

SECTION '3' – Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 10/02833/PLUD

**Ward:
Petts Wood And Knoll**

**Address : 64 Great Thrift Petts Wood Orpington
BR5 1NG**

OS Grid Ref: E: 544359 N: 168327

Applicant : Mr D Christilaw

Objections : YES

Description of Development:

Single storey building at rear for use as triple garage and store CERTIFICATE OF
LAWFULNESS FOR A PROPOSED DEVELOPMENT

Key designations:

Adj Area of Special Res. Character

Proposal

- This application seeks the Council's formal legal determination regarding whether a proposed outbuilding to the rear of 64 Great Thrift is permitted development.
- The proposed building will provide a double garage with attached store which will adjoin an existing summerhouse.
- The proposed building will have a dual pitch roof, three garage style doors to the front and one window to the side.
- It will face Silverdale Road where a vehicular access and hardstanding has been created under permitted development.
- The building will measure 2.3m high to eaves, and 3.9m high to the top of the roof, and will be set 2.0m from the rear boundary of 64 Great Thrift.
- The proposed use will be ancillary to the main use of the dwellinghouse at 64 Great Thrift.

Location

The property is located close to the junction of Great Thrift and Silverdale Road within a residential area of Petts Wood.

Comments from Local Residents

At the time of reporting, one representation had been received from a resident adjacent to the site. This expresses concern that yet another application has been submitted for this site and that objections are raised for the same reasons as on previous applications, in particular that if this proposal is allowed it will lead to the future sale of the ends of gardens and harm wildlife.

A letter has been received from the Member of Parliament for Orpington in which the MP considers that the planning application is inappropriate in an area of special residential character, it is the sixth such proposal and has been causing significant distress to local residents.

Comments from Consultees

Comments from a legal perspective concur with the recommendation and raise no objection to the granting of this certificate.

Planning Considerations

This application falls to be considered solely on its legal merits with regard to whether the proposed development is permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). The most recent changes to Class E were in the Town and Country Planning (General Permitted Development)(Amendment)(No.2)(England) Order 2008 (GPDO).

Planning History

The site has been the subject of previous applications including several extensions to the dwelling at 64, which were permitted, and several applications for a new residential dwelling on the part of the site to the rear of 66 Great Thrift, which were refused and dismissed at appeal. A previous planning application for an outbuilding similar to this proposal was withdrawn.

A separate application for a boundary fence fronting Silverdale Road was refused by the Council but allowed at appeal.

Recently an application for a certificate of lawfulness for an identical outbuilding was refused by the Council. The applicant appealed this decision and the Inspector dismissed the appeal. The decision rested on whether the land upon which the outbuilding was to be constructed was within the curtilage of the dwellinghouse. Within his decision the Inspector commented as follows:

"I can see no good reason why the erection of a single-storey structure, to be used as a triple garage and store, cannot be regarded as a building required for a purpose incidental to the enjoyment of the dwellinghouse at 64 Great Thrift as such." (paragraph 6)

and then continues:

"Nevertheless, such a proposition has to be based on whether the land, upon which the proposed building was to be erected, fell within the curtilage of the dwellinghouse at 64 Great Thrift at the time that the application for the lawful development certificate, the request for confirmation of proposed lawfulness, was made. For the avoidance of doubt, this is neither the date that the appeal was lodged nor the time of my inspection of the site but 16 September 2009. If I reach the conclusion that the site of the proposed development did not, on 16 September 2009, fall within the curtilage of 64 Great Thrift, then I have no conclusion to reach other than to find the Council's decision, to refuse the lawful development certificate, to be well-founded." (paragraph 7)

And concludes:

"The land in question was undoubtedly within the curtilage of 66 Great Thrift at the time when Great Thrift, Silverdale Road and the surrounding area in general was laid out as a suburban housing estate between the two World Wars. It remained as such until various unsuccessful attempts were made to obtain planning permission for this rear garden land, fronting on to Silverdale Road to be developed, as a dwellinghouse. According to the local planning authority's representations, which are not contested by the appellant, the land in question could not have formed part of the curtilage of any dwellinghouse for several years, having been severed from number 66 some time ago. Photographs of the site of the proposed building taken on 17 October 2009, attached to Mr Richard Buxton's letter dated 21 January 2010, show an area of land entirely fenced off and separated from the original rear garden of 64 Great Thrift. (paragraph 8)

This photographic evidence postdates the crucial date for determining the lawfulness of the proposed development. In my professional judgement as a Chartered Surveyor, this fenced-off land, physically demarcated by a sturdy physical structure separating it from the original rear garden of 64 Great Thrift, could not be construed as falling inside the curtilage of the latter property at the time that the application for the certificate of proposed lawfulness was made. Even if the appellant owned all of the relevant land at the time, the clear-cut division between the land to the rear of 66 Great Thrift and the original rear garden of number 64 meant that that the site of the proposed triple garage and store could not be said to have been within the curtilage of the dwellinghouse on the relevant date. Therefore, the local planning authority's refusal of lawful development certificate was well-founded and the appeal fails." (paragraph 9)

Conclusions

This application must be determined solely on its legal merits.

Clearly the recent appeal decision is a matter of considerable weight in determining this revised application for a certificate of lawfulness. The only point of contention is whether the land forms part of the residential curtilage at the time of making the application. It is clear from the Inspector's decision that the land was fenced off and

physically separated from the main garden of 64 Great Thrift at the time of the previous application. However, a site visit has been made in connection with this current application on 8th October 2010 which shows that the situation has now changed. The current situation is understood to have been the case on the date of making the application 23rd September 2010 as set out in the supporting statement on the application forms. The fence has been removed for some time and there are signs that the enlarged garden area is being used for domestic purposes, including car parking, the growing of vegetables and children's play equipment. It is clear that the land upon which the building is proposed is now within the curtilage of 64 Great Thrift and the Inspector's sole reason for dismissing the appeal has been overcome.

Although the concerns of residents regarding the planning history of this site and previous attempts to develop a dwelling, which was resisted by the Council, are fully understood, this in itself is not a reason to refuse this certificate. Planning permission would be required to sever the land and use the building as a dwelling, or indeed for any other purpose not ancillary to the enjoyment of the dwellinghouse at 64 Great Thrift. Ultimately the proposal falls within the size and other tolerances of Class E of the GPDO.

The proposed development is considered to comply with Class E of the General Permitted Development Order (as amended) and the certificate should be granted.

Background papers referred to during production of this report comprise all correspondence on files refs. 84/00896, 84/01944, 04/01743, 05/00417, 07/02016, 07/02861, 08/00681, 09/02011, 09/02642, 09/02574, and 10/02833, excluding exempt information.

RECOMMENDATION: CERTIFICATE BE GRANTED

- 1 The proposed development falls within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

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Proposal: Single storey building at rear for use as triple garage and store
CERTIFICATE OF LAWFULNESS FOR A PROPOSED DEVELOPMENT



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