

Recommendation Report for Lawful Development Certificate for a Proposed Use or Development

REF NO: EP/171/18/CLP

LOCATION: 8 Seaview Avenue
East Preston

PROPOSAL: Lawful development certificate for a proposed single storey conservatory extension to side of an existing detached garage outbuilding.

DESCRIPTION OF APPLICATION

The proposal is to construct a conservatory extension to an existing outbuilding in the garden of 8 Seaview Avenue. It would project 4 metres from the north side elevation of the 2 storey outbuilding. The existing outbuilding has an eaves height of 2.5 metres and a ridge height of 7 metres. The proposed conservatory would have a width of 6 metres and a height of 2.5 metres to eaves level and 3.5 metres to the ridge level of a double hipped roof. It is stated that the conservatory windows and UPVC white frames would match the UPVC frames of the existing outbuilding. The bricks used on dwarf wall of the conservatory would match the bricks used in the existing outbuilding.

DESCRIPTION OF SITE AND SURROUNDINGS

RELEVANT SITE HISTORY

EP/26/09/	Replacement two storey garage complex.	ApproveConditionally 06-04-2009
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REPRESENTATIONS

Representations received:

Comments on Representations received:

CONSULTATIONS

Consultations responses received:

Comments on Consultation responses:

LEGISLATIVE BACKGROUND

Section 192(2) of the Town and Country Planning Act 1990 states:-

If, on an application under this section, 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 effect, and in any other case they shall refuse the application.

In this instance the proposed works will be assessed against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

- Class E, which pertains to buildings etc incidental to the enjoyment of a dwellinghouse.

Provided the proposed works satisfy the relevant criteria, and that no restrictive conditions to development have been imposed on the site, the proposed works will constitute Permitted Development and would not require planning permission. If the works fail to accord with the criteria then planning permission will be required for them to take place.

CONCLUSIONS

The proposed single storey rear extension to the outbuilding would need to comply with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

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.

E.1 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);

(b) the total area of ground covered by buildings, enclosures 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);

(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;

(d) the building would have more than a single storey;

(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, or

(iii) 3 metres in any other case;

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

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

(h) it would include the construction or provision of a verandah, balcony or raised platform; (i) it relates to a dwelling or a microwave antenna; or

(j) the capacity of the container would exceed 3,500 litres.

SUMMARY

In considering whether or not the proposal requires planning permission the following matters need to be taken into account;

Class E para (a) - Issue 1 - Is a conservatory incidental to the enjoyment of the dwellinghouse ? The proposed conservatory would serve a studio which has a bathroom and a garage at ground floor and a gym, hobbies room and study at first floor level. While the use of the studio is not defined and the burden of proof lies with the applicants it is considered that the primary purpose of the building is not for residential occupation and as it currently exists is not capable of independent habitable accommodation as it lacks a kitchen and a bedroom.

In accordance with Appeal Ref: APP/R5510/X/17/3188076 the Planning Inspector cites permissible uses are 'ones which are ancillary to the primary use as a dwellinghouse rather than integral to it' and therefore on this ground the proposed scheme is not considered to require planning permission.

Class E para (a) - Issue 2 - Is an enlargement permitted as an 'other alteration' to an outbuilding ? Under Class A enlargements are specifically allowed however this wording is not used under Class E where only "The provision of, or the maintenance, improvement or other alteration of such a building' are specifically permitted development.

Appeal decisions have interpreted Class E para (a) in opposing ways as follows;

Example 1) - Allowing for enlargements as 'other alterations' as in Appeal Ref: APP/W5780/X/18/3193186. The Inspector stated " Whilst I acknowledge that Class E does not specifically refer to permission to enlarge a building, it does allow for "other alterations" to the building subject to provisos. Within the GPDO, an alteration is stated to be included within the definition of "erection" in relation to buildings. Therefore despite the absence of specific reference to the word "enlargement" in the permitted development right, it seems to me that the proposed extension would still legitimately fall within the concept of "other alteration". "

Example 2) - Not allowing enlargements as 'other alterations' as in Appeal Ref; APP/H5390/X/15/3005151 para 12 where the Inspector stated ' Under Class E, permitted development works to an existing building were limited to its "maintenance, improvement or other alteration". There was no specific provision for the "enlargement" of such a building (unlike Class A developments which included "enlargements").

