

Delegated Report

Planning Reference: 25/00797/CLP

Applicant(s): Mr Rayner

Ward: Newbold Verdon with Desford and Peckleton



Hinckley & Bosworth
Borough Council

Application Site: Hill Rise, Station Road, Desford

Proposal: Certificate of proposed lawful development for the erection of a swimming pool and enclosure.

Case Officer: Gwion Russell (Planning Officer)

Recommendations

1.1. Refuse Certificate of Lawful Proposed Development

2. Planning Application Description

- 2.1. The proposal seeks a certificate of lawful proposed use for the erection of a Class E outbuilding within the rear garden and curtilage of a large detached residential dwelling.
- 2.2. The proposed structure will measure approximately 20.2m in depth, 7.8m in width, with a maximum ridge height of 4m and an eaves height of 2.5m. The building will be constructed using a combination of grey brickwork and metal sheet cladding, with full-length fenestration to the west elevation and smaller upper-quarter windows to the east elevation.
- 2.3. The outbuilding is designed to accommodate an indoor swimming pool for use by the occupants of the dwelling. The siting of the outbuilding is positioned to the rear and left of the main dwelling, if looking at the rear elevation.
- 2.4. The planning application explicitly assesses the proposed outbuilding as falling within Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended), in relation to its use and positioning relative to the main dwelling and the curtilage of the property as outlined in its most recent application for a residential outbuilding **21/01144/CLP**. It does not seek to establish the lawful extent of the curtilage in the application form, however, by virtue of the requirements of Class E an assessment has to be made as to the buildings proximity to the edge of the curtilage and therefore this matter is addressed where relevant.
- 2.5. It is however considered that should the applicant wish to obtain a lawful development certificate establishing the extent of the curtilage they should apply accordingly and explicitly seek this within the application description.

3. Description of the Site and the Surrounding Area

- 3.1. The application site relates to Hill Rise, Station Road, Desford, which is a substantial property on a generously sized plot.
- 3.2. Hill Rise is a two-storey detached dwelling outside of the Desford settlement boundary adjacent to properties of similar scale and massing, however with a large variety in architectural design. The host dwelling features white rendered facades with a combination of half-hipped and half-gabled roofing. It includes a spacious front driveway and an outbuilding that extends along the left side of the dwelling, which forms a secured garage and store.
- 3.3. Although there is extensive planning history associated with the property, its land has been the subject of lawful development certificate application **20/00749/CLP** and appeal **APP/K2420/X/20/3262446** where it concluded that there was insufficient evidence to suggest that a proposed outbuilding would be located on land within the curtilage of the dwellinghouse. Following this application and appeal, a further application (**21/01144/CLP**) for an outbuilding garage/store was assessed and approved against Part 1 Class E of the Town and Country (General Permitted Development) (England) Order 2015 (as amended) a site plan detailing a residential curtilage was submitted supporting this application.

4. Relevant Planning History

98/00282/FUL

- TWO STOREY REAR EXTENSION
- PER
- 14.05.1998

98/00849/FUL

- SIDE AND REAR EXTENSIONS TO DWELLING
- PER
- 17.11.1998

02/00977/FUL

- DOUBLE GARAGE
- REF
- 22.10.2002

15/00996/OUT

- Erection of 5 dwellings (outline - all matters reserved)
- REF
- 10.11.2015

16/00010/PP

- Erection of 5 dwellings (outline - all matters reserved)
- DISMIS
- 19.05.2016

18/00968/HOU

- Part two-storey, part single-storey side extensions with associated roof alterations
- PER
- 12.11.2018

20/00040/CLD

- Certificate of Lawful Proposed Development for detached outbuilding
- DISMIS
- 09.03.2021

20/00749/CLP

- Certificate of Lawful Proposed Development for detached outbuilding
- REFLPU
- 05.10.2020

21/01144/CLP

- Erection of garaging, gym and workshop for a purpose incidental to the enjoyment of the dwellinghouse
- CERTPU
- 04.05.2022

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 a(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:

The proposed outbuilding, which includes a swimming pool and indoor planting zone, is considered to meet the incidental test under Class E of the GPDO.

