HUNTINGDONSHIRE DISTRICT COUNCIL

24/02058/CLPD

OFFICER REPORT

Case No: **24/02058/CLPD** **Certificate of Lawfulness proposed**

Proposal: **Lawful development certificate for proposed erection of garage block within residential curtilage.**

Location: **Four Winds Houghton Hill Houghton**

Applicant: **Mr Harvey Death**

Grid Ref: **528925 272317**

DESCRIPTION OF SITE AND APPLICATION

Four Winds is a detached dwelling located within a large plot within Houghton and within the Houghton and Wyton Conservation Area. There is a tree subject to a Preservation Order to the front of the site which is within Flood Zone 1.

A Certificate of Lawfulness is sought for the erection of a garage block within the curtilage to the rear of the dwelling.

The planning history of the site has been reviewed and permitted development rights (in relation to outbuildings) were not removed.

There are no Article 4 Directions in place. As such, the permitted development rights are considered to remain intact.

This is a revised application following the withdrawal of application reference 24/01554/CLPD. As is discussed in further detail in the proceeding sections of this report, the width has been reduced and the building has been moved further west.

RELEVANT LEGISLATION

Town and Country Planning Act 1990

Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

RELEVANT PLANNING HISTORY

89/01039/FUL - Erect on dwelling (Permission)

94/00672/FUL - Renewal of planning permission for erection of one dwelling (Permission)

94/01388/FUL - Erection of a dwelling and garage (Permission)

22/01750/HHFUL - Erection of single storey rear and side extensions, amendments to the fenestration to the rear and partial conversion of the garage to form office space (Approved)

24/01554/CLPD - Lawful Development Certificate for proposed erection of garage block within residential curtilage (Withdrawn)

CONSULTATIONS

Whilst the Local Planning Authority does not have to consult on applications for Lawful Development Certificates in this case Houghton and Wyton Parish Council have commented independently of this. Their comments are available to view on HDC's Public Access Site and are shown below. They cannot however be considered in this determination as this is not an application for planning permission or prior approval. The consideration is one of purely compliance with the legislation.

"Houghton & Wyton Parish Council comment that as the property lies in a Conservation Area and this building is planned to be built about 42m from the house, we question if this is permitted as a Class E development under schedule 2 of the Town and Country Planning Order 2015. The site area is approximately 2 acres."

REPRESENTATIONS

Again, the regulations do not require the LPA to consult on such applications, but this does not prevent interested parties from being able to make comment. In this case however no representations have been received at the time of determination.

SUMMARY OF ISSUES

If the proposed works would constitute permitted development by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which relates to buildings incidental to the enjoyment of a dwellinghouse.

For completeness, the LPA has responded to each of the tests pertinent to the legislation under which the application has been submitted below. Further assessment on technicalities and the conclusion is later in this report.

*Permitted Development

Class E - buildings etc incidental to the enjoyment of a dwellinghouse

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. 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 G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);

Officer comments - Not applicable, the dwelling has not been subject to such a change 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);

Officer comments - Complies - the site is large and, whilst the building is also large it (alongside other structures shown on the plans - excluding the dwelling) would not exceed the 50% total

curtilage. This consideration applies in spite of the view of the LPA on the curtilage of the property detailed later in this report.

(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;

Officer comments - Complies - the plan submitted shows the building to the south-west of the dwelling.

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

Officer comments - Complies - the plans submitted show a single storey building.

(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;

Officer comments - Complies - the building has a maximum height of 4 metres (dual pitched) and is located more than 2 metres from the boundary.

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

Officer comments - Complies - the eaves are set at 2.5 metres.

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

Officer comments - Complies - the building is not listed.

(h) it would include the construction or provision of a verandah, balcony or raised platform;

Officer comments - Complies - no such installation is included.

(i) it relates to a dwelling or a microwave antenna;

Officer comments - Complies - no such installation is included.

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

Officer comments - Complies - this does not relate to a container.

(k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

Officer comments - Complies - the dwelling has not been constructed under this legislation.

Part E.2 specifies:

In the case of any land within the curtilage of the dwellinghouse which is within—

(a) an area of outstanding natural beauty;
(b) the Broads;
(c) a National Park; or

(d) a World Heritage Site, development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

Officer comments - Complies - the site does not lie within an area afforded such protection.

Part E.3 specifies:

In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.

Officer comments - Complies - whilst the site is within a Conservation Area the building would be located to the rear.

