

DELEGATED FILE NOTE

CASE OFFICER: ...Andrew Hunter.....

APPLICATION REFERENCE	BRIEF DESCRIPTION OF DEVELOPMENT	APPLICATION SITE
24/02247/LDCP	Erection of detached carport, garage and log store in rear garden following demolition of existing greenhouse and outbuildings	2 Lodge Temple Dinsley St Albans Highway Preston Hitchin Hertfordshire SG4 7RU

Submitted Plan Nos

24026 - 001 24026 - 010

1.0 Policies

2.0 **Site History**

2.1 None.

Temple Dinsley

2.2 24/01604/FP - Change of use of the Former Princess Helena College and associated land from a former all-girls boarding school to 69no. private residential dwellings (Use Class C3), including the conversion of the main Grade II* Listed House to 35no. new apartments, the conversion of the retained Teaching Block to provide 8 new apartments, the demolition of the existing sports hall building and science block and replacement with 20no. new houses and 2no. new apartments, the conversion of the Tank House and the Pump House buildings to provide 2no. detached dwellings and the erection of 2no. new dwellings located within the summerhouse plantation. The provision of cart lodges, creation of new car-park together with domestic storage units and covered parking bays to include solar PV panels, and waste storage units and the provision of new driveways and associated works. Erection of new sub-station building and plant room. In addition, the associated landscaping of the site including provision of new pathways and gates and the reinstatement of Grade II* Listed Parks and Gardens and the provision of a new cricket pitch, associated cricket pavilion and car parking and refurbished tennis courts (as amended by plans and supporting documents received November 2024) – Pending.

2.3 Parallel listed building consent application to the above - 24/01605/LBC – Pending.

3.0 **Representations**

3.1 None consulted.

4.0 **Planning Considerations**

4.1 **Site and Surroundings**

4.1.1 The site comprises a semi-detached two storey dwelling on a spacious plot, and separate outbuildings.

4.1.2 The site is on the eastern side of the Temple Dinsley Grade II* Registered Park and Garden of Special Historic Interest. Temple Dinsley house is a Grade II* listed building.

4.2 **Proposal**

4.2.1 A Certificate of Lawfulness (proposed) is sought for the erection of an outbuilding with a pitched roof at the rear of the site; to be used as a car port, garage, and store.

4.3 **Key Issues**

- 4.3.1 The key issues for consideration are whether the proposed development would require a specific planning permission or be considered 'permitted development' in line with the Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 1, Class E, as amended. Class E permitted development rights have not been removed by Condition.

4.3.2 **Permitted development**

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.

- 4.3.3 A proposed incidental building to a dwellinghouse has to firstly be within the curtilage of the dwellinghouse to be permitted development, provided the proposal complies with the other criteria of Class E.

What is 'curtilage' has been subject to some Court decisions, such as in *Dyer v Dorset CC [1989] Q.B. 346*, the Court of Appeal held that in the absence of any definition, "curtilage" bore its restricted and established meaning connoting a small area forming part or parcel with the house or building which it contained or to which it was attached. It was a matter of fact and degree.

The concept of the "curtilage" for the purposes of the GPDO was recently reviewed by the High Court in *Burford v SSCLG [2017] J.P.L. 1300* per Supperstone J. The judge summarised the relevant factors for determining the curtilage as: (1) the physical layout of the building and the structure; (2) their ownership, past and present; (3) their use or function, past and present.

- 4.3.4 From a site visit, the current plot is relatively large, with its main garden area considered to be to the side of the house, and to its rear but south of a line of fencing to the south of the greenhouse to be demolished.

Historically, there was only one lodge dwelling, with No. 2 Lodge built towards the end of the 19th century. A series of historic map extracts from P94 of the Heritage Statement submitted with 24/01604/FP shows how the plots and curtilages have changed over time.

At 1971, the rear garden of No. 2 Lodge was smaller in width and depth than is presently the case. At 1948, historic maps show there was one communal garden that had a similar extent to the combined 1971 gardens.

Prior to 1948, in 1922 the two dwellings had one communal garden similar to the extent of that in 1948. In 1897, by which time No. 2 Lodge was considered completed, there was still a communal garden, however it was a considerably smaller triangular shape than that in 1922 and 1948.

A planning application 24/00327/FPH at attached dwelling No. 1 Lodge included a site plan showing the plots of Nos. 1 and 2, which essentially match those of the 1971 map.

- 4.3.5 The original curtilage of the dwelling No. 2 is considered to be that shown within the 1897 map, which was communal. At 1948 the plot of Nos. 2 and 1 is larger and remained communal.

The site for the proposed outbuilding is to the north of the south elevation of the greenhouse to be demolished and a nearby fence further south. This part of the site is more overgrown and less managed than the part of the garden south of the fence.

Part of the proposed outbuilding is considered to be within the garden area of No. 1 as shown in the 1971 map, therefore in this respect the proposed building is not considered to be within the curtilage of the dwelling.

Historically, the curtilage of No. 2 would've been much smaller than the plot area shown in 1971 and 1948, with this curtilage being in the smaller triangular plot of the 1897 map.

