

**HIGH PEAK BOROUGH COUNCIL  
DEVELOPMENT CONTROL COMMITTEE**

**Date 25 March 2024**

<b>Application No:</b>	HPK/2023/0511	
<b>Location</b>	58 Cedars Sheffield Road, Glossop	
<b>Proposal</b>	Retrospective change of use to domestic private amenity space and retention of detached summer house	
<b>Applicant</b>	Mr John Green	
<b>Agent</b>	Jonathan Stackhouse, Prime Oak	
<b>Parish/ward</b>	Old Glossop	<b>Date registered 27.11.23</b>
<b>If you have a question about this report please contact:</b> Rosie Dinnen <a href="mailto:rosie.dinnen@highpeak.gov.uk">rosie.dinnen@highpeak.gov.uk</a>		

**1. SUMMARY OF RECOMMENDATION**

**Delegated authority to Approve with Conditions**

**1. REASON FOR COMMITTEE DETERMINATION**

- 1.1 The Chair and Vice Chair requested that it was determined at DC committee as the application seeks retrospective approval.

**2. DESCRIPTION OF THE SITE AND ITS SURROUNDINGS**

- 2.1 The application site relates to a parcel of land to the rear of 58 Cedars Sheffield Road, Glossop, which is outside the curtilage of the property. The land is L shaped and its longest length is 30m deep and 23m wide. The site is bordered by 52, 54, 56 Sheffield Road to the northern boundary. 60 Sheffield Road adjoins the eastern boundary and 1 Brook Meadow to the western boundary.
- 2.2 Land to south is also owned by the applicant and edged blue as not subject to this application. The blue land extend to beyond the Hurst Brook and is subject to Tree Preservation Orders.
- 2.3 Concrete footings for the outbuilding have been laid with a surrounding gravel path. Trees and hedging has been recently cutback in the surrounding land.

**3. DESCRIPTION OF THE PROPOSAL**

- 3.1 The application seeks retrospective change of use to domestic private amenity space and retention of detached summer house. The concrete footings for the outbuilding have already been laid but the outbuilding

had not been erected at the time of the officer's inspection in December 2023.

- 3.2 The application was originally described as 'retrospective change of use to garden land and retention of a detached outbuilding'. Subject to recent discussions with the agent about how the land and building would be used, the application description has been amended to 'retrospective change of use to domestic private amenity space and retention of detached summer house'. For clarity, the application has been readvertised.
- 3.3 The proposed outbuilding would be 10.6m long and 6m wide. A hipped roof would cover 4m depth of the outbuilding and a flat roof would cover the remaining 2m x 10.6m. The height of hipped roof ridge is 3.8m and 2.45m to the flat roof. The outbuilding would be oak framed with oak weatherboarded elevations and reclaimed slates for its roof. The outbuilding would be a summer house used for ancillary domestic purposes.
- 3.3 The covering letter explains that the planning application has been made to regularise the use of land and the erection of the summer house. The applicant also makes the case that the land should be considered to be within the curtilage of 58 Sheffield Road and cites some case law examples.
- 3.4 The application, the details attached to it including the plans, comments made by residents and the responses of the consultees can be found on the Council's website at <http://planning.highpeak.gov.uk/portal/servlets/ApplicationSearchServlet?PKID=264553>

#### **4. RELEVANT PLANNING HISTORY**

- 4.1 There is a concurrent Lawful Development Certificate (HPK/2023/0510) which seeks to establish that the existing use of the land is lawfully in use as a garden in association with 58 Cedars, Sheffield Road.

#### **5. PLANNING POLICIES RELEVANT TO THE DECISION**

##### **High Peak local Plan 2016**

S 1 Sustainable Development Principles  
S 1a Presumption in Favour of Sustainable Development  
EQ 6 Design and Place Making  
CF 6 Accessibility and Transport

##### **National Planning Policy Framework**

Chapter 2: Achieving Sustainable Development

## 6. CONSULTATIONS CARRIED OUT

<b>Site notice</b>	Expiry date for comments: 04/01/24
<b>Neighbour letters</b>	Expiry date for comments: 04/01/24

### Public Comments

6.1 A neighbour who lives in Brook Meadow has objected to this application and the corresponding Certificate of lawfulness application (HPK/2023/0510) to change the use of the land and retention of detached outbuilding. They raise a number concerns about the use of the land and the proposed summer house, which foundations have been constructed.

- Applicant has previously had parties in marquee on land, adjacent to their boundary which has caused disturbance (Noise and lighting);
- Covering letter states that the land has been used as a garden for some time without causing harm and regularisation of it would not continue any known problems but this is not the case, noise and lighting has caused disturbance.
- Applicant has previously cut back trees.
- The commercial size of the proposed building over 64 sq.m with a height of 3.8m which is wholly disproportionate for a domestic setting.
- The new building could be capable of holding more than 25 people, possibly up to 50 people plus the outdoor seating it could have the capacity for some 75 people.
- Applicant not provided a justification why a room of such a commercial size is necessary in such a domestic setting and small area of garden.