Assessment

Whilst as can be established above, the building in terms of its size could be considered to fall within the remit of permitted development, it is not just about size, and in practice it is necessary for the Local Planning Authority (LPA) to consider the proposal's context and if the development could be deemed to be reasonably required for purposes incidental to the enjoyment of the associated dwelling, which the legislation covers. It is noted that the supporting statement considers that the building would be for purposes incidental to the enjoyment of the dwellinghouse and used solely for the storage of a classic car collection. Whilst in principle, the storage of a few classic cars in an outbuilding could be considered to be an incidental purpose for a domestic dwelling. What is proposed here is a large 7 bay garage, measuring 23.5m x 8m, with an overall footprint of approx. 188m² (contrary to the statement which suggests that the building would be 167m²), in association with the 2-storey host detached dwelling, which the submission states is 400sqm (including approved extensions). Therefore, the proposed outbuilding would be approximately 47% of the size on the main dwelling and allow the storage of at least 7 classic cars. Therefore, the LPA do not consider that the size and scale of both the building and its intended use, could reasonably be considered to be required for purposes incidental to the enjoyment of this dwelling.

Further to this, the building is located approx. 46 metres south-west of the host dwelling. Whilst the scale of the plot is acknowledged, this seems to be a significant distance from the house and further than most people would expect to travel in order to reach their garage. Further, for a building intended for the purposes suggested, where security of the items to be stored would be an issue, it would generally be required for it to be located in an area much closer to the property (matters of curtilage as expanded on below) in order to allow for adequate surveillance/security etc.

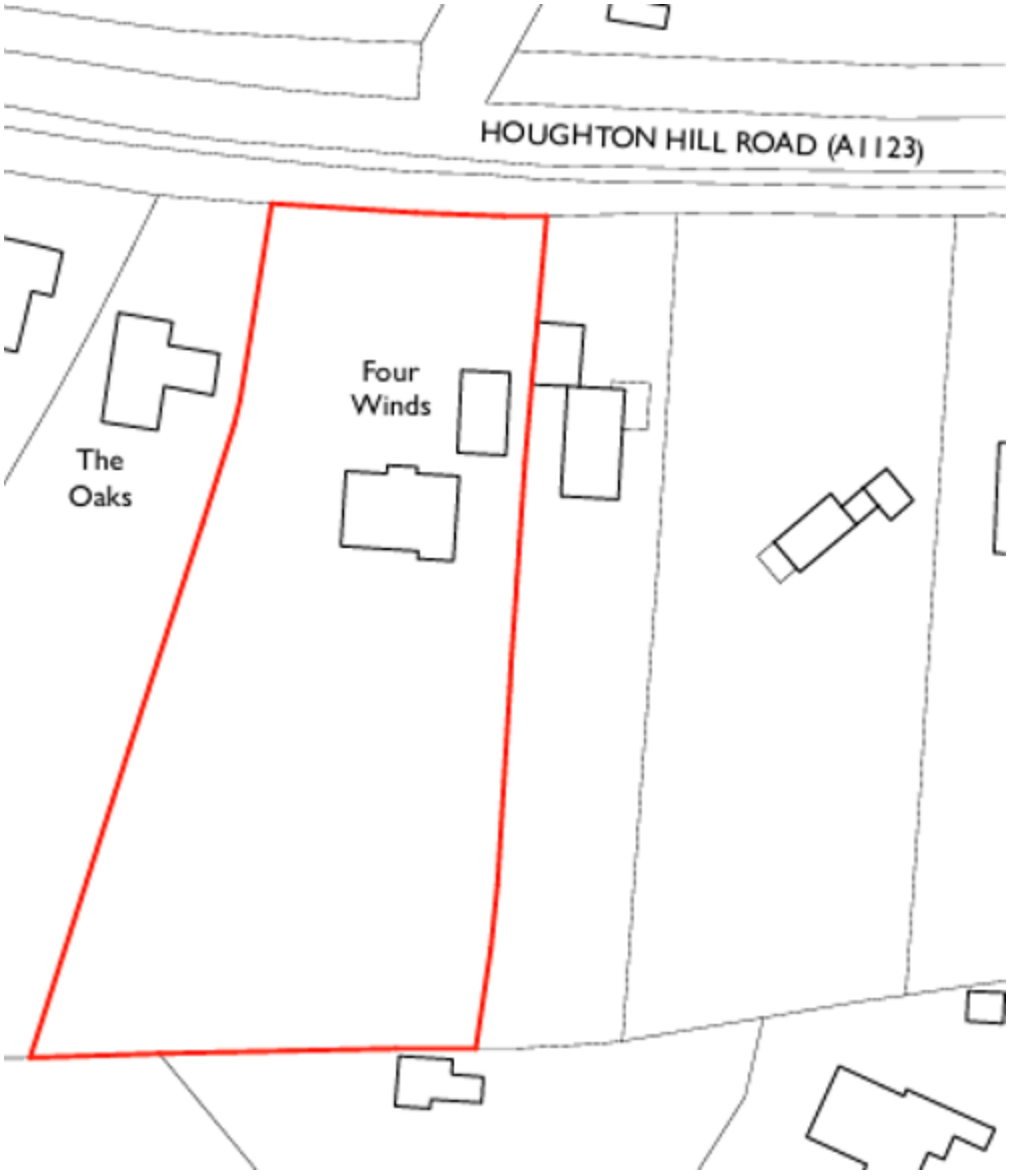
The submitted plans show concrete paths and access to the site but it is unclear if these already exist or are proposed. They have not been included within the description of this application but it is acknowledged that hard surfacing may be added by exercising permitted development rights subject to adherence to the relevant tests.