The balance of appeal decisions leans toward enlargements being seen as 'other alterations' and therefore on this ground the case in hand is not considered to require planning permission.

Class E.1 para. (d) - the building would have more than a single storey and;

Class E.1 para. (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,

The outbuilding to 8 Seaview Avenue is a two storey building, 7 metres in height and

consequently it does benefit from permitted development rights under class E due to Class E.1 para. (d) which states that development is not permitted by Class E if the building would have more than a single storey and by para (e) which states that development is not permitted if the height of the building would exceed 4 metres in the case of a building with a dual pitched roof;

Appeal statements conclusively regard the whole building when assessing outbuildings under criteria in Class E.1 not just the extended or altered part.

Appeal decisions unanimously view the above to be the case.

In Appeal Ref; APP/W5780/X/18/319318 the Inspector states ' However the various limitations for Class E are expressed in terms of the building as a whole, rather than any disaggregated part. I therefore consider that the dimensions of the building as a whole, as extended, are key to determining whether the proposed extension would constitute permitted development.

This principle is reflected in further appeal decisions and furthermore in appeal decision APP/X0360/X/16/3164041 with respect to Class E.1 para. (f) a similar height criteria relating to the eaves height eaves the Inspector states;

The Department for Communities and Local Government published 'Permitted development rights for householders, Technical Guidance' (TG) in April 2016, which was subsequently updated in 2017. This assists with the interpretation of the GPDO. It sets out (page 44) that 'Under Class E the maximum height of the eaves on any part of the building (my emphasis) is 2.5m'. The proposed development in terms of its eaves height for all of the building would therefore not accord with the limitation set out in paragraph (f) of Class E and as such would not be permitted development (PD)."

It is logical that this should also apply to the maximum height of the building under paragraph (e) of Class E and it follows that the same reasoning should be applied to Class (E) para (d) relating to single storey of the outbuilding

The Councils legal team were consulted and confirmed that in considering such an application the whole building, not just the proposed extended part, should assessed for compliance with parts d) and e) of Class E.

The property does not have any permitted development rights removed as a result of previous planning permissions.

In summary the proposed conservatory extension would form part of an outbuilding which would exceed 4 metres in height at 7 metres to the main ridge height and have a second storey and would therefore fail to comply with Schedule 2, Part 1,Class E para. (d) and (e)(i) of the Town and Country (General Permitted Development) (England) Order 2015 as amended.

RECOMMENDATION

PP REQUIRED

The Arun District Council hereby certify that on 23/11/18 the development described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to

this certificate and edged in black on the plan attached to this certificate, would not have been lawful within the meaning of section 192 of the Town & Country Planning Act 1990 for the following reasons;

- The proposed development to enlarge an existing outbuilding that has a second storey and a highest point of above 4 metres (7 metres to the ridge) does not comply with Schedule 2, Part 1, Class E para. (d) and (e)(i) of the Town and Country (General Permitted Development) (England) Order 2015 as amended.

FIRST SCHEDULE

Construction of a single storey conservatory extension to the side of an existing detached garage outbuilding as shown on the following plans;

Block/Site Plan dated 22/11/2018.

