

Agenda Item A7	Committee Date 20 September 2010	Application Number 10/00392/PLDC
Application Site 20 Browsholme Close Carnforth Lancashire LA5 9UW		Proposal Proposed Lawful Development Certificate for the erection of an outbuilding
Name of Applicant Ms Jane Reid		Name of Agent
Decision Target Date 15 July 2010		Reason For Delay Rise in application numbers
Case Officer		Mr Andrew Holden
Departure		No
Summary of Recommendation		Planning Consent is required for the proposed works.

1.0 The Site and its Surroundings

- 1.1 The application site is located within the rear garden area of a residential property known as 20 Browsholme Close, Carnforth. The dwelling is located within a cul-de-sac of residential dwellings, predominantly two storey detached houses. The rear garden is typical of a modern suburban property with an average depth of 10m and a width of 16m. The detached house is again typical with a footprint of 71sqm (including integral garage) sat in a plot area of 358 sqm.
- 1.2 Land to the rear (north) of the property comprises open pasture owned by the applicant. Direct access is available from the garden of the property into the field. Access on a day to day basis is via a pedestrian gate with a section of removable fencing is available for the movement of horses from the field directly through the domestic curtilage for possible access to a horse box. The applicant owns 21 acres of land which is used for the grazing of sheep along with up to 6 horses. The main access to the fields is to the north off an unmade lane running alongside the former Steamtown.

2.0 The Proposal

- 2.1 This is not a planning application but a Proposed Lawful Development Certificate (PLDC). PLDC applications seek to establish whether a building, use or activity is 'permitted development' under the provisions of the Town and Country Planning (General Permitted Development) Order. If it is considered to be permitted development (and thus, doesn't require planning permission), then a Certificate is granted and the development/use in question can proceed. It is purely a determination based upon whether the proposal is lawful for planning control purposes.
- 2.2 In this particular case the applicant has submitted a PLDC application to clarify whether a detached outbuilding to be used for the stabling of two horses requires the benefit of planning consent or whether it is 'Permitted Development' by virtue of Schedule 2, Part 1, Class E of the above-mentioned Order. Class E relates to the provision within the curtilage of the dwellinghouse of a building required for purposes incidental to the enjoyment of the dwellinghouse as such.
- 2.3 The building is designed wholly for the purpose of stabling two horses. The footprint of the stables is 7.36m X 3.6m (26.5 sqm) with the maximum height of the building being 2.49m to the ridge. The

building is to be built along the eastern boundary of the rear garden 5m from the rear of the house. The stables are constructed of horizontal timber cladding under a profile roof.

3.0 Site History

- 3.1 The property has no history of planning applications directly relating to the dwelling and its garden but two recent applications have been submitted in relation to the development of stabling within the adjacent field.
- 3.2 The property has been the subject of a Householder Development Questionnaire in February 2010 (HHQ07196). The questionnaire sought an opinion as to whether the erection for an outbuilding for the stabling of horses would require the benefit of planning consent. The building was to be erected within the rear garden of 20 Browsholme. The footprint of the building was 7.2m X 3.6m with a maximum height of 2.4m at the ridge. The building was to be erected along the northern boundary of the garden alongside the field boundary.
- 3.3 In February 2010, the Planning Advice Team indicated that it was of the opinion that planning consent was not required for the development of the outbuildings for stabling. It is made clear as part of the response that the letter is an opinion only and if a legally binding determination is required, a Certificate of Lawfulness for a Proposed Development should be applied for.
- 3.4 The current application is such a request, although it must be noted that the current siting of the building differs from that of the householder questionnaire, as do the overall dimensions of the building.

Application Number	Proposal	Decision
09/00793/CU	Erection of 6 stables plus tack room and feed room together with the change of use of agricultural land to form sand paddock for private use only	Withdrawn Sept 2009
10/00012/FUL	Erection of a block of 4 stables for private equestrian use.	Withdrawn January 2010

4.0 Consultation Responses

- 4.1 The following responses have been received from statutory consultees:

Statutory Consultee	Response
Carnforth Town Council	Although aware of the proposed 'permitted' nature of the development. The Parish wish to raise their concerns over the potential to impact upon neighbouring residential amenity, potential conflict with children and horses, scale of the building in relation to the garden area, and the reduction in garden area following development of the stables and a possible 'PD' conservatory.

