

Delegated Report

Planning Reference 25/00934/CLP
Applicants Mr and Mrs Angus
Ward Ambien



Hinckley & Bosworth
Borough Council

Application Site The Bothy, Barr Lane, Higham on the Hill, CV13 6AW

Proposal Certificate of proposed lawful development for the erection of new garage

Case Officer Rudi Simpson

1. Recommendations

- 1.1. Refuse Certificate of Lawful Proposed Development

2. Planning application description

- 2.1 This application seeks to obtain a certificate of lawful development for the proposed erection of a new garage at The Bothy, Barr Lane, Higham on the Hill.

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 site relates to a new residential dwelling (The Bothy) that was approved via planning applications 23/00521/FUL and 24/0112/FUL on land previously associated with Cottage Farm. Based on the Case Officer's visit to the application site on 18 November 2025, the new dwelling appeared to be substantially complete but remained unoccupied.

4. Relevant Planning History

4.1. 24/00621/HOU

- Construction of double garage and tractor shed
- Withdrawn
- 28.08.2024

4.2. **24/00112/FUL**

- Demolition of existing outbuildings and construction of a new dwelling (revised scheme of 23/00521/FUL)
- Permitted
- 20.03.2024

4.3. **23/00521/FUL**

- Proposed conversion and extension of existing garage to new dwelling, new pergola and boundary with associated access, parking, landscaping, and solar panel
- Permitted
- 20.07.2023

5. Publicity and Consultation

- 5.1. There is not statutory requirement to consult third parties on an application for a lawful development certificate. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is a good reason to believe they possess relevant information about the content of a specific application.
- 5.2. Notwithstanding this, views expressed by third parties on the planning merits of the case, or on whether the Applicants have any private rights to carry out the operation, use or activity in question are irrelevant when determining the application.
- 5.3. In this instance, no consultation was undertaken for this application.

6. Policy

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

7. Appraisal

- 7.1. Section 192 of the Town and Country Planning Act 1990 enables any person with the opportunity to ascertain whether any proposed use of buildings or other land, or any operations proposed to be carried out in, on, over or under land would be lawful.
- 7.2. The statutory framework covering, 'lawfulness,' for lawful development certificates is set out in Section 191(2) of the Town and Country Planning Act 1990.

- 7.3. Section 191(2) of the Town and Country Planning Act 1990 confirms that uses and operations are lawful at any time if:
- (a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.
- 7.4. Paragraph 55(1) of the Town and Country Planning Act 1990 defines, 'development,' as the carrying out of building, engineering, mining, or other operations in, on, over, or under land, or the making of any material change in the use of any buildings or other land.
- 7.5. Section 192(2) of the Town and Country Planning Act 1990 confirms that if the Local Planning Authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that; and in any other case they shall refuse the application.
- 7.6. Given the above, National Planning Practice Guidance (NPPG) states that the applicant is responsible for providing sufficient information to support an application. In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable to a local planning authority to understand exactly what is involved.
- 7.7. Without sufficient or precise information, a local planning authority may be justified in refusing a certificate. However, this does not preclude another application being submitted later on if more information can be produced.
- 7.8. Ultimately, the NPPG highlights that a local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is, or would be, lawful. Planning merits are not relevant at any stage in this particular application.
- 7.9. The proposal is for a new detached garage to serve The Bothy, which was approved via planning application 24/00112/FUL.
- 7.10. The Applicants consider that a Lawful Development Certificate should be granted for this proposal because the development complies with Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

- 7.11. Class E(a) of Part 1 of Schedule 2 of the GPDO details the Permitted Development Rights for the provision of 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.
- 7.12. The application site is not located within an area of outstanding natural beauty, the Broads, a National Park, a World Heritage Site or within the curtilage of a dwelling house that is on Article 2(3) land. Therefore Paragraphs E.2 and E.3 of this Class are not applicable to the proposed development.
- 7.13. The host dwellinghouse was not granted its use as a dwellinghouse by any classes under Part 3 of Schedule 2 of the GPDO, nor was the property constructed under Part 20 of Schedule 2 of the GPDO. Therefore, Paragraphs E.1(a) and (k) are not applicable to the proposed development.
- 7.14. The development does not result in the total area of ground being covered by buildings, enclosures and containers within the curtilage of the dwellinghouse exceeding 50% of the total area of the dwellinghouse in accordance with Paragraph E.1(b) of this Class.
- 7.15. The proposal is not situated on land forward of a wall forming the principal elevation of the host property, and the development does not have more than a single storey, a total height that exceeds 4 metres, or an eaves height of 2.5 metres. The scheme therefore accords with Paragraphs E.1(c), (d), (e), and (f) of this Class.
- 7.16. The proposed development is not within the curtilage of a Listed Building, nor does the scheme include the construction or provision of a verandah, balcony, raised platform, a microwave antenna, nor a container that has a capacity that exceeds 3,500 litres. As a result, the proposal complies with Paragraphs E.1(g), (h), (i), and (j) of this Class.
- 7.17. However, Paragraph E.4 of Class E of Part 1 of Schedule 2 of the GPDO confirms that, for the purposes of this Class, a:

“Purpose incidental to the enjoyment of the dwellinghouse as such” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.”

- 7.18. On 24 September 2025, the Inspector for the appeal at The Bourne, Redlands Lane, Crondall, Farnham (APP/N1730/X/24/3340101) stated at Paragraph 10 that:

“The development carried out on the land would become a single dwellinghouse once it was substantially complete and had been occupied, at which time it would benefit from permitted development rights set out in Part 1 of Schedule 2.”