Consideration of when a building may be considered as incidental to a dwellinghouse are often matters of fact and degree. Incidental use is 'parasitic' to the primary use in that it cannot exist without it. The LPA acknowledge the examples of appeal decisions which have been provided in the supporting statement, however, the LPA have also identified other examples of such decisions which have been in favour of the view of the LPA stated above, and therefore the submitted appeals of which there are differences to this proposal, are not considered sufficient to allow the LPA to consider the proposal as permitted development, and in addition each case must be considered on its own merits.

In this case, the size and scale of the building and its use, and its location within the site could not be considered to be reasonably required for purposes incidental to the enjoyment of the dwelling. The building could easily exist in its own right (and within a separate planning unit) regardless of the function of the main dwelling. Therefore, it is not considered that it can be assessed as an incidental building within the meaning of Schedule 2, Part 1, Class E of the GPDO and planning permission will be required.

Notwithstanding the above, the LPA has also reviewed the history of the site such to establish its residential curtilage, and whether this building would be located within its residential curtilage. Previous advice provided by the LPA has identified that there appears to have been some alteration to the boundaries to these properties with some of the land associated with The Oaks (to the west) having been brought into the 'curtilage' of Four Winds. Historic applications for Four Winds reflect the adjustment of the red line (see below):

Location plan submitted for 22/01750/HHFUL



Location plan submitted for application under consideration



A review of case history identifies much deliberation of the meaning of 'curtilage'. The 'Permitted development rights for householders Technical Guidance' (September 2019) defines curtilage 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'.

Four Winds has a large area of land associated with it (approx. 1.13 acres from the red line plan submitted with the 2022 application) which is a generous area. As above, the proposed garage (although now in an area outside of the red line of the above application) is approx. 46 metres from the main house. Aerial photography shows that the land associated with Four Winds extends a generous distance to the south of the house and there are a large number of trees/shrubs and landscaping. There is some hardstanding directly surrounding the house which is accepted as land forming its curtilage and equally, some of the land immediately adjacent to this hardstanding and the outbuildings to the west could be reasonably considered as within the curtilage of Four Winds. Any land beyond this is unlikely to be considered as curtilage having regard to the technical guidance stated in the preceding sections of this report. As can be seen from the image below, the building proposed would be north of the pool (to the far south of The Oaks) and the degree of separation to Four Winds would mean that the land could not be considered residential curtilage. That said, the LPA remain satisfied that the tests conducted in regard to Schedule 2, Part 1, Class

E (b) are relevant as if the land considered to form part of the curtilage of Four Winds were used a building of this scale would still not cover more than 50% of the total curtilage.



Further, it should be noted that simply because land may fall within the ownership of the applicant it does not necessarily mean that the land can be considered to form part of a curtilage. In this case it is apparent that until relatively recently the area of land proposed for the siting of this building was in separate ownership and functioned as garden land associated with The Oaks. Simply because the applicant acquired this land does not mean that it is considered residential curtilage associated with Four Winds in order to meet the tests of Schedule 2, Part 1, Class E.

There are examples of Inspector decisions whereby the consideration of curtilage has been undertaken. One such case is 08/00748/LAWEX (Bolsover District Council) where the Inspector concluded that a proposal for the retention of an outbuilding as ancillary annexe accommodation could not be considered as part of the curtilage as (whilst the garden extended to a much greater extent than this site) the nearest part of the building to the dwelling was 48 metres away (in this case 46 metres approx.). The relevance to this scheme is that the conclusion was that a building located at such a distance could not reasonably be regarded as a small area attached to it which corresponds with the technical guidance referenced above.

*Conclusion

It is the view of the Local Planning Authority that the proposed building by virtue of its size, scale and location cannot be reasonably considered to be required for purposed incidental to the main dwelling as required by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Therefore, a Certificate of Lawfulness cannot be granted under Section 192 of the Town and Country Planning Act 1990 (as amended).

Notwithstanding the above, regardless of its scale and siting (in terms of meeting the tests) it is not considered that the land in question could be considered as residential curtilage associated with the Four Winds dwelling and therefore the scheme cannot be considered under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

As such, an application for planning permission would be required.

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CONTACT OFFICER:
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