5.0 Neighbour Representations

- 5.1 To date 26 letters of objection have been received from local residents to this legal determination. The letters raise objection on the following grounds: -
- That a stable building is not a use that is incidental to the residential use of the dwelling and consequently Class E permitted development (PD) rights do not apply. This approach has been supported on numerous occasions at appeal, including the following example where a stable building was proposed on land adjacent to a dwelling (*DCS Number 100-064-856 - see DC Casebook in Planning, 20 November 2009 - APP/A0665/C/09/2107671*). Whilst in this example, the land was not within the curtilage and consequently the stables required express permission, the Inspector stated that "Even if the land fell within the curtilage ... the scale of the equine use went beyond anything that might reasonably be associated with the enjoyment of the dwellinghouse". The Inspector was clearly of the view that an equestrian use is not incidental to the residential use of a dwelling.

- In the current case, there are two planning units involved - (1) the residential dwelling and its curtilage and, (2) the equestrian land at the rear of the dwelling. The proposed stables are clearly for a use associated with the equestrian land at the rear and are not proposed for a use in association with the residential dwelling. Consequently, they are not for "a purpose incidental to the enjoyment of the dwellinghouse", which is the fundamental test in the case of potential Class E buildings.
- The PLDC must therefore be refused and to allow this application on incorrect legal grounds (including asserting that the stables fall to be considered under Class E - for they do not), would lay the Council open to a legal challenge and/or compensation to local residents following the involvement of the Ombudsman.
- The proposal should be resisted for similar reasons to those of the earlier planning application. The development is visible from the neighbouring public highway. In addition, the stables are not to be used in association/incidental to the enjoyment of the dwelling house.
- The development is a change of use of the land as the stables would be used in association with the field to the rear of the site and not the dwelling.
- Class E ONLY applies to buildings that are, 'incidental' to the residential use of the dwelling. It does certainly NOT apply to all outbuildings, regardless of use. This outbuilding is NOT 'permitted development' under Class E (regardless of its size), as it is not incidental to the residential use of the property (and there are plenty of appeal decisions to support that).
- A stable building that is clearly for use in connection with the equestrian land to the rear is NOT incidental to the residential use of the dwelling (and the applicant pretty much admits this, by stating on the application form that the proposed use is 'other', rather than 'residential')

6.0 Principal Development Plan Policies

6.1 None.

7.0 Comment and Analysis

- 7.1 The application would normally be considered and determined under the scheme of delegation. However, following concerns raised by local residents, Cllr Budden has requested that the application be brought before the planning committee for determination.
- 7.2 The initial submission sought consideration of a development of an outbuilding with a footprint 7.36m x 3.6m but with a maximum height of 3.2m at the ridge. The agent realising the error in the submission revised the submission drawings on 10 June 2010. The details of the building under consideration are those detailed in 'The Proposal' section of the report i.e. with a maximum height of 2.49m at the ridge.
- 7.3 The Town and Country Planning (General Permitted Development) Order 1995, Schedule 2, Part 1, Class E – allows for the provision within the curtilage of the dwellinghouse of a building required for purposes incidental to the enjoyment of the dwellinghouse as such. The wording of this legislation is important and is reprinted in full below and on the following page:

Permitted development

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.

Development not permitted

E.1 Development is not permitted by Class E if:

- (a) 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);
- (b) 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;
- (c) The building would have more than one storey;
- (d) 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;
- (e) The height of the eaves of the building would exceed 2.5 metres;
- (f) The building, enclosure, pool or container would be situated within the curtilage of a listed building;
- (g) It would include the construction or provision of a veranda, balcony or raised platform;
- (h) It relates to a dwelling or a microwave antenna; or
- (i) The capacity of the container would exceed 3,500 litres.