- 7.19. Given the above, if the existing property has never been occupied, then the building does not benefit from Permitted Development Rights because it cannot be for the domestic needs or personal enjoyment of its occupants.
- 7.20. At the time of the site visit, the building was unoccupied, and the contractor confirmed on site that the Applicants were intending to move into the premises at the beginning of December. The Agent also confirmed in writing on 20 November 2025 that the development was unoccupied.
- 7.21. By virtue of these factors, at the time of the application, the development was not occupied and therefore the building's use as a dwellinghouse had not been established. Although the Applicants have referred to the London Borough of Brent v Levelling Up, Housing and Communities [2022] EWHC 2051 (Admin) judgement, this decision was based on a property that had previously been occupied as a Use Class C3 dwellinghouse, and therefore this judgement is materially different to the site-specifics of this proposal.
- 7.22. Given the above, the property is not considered to benefit from Permitted Development Rights at this current time and therefore the scheme represents development to which Class E of Part 1 of Schedule 2 of the GPDO does not apply.
- 7.23. In addition to this, it is noted that a previously withdrawn householder planning application 24/00621/HOU sought permission for a garage within this site. In comparison to the originally submitted plans within this previous application, the current proposal is 13.7 square metres larger in footprint, 2.8 metres wider, and 1.2 metres deeper in size and scale. No justification has been submitted by the Applicants within this current application to demonstrate why a larger structure is now required for this site in comparison to this previous application.
- 7.24. Furthermore, the design of the originally submitted plans for this previous application was very similar to the currently proposed development and included a tractor store in the location of the proposed store. On 14 August 2024, the Applicants stated as part of 24/00621/HOU that the tractor store was required to store the, "*Tractor and other outdoor machinery for the 10-acre site.*" The wider 10-acre site is located immediately to the south of the site and was identified within the Site Location Plan (PL03-B) submitted to the Council on the same date.
- 7.25. Development utilised to store non-domestic machinery for the maintenance of agricultural land outside of the curtilage of the host dwelling is not considered to be required for a purpose incidental to the domestic needs or enjoyment of the dwellinghouse.
- 7.26. No information has been submitted as part of this current application to suggest that the ten acres of agricultural land to the south of the site are no longer within the ownership of the Applicants.

- 7.27. Moreover, if the land is no longer within the ownership of the Applicants, then the Applicants have failed to demonstrate why a building is now required for a purpose incidental to the domestic needs or enjoyment of the dwellinghouse that is larger than what was previously submitted as part of planning application 24/00621/HOU.
- 7.28. Notwithstanding the above, on 20 November 2025, the Applicants then stated that the proposed store would not be used to store a tractor.
- 7.29. In spite of this, on 21 November 2025, the Applicants then confirmed that the development would be to store, *“Three cars on site, a ride-on lawnmower and a small multi-use tractor,”* and the tractor and lawnmower were, *“Essential,” for the maintenance of, “One acres of grounds.”*
- 7.30. No information has been submitted by the Applicants to identify these grounds, nor confirm whether they are in the curtilage of the dwellinghouse.
- 7.31. Based on the submitted details, the size of the entire application site, including the proposed development, the previously approved dwelling, the existing hard surfacing, and the existing pond is less than an acre in size. Therefore, the Applicants have failed to demonstrate the grounds that necessitate the size and scale of the proposed development are residential in use, nor within the curtilage of the host dwelling.
- 7.32. In light of the above, it is considered that the Applicants have failed to demonstrate that the proposed development and its proposed size, scale and use, are required solely for a purpose incidental enjoyment of the dwellinghouse in these site-specific circumstances. Given the above, the proposal does not comply with Class E of Part 1 of Schedule 2 of the GPDO.
- 7.33. In conclusion, it is considered that the proposal complies with Paragraphs E.1(a) to (k) of Class E of Part 1 of Schedule 2 of the GPDO. However, at the time of this application, the host property has never been occupied and therefore the building’s use as a dwellinghouse had not been established. As a result, the property is not considered to benefit from Permitted Development Rights and therefore the proposal does not comply with Class E of Part 1 of Schedule 2 of the GPDO. In addition, the Applicant has failed to demonstrate that the proposed development and its proposed size, scale and use, are required solely for a purpose incidental enjoyment of the dwellinghouse in these site-specific circumstances. By virtue of these factors, the development is not considered to be lawful, and a Lawful Development Certificate is refused.

8. Equality Implications

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

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; and
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (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 The Applicants have failed to demonstrate that the proposed garage at The Bothy, Barr Lane, Higham on the Hill represents lawful development. The existing property has not been occupied yet and is therefore not currently considered to benefit from Permitted Development Rights, and the Applicants have failed to demonstrate that the proposed development and its proposed size, scale and use, are required solely for a purpose incidental enjoyment of the dwellinghouse in these site-specific circumstances. Based on the submitted information, the development is not considered to be lawful, and a Lawful Development Certificate is refused.

9.2. This conclusion is made on the basis of details provide by the Applicants, and as shown on the following documents received by the Local Planning Authority:

- Application Form (submitted: 29.09.2025)
- Photo (submitted: 21.11.2025)
- Proposed Garage & Shed Dwg no 23 101 04G (submitted: 20.11.2025)
- Site Plan Block Plan & Location Plan. Dwg no 23 101 01G (submitted: 20.11.2025)

10. Recommendation

10.1 Refuse Certificate of Lawful Proposed Development