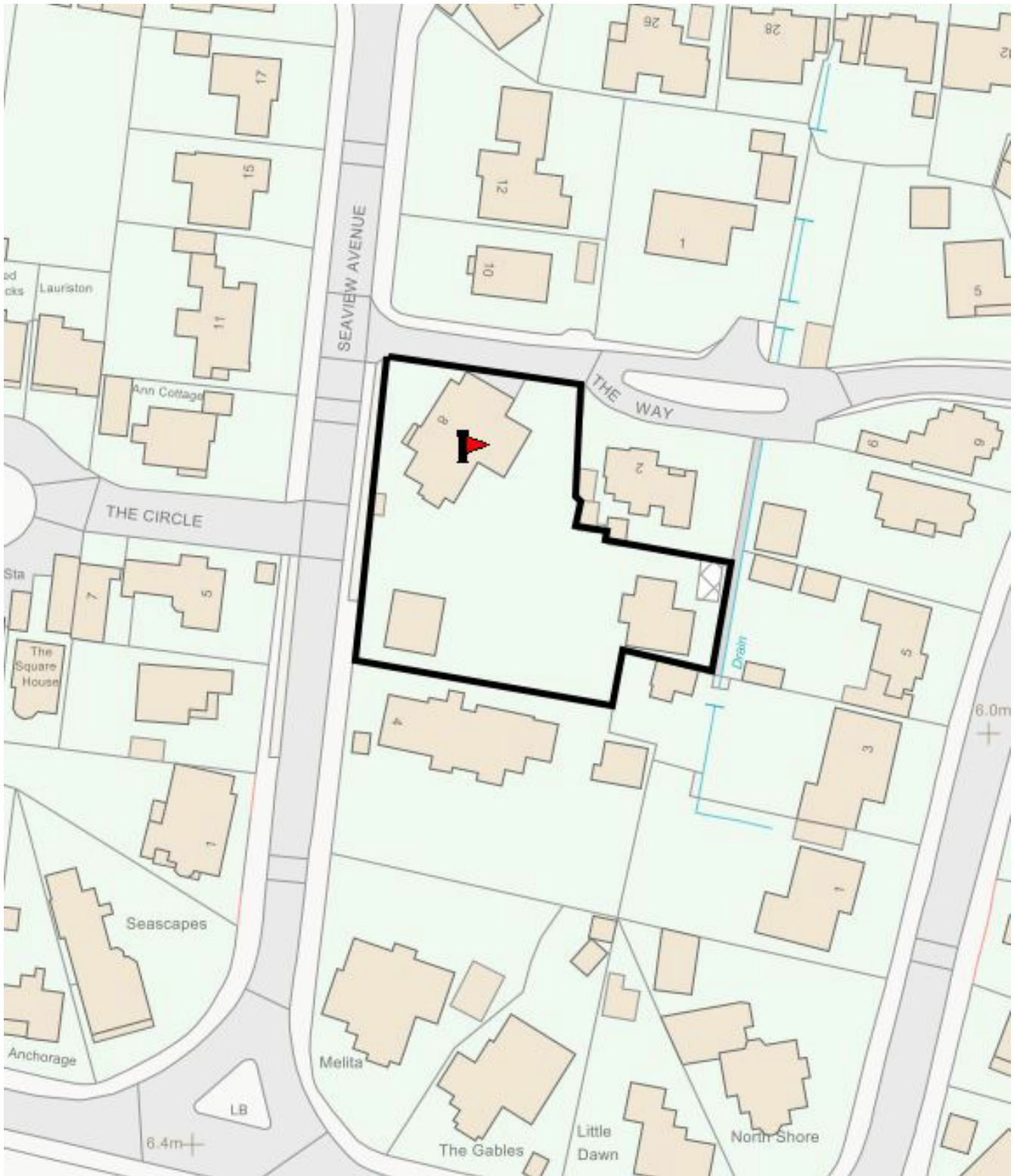
Elevations with Proposed Conservatory dwg.no. SK18/001 dated Nov 2018.

SECOND SCHEDULE

8 Seaview Avenue, East Preston, West Sussex, BN16 1PP.

EXTENT OF USE

Construction of a single storey conservatory extension to the side of an existing detached garage outbuilding.



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