdrawn
 - 22.11.2022
- **24/00694/FUL**
 - Construction of a self-build dwelling with solar panels and access
 - Withdrawn
 - 12.09.2024
- **25/00934/CLP**
 - Certificate of proposed lawful development for the erection of new garage
 - REFLPU
 - 24.11.2025

5. Publicity

- 5.1. Not required for this type of application.

6. Consultation

- 6.1. Not required for this type of application.

7. Policy

- 7.1. Section 192 of the Town and Country Planning Act 1990.
- 7.2. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

8. Appraisal

- 8.1. The main consideration for determination of this proposal is whether the proposed development falls within permitted development rights as set out under The Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended) Schedule 2, Part 1, Class E.
- 8.2. Class E covers:
- 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.*

Incidental Test

- 8.3 The use of the building, enclosure, pool or container must be incidental to the enjoyment of the dwellinghouse in order for the development to meet the requirements of Class E.
- 8.4 The applicant has stated that the proposed garage is intended for solely of domestic use and residential storage. The garage has been reduced in scale following the previous refusal for a Lawful Development Certificate, two stores have been removed and the width of the garage reduced by 6m. Doubts as to the incidental nature of the building previously stemmed from the planning history whereby the applicants had previously applied for planning permission for a building similar to the previous building for use as a tractor store- a use not incidental to the enjoyment of the dwelling.
- 8.5 Appeal decisions relating to incidental uses are mixed and highlight the need to assess a scheme on its own merits. One of the leading cases in this regard is the Emin [Emin v SSE & Mid Sussex DC [1989] JPL 909] judgement where it was found that an outbuilding must be 'required for some incidental purpose' to be permitted development under Class E of the GPDO. The size of the building, including in comparison to the host dwelling, may be an important consideration, but size alone is not conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose.
- 8.6 In isolation, the activities for which the outbuilding would be put to use could all generally reasonably be regarded as being subordinate to and connected with the running of the dwelling and as such, incidental to its enjoyment. However, when assessing the application the material planning history which includes recent planning applications for a non-incidental structure on a similar site to the proposed building clearly weighs against the applicants and their genuine requirement for a garage as proposed. Therefore, further justification was requested, and a justification statement has been provided by the agent in support of the application:
1. *"The proposed garage is solely for domestic vehicle and residential storage.*
- In this case the existing integral garage would provide space for three vehicles, The garage is large but is not unjustified when considering a triple garage would require an internal space of 18X6m. according above, the garage includes a parking and a residential storage and there are no other outbuildings within the curtilage which would otherwise provide this purpose".*
- 8.7 In making an application for a Certificate it is the responsibility of the applicant to provide that the development would be lawful on the balance of probabilities. In this case, doubts are raised with regards to the planning history, however, the reduction in the scale of the garage to a more domestic scale and the above evidence subsequently provided by the applicants that address this and the incidental nature of the use is considered sufficient and on the balance of probability the proposed building would be incidental to the enjoyment of the dwelling.

Development is not permitted by Class E if:

a) Permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (changes of use);

Permission to use the dwellinghouse as a dwellinghouse has not been granted by Class M, N, P, PA or Q of Part 3 of this Schedule.

b) The total area of ground covered by buildings, enclosures, pools and containers 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);

The total area of ground covered would not exceed 50% of the property curtilage.

c) Any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

The proposed development would not be situated to the rear of the principal elevation.

d) The building would have more than one storey;

The proposed building would be single storey, with a maximum ridge height of 3.8 metres.

e) The height of the building, enclosure or container would exceed—

- (i) 4 metres in the case of a building with a dual-pitched roof,
- (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse,
- (iii) 3 metres in any other case;

The proposed building complies with the relevant height restrictions and being proposed as a dual-pitched roof, does not exceed 4m in height from the base to the ridge.

f) The height of the eaves of the building would exceed 2.5 metres;

The proposed eaves height would not exceed 2.5 metres.

g) The building, enclosure, pool or container would be situated within the curtilage of a listed building;

The site is not within the curtilage of a listed building.

h) It would include the construction or provision of a veranda, balcony or raised platform;

The proposal does not include a veranda, balcony or raised platform.

i) It relates to a dwellinghouse built under Part 20 of this Schedule (construction of new dwellinghouses);

The dwellinghouse was not built under Part 20 of this Schedule.

9. Equality Implications

9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

- (1) A public authority must, in the exercise of its functions, have due regard to the need to:
 - (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

9.2. Officers have taken this into account and given due regard to this statutory duty, and the matters specified in Section 149 of the Equality Act 2010 in the determination of this application.

9.3. There are no known equality implications arising directly from this development.

9.4. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

10. Conclusion

10.1. Based on the submission the proposed extension would comply with the relevant provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

11. Recommendation

11.1. Grant Certificate of Proposed Lawful Development

11.2. The application has been determined with consideration to the following submitted documents:

- Application form for a Certificate of Lawful Proposed Development received by the Local Planning Authority on 16/12/2025.
- Proposed Floor, Roof Plans, Elevations, 3D View, Drg No. 23/101 07 and
- Proposed Site Plan, Block Plan, Site Location Plan, Drg No. 23/101 06 and received by the Local Planning Authority on 16/12/2025.

12.1. Notes to applicant

- a) The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at building.control@blaby.gov.uk or call 0116 272 7533.