E.2 In the case of any land within the curtilage of the dwellinghouse which is within:

- (a) A World Heritage Site,
- (b) A National Park,
- (c) An area of outstanding natural beauty, or
- (d) The Broads,

then 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.

E.3 In the case of any land within the curtilage of the dwellinghouse which is article 1(5) 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.

Interpretation of Class E

- 7.3 **E.4** For the purposes of Class E, “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

- 7.4 The outbuilding is not listed or within the curtilage of a listed building, nor is it sited within Area of Outstanding Natural beauty (AONB) land or any of the other protective land designations. The building is located within 2.0m of the boundary and has a height less than 2.5m (2.49m is proposed). On the basis of the criteria laid down with the Permitted Development Order if the building is considered to be for “purpose incidental to the enjoyment of the dwellinghouse as such” the development would be ‘permitted’ and not require the benefit of planning consent.

- 7.5 **The key issue is whether this detached outbuilding is required for purposes which are incidental to the enjoyment of the dwellinghouse as such.** Guidance within the Encyclopaedia of Planning Law and Practice informs that ‘*purpose incidental to the enjoyment of the dwellinghouse as such*’ is a broad concept. Although the building must be “required” for the incidental purpose, it is a matter primarily for the occupier to determine what incidental purpose he/she proposes to enjoy. Whilst a purely commercial purpose would be outside the scope of the permission, a wide range of recreational purposes can be within it. Under Class E.2 (now E.4 under the 2008 amendments) the keeping of livestock is included, and recreational ponies would appear to fall within that definition within the permitted tolerances. Further confirmation that stabling and loose boxes could be for the personal enjoyment of the occupants of the dwellinghouse could be incidental comes from the inclusion of such development within the 1988 General Development Order (and subsequent amendments) following the deliberate exclusion of such development in the previous 1977 General Development Order.

- 7.6 The guidance goes further in acknowledging that whilst the test is whether the building or enclosure is reasonably required for a purpose incidental to the enjoyment of the particular dwellinghouse (as opposed to dwellinghouses in general), the test must retain an element of objective reasonableness (*Wallington v Secretary State for Wales (1990)*).

- 7.7 A further ‘test’ in considering whether a building is incidental is one of scale, and *Emin v Secretary of State for the Environment (1989)* indicated that the physical size of the building *per se* should not determine whether a building is incidental or otherwise, but could be a relevant consideration in that it might represent some index of the nature and scale of the activities. The court also held that the use of a building cannot rest solely on an unrestrained whim but connotes some sense of reasonableness in the circumstances of the particular case. The word “incidental” implies an element of subordination, in land use terms, in relation to the enjoyment of the dwelling house itself.

With these ‘tests’ in mind the applicant was asked a number of questions to help gain an understanding of how the stables were to be used and the relationship of the residential curtilage to the neighbouring field. The questions asked were as follows: -

- 7.8
- a. How many horses do you own?
 - b. How many horses are intended to be stable in the ‘outbuilding’?
 - c. Do you intend to change/rotate the horses that are stabled in the ‘outbuilding’?
 - d. Is the stabling for private or commercial use?
 - e. What is the hectare/acreage of the neighbouring field and what livestock/horses are present on a regular basis.
 - f. Who is to ride/groom the horses stabled at the dwelling house?
 - g. Is it intended to use or alter the current access between your garden area and the neighbouring field for use by horses?
 - h. On a location plan can you identify any other areas, buildings that are use in connection with the horses, tack room, feed stores etc.

The applicant’s agent full response to this request is appended to the agenda item. In short,

7.9 the applicant currently owns 8 horses but intended to only house a gelding and a pony within the stables for the sole private use of the applicant and her daughter. The other horses would not be housed in the stables. These horses are on the adjoining land or on rented land at Nether Kellet. The adjoining fields are use for grazing only of the horses and up to 75 sheep by arrangement with local farmers. Tack is stored in a small shed within the domestic curtilage, along with the horse van on the driveway. Some feed is kept in bins within the curtilage with the main haylage kept at the northern end of the fields, close to the main field access.