There is currently no swimming pool enclosure within the main dwelling or existing outbuildings (which include other uses which are used as garages and storage and which is incidental to the main dwelling).

Given the generous size of the land associated with the dwelling, the inclusion of a swimming pool is considered reasonable and justified.

Case law arising from the judgment in *Emin v SSE & Mid Sussex DC [1989] JPL 909* examines '...whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house' and whether '...the use to which it is proposed to put a building and to considering the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse'. As established in this case law, the assessment focuses on whether the building is genuinely and reasonably required for an incidental purpose. In this case, it is considered that on balance the proposed structure is subordinate to and connected with the enjoyment of the dwellinghouse and therefore meets the incidental test. It is however considered that the scale of development on site and the outbuildings already developed under Class E are significant.

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 extent of the curtilage is disputed as set out in more detail below. However, by reviewing the 5187 m² curtilage footprint of the site, as outlined in application 21/01144/CLP the total area of ground covered would not exceed 50% of the property curtilage. The land coverage of the proposed outbuilding along with the existing outbuilding 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 forward of the principal elevation. The proposed development is located to the rear of the property, not in front of the principal elevation, and therefore is considered acceptable in terms of siting and positioning.

d) The building would have more than one storey;

The proposed building would be single storey, with a maximum ridge height of 4 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 detached outbuilding has a height of 4 metres from its base to the ridge. As it exceeds the maximum permitted height of 2.5 metres within 2 metres of the boundary of the dwellinghouse's curtilage, it does not comply with point (ii) of criterion (e).

This assessment has been reached by reviewing pertinent planning history associated with the property, specifically the appeal decision for application 20/00749/CLP (Ref: APP/K2420/X/20/3262446) in which a certificate of lawful use or development was refused for a detached ancillary recreation building.

This appeal reviewed whether the Council's decision to refuse the previous certificate of lawfulness was well-founded.

To support this, the appeal statement specifically assesses the consideration of whether the proposed operations (a detached ancillary recreation building) fall within the residential curtilage of the dwellinghouse, as this would form a criterion for its assessment under the provisions of the GDPO.

To aid in defining residential curtilage the Permitted Development Technical Guidance (2019) defines it as:

'land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.'

Bolstering this, paragraph 8 of the Appeal Statement reads, with specific regards to the site:

'there appear two distinct areas within the site: The main dwelling, together with its driveway and landscaped grounds to the rear; and the area where the outbuilding would be located, which appeared disused and is delineated from the rest of the appeal site by vegetation, fencing and a gate.'

Paragraph 16 states:

‘Whilst the whole site is within the ownership of the appellant, this by itself is not determinative, particularly given the substantial size of the plot’.

To support the appeal, the appellant submitted supporting documents – an OS Map and numerous family photographs, however paragraph 17 states:

‘the appellant’s evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the outbuilding would be located on land within the curtilage of the dwellinghouse.’

To sum up, the appeal statement concludes:

‘the Council’s refusal to grant a certificate of lawful use or development in respect of a detached ancillary recreation building was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.’

Following this an application was made in 2021 (Ref: 21/01144/CLP). To support this application, a site location plan (Drg. No. 001 – received by the Local Planning Authority on 13/09/2021) was submitted to support the proposals and which defined the residential curtilage as outlined the land to the rear of the application dwelling (approximately 5121.07 m²), and defined the parcel of land to the northeast (approximately 5687 m²) as outside the residential curtilage of the dwellinghouse. The currently proposed outbuilding would sit within 2m of the boundary of this curtilage.

Whilst additional information has been submitted pertaining to the disputed land prior to the APP/K2420/X/20/3262446 it is not considered that this is sufficient to overcome the Inspectors concerns during that appeal.

Furthermore, the subsequent 2021 application seems to affirm the extent of the residential curtilage is smaller than that proposed by the applicant in the earlier appeal and currently indicated.