6.2 A neighbour from a property that borders the site has objected to the proposal raising the following concerns:

- If planning permission is granted what is the maximum height and square area that a building can be erected?
- There appears to be two applications. Is one to acquire the land and the other to apply for building permission?
- How has the land been acquired?
- Several trees have already been removed and I would like assurance that this will not adversely impact my land.
- Do I have any rights of challenge to any of the applications?
- If planning permission is granted will there be restrictions on the installation of windows on elevations that overlook my property and so compromise my privacy?

- Finally over several years the land in question has not been maintained by the applicant. I have on several occasions asked to buy the land or maintain it to preserve the trees and wildlife and the applicant has refused implying that he was already the legal owner. This now appears to be in dispute

6.6 The application was subject to any internal or external consultations due to the nature of the proposals and the site is not within an environmentally sensitive area.

## **7. POLICY AND PLANNING BALANCE**

### **Planning Policies**

7.1 The determination of a planning application is to be made pursuant to section 38(6) of the Planning and Compulsory Purchase Act 2004, which is to be read in conjunction with section 70(2) of the Town and Country Planning Act 1990.

7.2 Section 38(6) requires the local planning authority to determine planning applications in accordance with the development plan, unless there are material circumstances which 'indicate otherwise'. Section 70(2) provides that in determining applications the local planning authority "shall have regard to the provisions of the Development Plan, so far as material to the application and to any other material considerations." The Development Plan consists of the High Peak Local Plan Policies Adopted April 2016.

7.3 Other material considerations include the National Planning Policy Framework (NPPF) and National Planning Policy Guidance (NPPG). Paragraph 11 of the NPPF explains that at the heart of the Framework is the presumption in favour of sustainable development. For decision makers this means that when considering development proposals which accord with the development plan, they should be approved without delay, but where the development plan is absent, silent or relevant policies are out of date, grant planning permission unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

7.4 Local Plan policy S1a establishes a presumption in favour of sustainable development as contained at paragraph 11 of the NPPF.

### **Principle of Development**

#### Change of use of land

7.5 The land is situated to the rear of 58 Sheffield Road and it is also bordered by 52, 54, 56 Sheffield Road to the northern boundary and 1 Brook Meadow to the western boundary. It is unclear why this land

does not form part of gardens along Sheffield Road as properties 60-74 Sheffield Road have a contiguous rear (southern) boundary the same as this parcel of land. The parcel of land is surrounded by residential gardens on three sides. Land to south is also owned by the applicant and edged blue as not subject to this application. The blue land extend to beyond the Hurst Brook and is subject to Tree Preservation Orders.

- 7.6 The land comprises a grass lawned area with trees and planting which is outside the curtilage of 58 Sheffield Road. A concrete base has recently been constructed for the summer house.
- 7.7 The application was originally described as retrospective change of use to garden land and retention of a detached outbuilding. However, upon further evaluation of how the site has been used and what the applicant is seeking to use the land for, it was felt that a more appropriate description would be as domestic private amenity space. Garden as defined by the Oxford English Dictionary is “*a piece of ground used for growing flowers, fruit or vegetables*” is more akin to horticulture (a form of agricultural use) and this is not how the land has been used or is intended to be used. The land will be used for purposes incidental to the enjoyment of 58 Sheffield Road i.e. primarily domestic recreational and leisure purposes.
- 7.8 The applicant has made the case in their covering letter that the land should be considered as falling within the curtilage of 58 Sheffield Road. If the local planning authority accepted that the land is curtilage then it would mean as a result that the land would be exempt from the definition of development as per Section 55 of the Town and Country Planning Act 1990, subsection (2) (d) and accordingly benefit from permitted development from the General Permitted Development Order Class E (buildings etc. incidental to the enjoyment of a dwelling house).
- 7.9 However, it is the planning officer’s view that just because the land is owned and maintained by the same owner, and is situated adjacent to their rear garden, doesn’t mean that the land should automatically be considered as curtilage. It is not uncommon for garden land to go beyond the originally defined curtilage of a dwelling house due to changes in land ownership over time
- 7.10 It is the officer’s view that the land does not constitute curtilage. The Oxford English Dictionary defines curtilage as: “an area attached to a dwelling house and forming one enclosing with it”. The land does meet the definition as it is detached and is separated by boundary treatment. It does not form one enclosure with the property. Therefore, as a consequence, the land will not benefit from permitted development rights.
- 7.11 Returning to the acceptability of its use as domestic private amenity land, the activities associated with private amenity land, such as recreation (children playing, dog exercising, outdoor entertaining) and

gardening activities are considered appropriate to the site. Furthermore, the land is in a residential locality and given the context of it being surrounded by garden land on all sides, it is a compatible use. The site is enclosed and not visible from public views therefore there are no impacts to others beyond its immediate surroundings.

- 7.12 As such the retrospective change of use of land to domestic private amenity space is considered appropriate and acceptable in terms of the requirements of policies S1 and EQ 6.