7.10 The agent indicates that the arrangement for the storage of tack, food and the horse van have been this way for many years. The two horses that would be accommodated in the stables are those which are used by the two occupiers of the house for recreational purposes are nothing to do with breeding or any other wider equine activity. The agent concludes that it is his view that the stable building is without doubt incidental to the occupation of the dwellinghouse.

7.11 Formal notification of neighbours and Parish Council does not normally occur for this type of application, as it is only seeking a determination from the Local Planning Authority whether planning consent is required for a particular development and not the views of local residents etc. In this instance a number of residents have given their views without formal consultation, as has Carnforth Town Council. Many of the comments relate to the planning merits or otherwise of the development but a planning appeal case has also been cited which questions whether the development is incidental to the use of the dwellinghouse and therefore the need for planning permission is raised.

7.12 The planning case is appeal ref APP/A0665/C/09/2107671 relating to the development of a stable building (11m X 5.5m) on land adjacent to a dwelling known as Newlyn, Suaghall, Chester. The area of consideration was to whether land formed part of the domestic curtilage of the dwelling and as such whether stable development would be regarded as incidental to the use of the dwellinghouse as such. In upholding the enforcement notice to remove the building, the Inspector concluded that the development was not within the domestic curtilage of the dwelling and therefore required consent. He also made reference that if the stable had been within the domestic curtilage, the scale of equine development seemed to go beyond that which may reasonably be associated with the enjoyment of the dwellinghouse. This statement has been ceased upon by neighbours and they echo the comments that the current application is also of a scale that goes beyond that which may reasonably be associated with the enjoyment of the dwellinghouse. However, the statement appears to have been taken in isolation by the objectors and regard needs to be taken as to the context of the Inspector's views. In this appeal case, the site already had a large stable building capable of re-use for stabling, a ménage was also present and the enforcement notice related to a larger building which house two stables and hay store. However, the overall plot was substantially greater than the current application site.

7.13 The Inspector, in reaching his decision, had regard to the concept of reasonableness, scale and intensity and these principles would need to be applied to this proposal rather than a strict interpretation that no equestrian use could be incidental to the enjoyment of the dwellinghouse as appears to be the interpretation of the neighbours.

7.14 Each application must be considered on its individual merits as a matter of fact and degree but taking into account the principles identified above. The applicant has indicated that the driveway is already used for the permanent parking of a horse van, a small shed in the garden is used as a tack room and feed bins are located within the curtilage of the house. In addition, the property has a direct and regularly used link to the adjoining fields. Whilst the field clearly has an agricultural use associated with the grazing of sheep, this function is not one directly undertaken by the applicant and the fields also provide for the grazing and nurturing of the applicants' horses.

7.15 The building is not unduly large within the context of a domestic garden area, (equivalent to a generous single garage in footprint), however, in this case the rear garden is relatively small and the development will occupy approximately 17% of the rear garden in a location where the garden is at its longest within the plot.

It is noted that the applicant has indicated that the use of the stabling will be for the housing of the applicant's own horses and for personal use of the occupants of the dwellinghouse. However, the scale of the building together with the existing equine related elements within the domestic curtilage and adjoining fields is considered to be to go beyond that which may reasonably be associated with the enjoyment of this modest domestic property located within a modern urban housing estate. As

such the proposal is not considered to be 'incidental to the use of the dwellinghouse as such' and would require the benefit of planning consent.

8.0 Planning Obligations

8.1 N/A.

9.0 Conclusions

9.1 It is considered that the development in the form proposed would not be incidental to the use of the dwellinghouse as such and by virtue of The Town and Country Planning (General Permitted Development) Order 1995, Schedule 2, Part 1, Class E would require the benefit of planning consent.

Recommendation

That Planning Consent **IS REQUIRED** for the proposed works.

Human Rights Act

This recommendation has been reached after consideration of the provisions of The Human Rights Act. Unless otherwise stated in this report, the issues arising do not appear to be of such magnitude to override the responsibility of the City Council to regulate land use for the benefit of the community as a whole, in accordance with national law.

Background Papers

None.