On 6 December 2024, pre-application enquiries (reference: 24/10174/PREHMO) were made by the applicant seeking advice on the erection of 2 self build dwellings on the land to the east of Hill Rise including land claimed to be residential curtilage in the current application. On the application the response to the question please provide the current use of the site/property was “land under ownership of Hill Rise”. There was no reference to the land in question being part of the curtilage for Hill Rise in the pre-application documentation or indeed it being used as residential garden land. The submitted site plan for the pre-application enquiry includes part of the land which is included in the current application as residential curtilage for residential development. The remainder of the land included in the current application as residential curtilage is excluded from the development site, the site plan states that this land would be “retained as open countryside” (dwg. Reference 002). This indicates that at least part of the land currently indicated as residential curtilage was as of 6 December 2024 “open countryside” and not residential curtilage.

The submitted aerial imagery from May 2025 does show the removal of hedgelines and enclosure on the site and from an aerial view the land appears to be well managed as an entire parcel. However, similarly to the appeal other than a statement within the Supporting Statement (5.70) that the whole of the area is maintained as garden, for purposes ancillary to the enjoyment of the

dwellinghouse, there is very little evidential information regarding the use of this land. Furthermore, the stated use of the land as garden does not in itself render this land to be residential curtilage.

In the LPA's opinion no evidence has been submitted that overcomes the concerns of the Inspector in application APP/K2420/X/20/3262446. The applicant's later lawful development certificate outlines a smaller curtilage than that proposed. Furthermore up-to-date correspondence through the pre-application process indicates that the currently indicated curtilage was partly "open countryside" in December 2024. The information submitted in the timeframes since this date is limited and the application and site history raises significant doubts that the extent of the curtilage is as indicated within the submission.

Whilst it remains that the whole site is within the ownership of the applicant, as per the Inspector's findings, this by itself is not determinative, particularly given the substantial size of the plot. There also remains significant ambiguity as to how the northern part of the land has been used in the past through the formal and informal applications submitted to the LPA. Therefore, the LPA cannot be sure the curtilage identified in the application has been used as part and parcel of the house or that (in its entirety) it forms part of the curtilage of the residential property known as Hill Rise.

Using both the appeal statement (ref: APP/K2420/X/20/3262446) and the most recent planning application submitted to the Local Planning Authority; it is concluded that the residential curtilage measures approximately 5121.07 m² to the northwest of the main dwellinghouse and as outlined in Drg. No. 001 (received by the Local Planning Authority on 13/09/2021) of the applicant's most recent application made under 21/01144/CLP. As the proposed outbuilding is 4 metres in height from the base of the outbuilding to the ridge of its roof and given that it is within 2 metres of the boundary of the residential curtilage as outlined in application 21/01144/CLP it would exceed 2.5 metres and would therefore not meet point (ii) of criterion (e) and would not meet the particulars of the GDPO. It has not been demonstrated on the balance of probabilities that the boundary of the curtilage is more than 2m from the proposed outbuilding.

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.

8. Equality Implications

- 8.1. 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.
- 8.2. 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.
- 8.3. There are no known equality implications arising directly from this development.
- 8.4. 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).

9. Conclusion

- 9.1. Based on the submission the proposed outbuilding would not 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).

10. Recommendation

- 10.1. **Refuse Certificate of Proposed Lawful Development** for the reason below.

10.2. Reasons

- 1) Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) relates to permitted development within the domestic curtilage of a dwellinghouse. The proposed outbuilding exceeds 2.5m in height and it has not been demonstrated, on the balance of probabilities, that the outbuilding is sited more than 2m from the boundary of the curtilage of the dwellinghouse. The proposed detached outbuilding as shown on Proposed Elevations (Drg. 486-03 (Revision A) and the Proposed Site Plan (Drg. 486-04) received by the Local Planning Authority on 15th August, 2025, therefore fails to qualify for assessment of permitted development under clause e) (ii) of Schedule

2, Part 1, Class E of the Town and Country Planning) General Permitted Development (England) Order 2015 (as amended).

11. Notes to applicant

- a) 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 21/08/2025.
 - Proposed Site Plan - Drg. 486-04 received by the Local Planning Authority on 15/10/2025.
 - Proposed Elevations – Drg. 486-03 (Revision A) received by the Local Planning Authority on 15/10/2025.
 - Supporting Statement (486-160625) received by the Local Planning Authority on 21/08/2025.