### Outbuilding

- 7.13 As outlined above, the land is not considered to be within the curtilage of the dwelling house and accordingly wouldn't benefit from permitted development rights (Class E) that existing for outbuildings to be constructed within the curtilage of the dwelling house. On this basis, the proposed outbuilding is considered to require planning permission and it is appropriate that the outbuilding has been included in the application.
- 7.14 Nonetheless, the presence of outbuildings on domestic private amenity space is an accepted consequence of its use as such and is therefore considered to be acceptable and appropriate in principle, subject to detailed considerations as set out below.

### **Design of outbuilding**

- 7.15 The proposed outbuilding is single storey and measures 10.6m long and 6m wide. A hipped roof would cover 4m depth of the outbuilding and a flat roof would cover the remaining 2m x 10.6m. The height of hipped roof ridge is 3.8m and 2.45m to the flat roof. Although it is relatively large construction, an outbuilding of this size would be permitted development under class E of the GPDO (single storey and height lower than 4m max) if the land benefitted from PD rights which it does not, as explained above.
- 7.16 The outbuilding would be an oak construction with a slate tiled roof and is therefore traditional in appearance and uses good quality materials. In design terms the proposed outbuilding is considered acceptable and accords with policy EQ 6.

### **Amenity**

- 7.17 It is noted that objections have been received from two neighbours who are concerned about how the land has been used previously and whether the proposed building would give rise to more regular social gatherings which could cause disturbance. These are considered isolated events. Indeed it is not unusual for homeowners or tenants to host occasional birthday parties or celebratory gatherings within the amenity space around their houses. The land is enclosed on 3 sides by

existing residential gardens and amenity space, all of which will be used for purposes ancillary to the enjoyment of the respective neighbouring houses. The proposed change of use of the land and the outbuilding will be entirely in keeping with the existing neighbouring land uses. It is not considered that the change of use or use of the outbuilding will result in unacceptable impacts on the amenity of neighbouring occupiers.

- 7.18 The outbuilding is positioned just over 3m from the northern boundary with 52, 54, 56 Sheffield Road. These three properties have long gardens and the distance between the outbuilding and the rear of these properties is at least 31m. The distance to the shared boundary with 1 Brook Meadow is 6m and the nearest point of rear of 1 Brook Meadow is distance of 14m. As such the building is positioned sufficiently away from boundaries to avoid any overshadowing or overbearing impacts.
- 7.19 The western elevation which faces the boundary with 1 Brook Meadow doesn't have any window or door openings nor does the northern elevation which faces the 52, 54, 56 Sheffield Road boundary. The eastern elevation has two windows and bi-folding doors and there are also French doors on the southern elevations, which are the elevations away from neighbouring properties. As such no privacy concerns are raised.
- 7.20 As such the outbuilding has been sensitively located away from the boundaries of other properties with windows and doors placed not shared boundaries which will reduce the potential for noise or light disturbance.
- 7.21 Concerns have been raised that the outbuilding could be used for commercial purposes. For the avoidance of doubt, it is recommended that a condition be added to the planning permission to ensure that the use of the building is for domestic purposes incidental to the enjoyment of the main dwelling house.
- 7.22 In all other respects the application is considered to be compliant with Local Plan Policy EQ6, the Residential Design Guide SPD, and the NPPF, with regards to potential impacts on neighbouring residential amenity.

### **Other Matters**

- 7.23 Objectors have raised concerns relating to trees and wildlife. None of the trees within the site are subject to Tree Preservation Orders and therefore the landowner is at will to maintain the land as they seem able. Also the land is not considered to contain any habitats related to protected species and therefore its wildlife potential is not considered to be any greater than a typical garden.

## **8. PLANNING BALANCE & CONCLUSION**

- 8.1 LP Policy S1a reflects the presumption in favour of sustainable development set out within the National Planning Policy Framework (NPPF).
- 8.2 Paragraph 11 of the NPPF sets out the presumption in favour of sustainable development. For decision taking, this means approving development proposals that accord with an up-to-date development plan without delay; or, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission, unless:
- the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
  - any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
- 8.3 A detailed assessment of this application, has, when taking account of all material considerations including local and national planning policies, supplementary design guidance, and comments submitted by statutory consultees and members of the general public, found that the principle of development is acceptable, demonstrating compliance with LP Policy EQ6, and relevant restrictive policies contained under Chapter 12 of the NPPF.
- 8.4 As noted above, the description of development has been amended to more accurately reflect the nature of the proposed use. This is subject to re-consultation. Therefore, delegated authority is sought to approve the application subject to the expiry of the consultation period and no substantive new matters being raised.

## **8. RECOMMENDATIONS**

**A. That the Head of Development Services, in consultation with the Chairman are given delegated authority to approve the application following the expiry of the reconsultation, with the following conditions imposed:**

- 1. Approved Plans**
- 2. Domestic/ancillary use only**

**B. In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add**



conditions/informatives/planning obligations or reasons for approval/refusal) prior to the decision being issued, the Head of Development Services has delegated authority to do so in consultation with the Chairman of the Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.

This recommendation is made following careful consideration of all the issues raised through the application process and through discussion with the applicants. In accordance with Paragraph 187 of the NPPF the Case Officer has sought solutions where possible to secure a development that improves the economic, social and environmental conditions of the area.

### Site Plan