The proposed building is therefore considered to be outside the curtilage of dwellinghouse No. 2 taking into consideration its original smaller plot, the division between the rear gardens of Nos. 2 and 1, and the physical character of the location of the outbuilding in an area fenced behind a more maintained and open garden closer to the main dwelling. The proposal therefore does not comply with Class E as the outbuilding would not be in the curtilage of the dwellinghouse.

- 4.3.6 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);

The property was originally built as a dwellinghouse and so complies with this criterion.

(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);

Not applicable as the building is not considered to be within the curtilage.

(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;

The proposed outbuilding would be sited in the rear garden and would not be situated on land forward of a wall forming the principal elevation of the original dwellinghouse, and so complies with this criterion.

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

The proposal is single storey and so complies with this criterion.

(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;**

The building would be more than 2m from the boundary and the height would not exceed 4m, and so complies with this criterion.

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

The height of the eaves would not exceed 2.5m and so complies with this criterion.

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

As stated above, the site is within the Temple Dinsley Grade II* Registered Park and Garden of Special Historic Interest. Temple Dinsley house is a Grade II* listed building.

Listed buildings can have varying curtilages, which are not the same as curtilages of a dwellinghouse, with Historic England advice stating in their Advice Note 10:

The curtilage of a building (the principal building) is in general terms any area of land and other buildings that is around and associated with that principal building.

1.4 of the Advice Note gives an example of a country house with parkland on a large site with separate lodges, which is not unlike Temple Dinsley house and its gardens, which also has a lodge building at its east entrance.

Regarding whether a building is within the curtilage of a listed building, the courts have said that there are three key factors to be taken into account in assessing whether a structure or object is within the curtilage of a listed building:

- ☐ the physical layout of the listed building and the structure;
- ☐ their ownership, both historically and at the date of listing; and
- ☐ the use or function of the relevant buildings, again both historically and at the date of listing (these tests were first proposed in the Attorney-General ex rel. Sutcliffe and Others v. Calderdale BC, 1982, as accepted by Debenhams plc v. Westminster CC, 1987).

It is considered that the application site No. 2 Lodge is within the curtilage physically of Temple Dinsley as it and No. 1 are referred to in a Heritage Statement submitted with planning application 24/01604/FP at Temple Dinsley as being curtilage listed (particularly P44, P93 and P95).

The Lodges are stated as dating from the late 19th Century, are at one of the entrances to the Temple Dinsley site, and are similar to the example 1.4 from Historic England above.

Temple Dinsley was added to the Statutory List on 09.06.1952.

The Lodges were built pre 1st July 1948 but the key questions are whether the Lodges were in the same ownership as the principal building (Temple Dinsley), and performed an ancillary function in June 1952.

The applicant has provided ownership details of No. 2 Lodge, and separate research of ownership changes has also been undertaken.

The information gathered shows that the applicant of this LDCP application became the owner of No. 2 Lodge in May 2024.

Before May 2024, No. 2 Lodge (and No. 1) were acquired as part of the sale of Temple Dinsley school which took place in May 2023.

Temple Dinsley had been a school since before WW2, and was taken over by United Learning in 2018, who then sold the school with the Lodge cottages in May 2023.

No. 2 Lodge was therefore in the same ownership of Temple Dinsley school at the date of its listing.

Regarding the use or function of the relevant building No. 2 Lodge, again both historically and at the date of listing, the Heritage Statement submitted with planning application 24/01604/FP states:

Originally the cottages were within a shared garden. The domestic curtilages as two cottages have been defined since circa 1971 and are separate from the fields that surround the Lodges.

The Lodge was originally built before Temple Dinsley became a school. This website url provides a detailed history of the Lodge and its previous occupants:

<https://prestonherts.co.uk/templedinsleylodges.htm>

The webpage states that No. 2 Lodge was built after No. 1, probably between 1884 and 1891.

From the creation of the Lodges to 1918, they were occupied by individuals who appeared to have served as staff for the main dwelling Temple Dinsley, such as butlers and chauffeurs.

After 1918, the occupants listed are not stated as performing functions related to the use of Temple Dinsley as Princess Helena College, with some occupants being evacuees during WW2.

No. 2 Lodge (and No. 1 Lodge) are considered in use and function to have transitioned from housing housekeeping staff for Temple Dinsley house to 'regular' tenants, including at the 1952 date of listing.

At the date of listing, it's considered that Temple Dinsley retained a pecuniary financial interest in both lodges, with rents from the tenants likely contributing to the upkeep and future of the lodges and potentially the wider Temple Dinsley estate.

On this basis, it's considered that No. 2 Lodge performed a use and function related to Temple Dinsley at the date of its listing and for some time before then, as it was let out to regular tenants that at least contributed financially to the Temple Dinsley estate.

Therefore, No. 2 Lodge is considered to be curtilage listed. The proposal does not comply with this criterion.

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

The proposal does not include any of the above and so complies with this criterion.

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

The proposal relates to an outbuilding in the garden of a dwelling and so complies with this criterion.

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

The proposal does not relate to a container and so complies with this criterion.

E.2 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.

The proposal complies with this criterion.

E.3 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.

The proposal complies with this criterion.

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

The proposed building is considered to comprise uses incidental to the enjoyment of the dwellinghouse, and complies with this criterion.

4.4 Conclusion

- 4.4.1 A Certificate of Lawfulness (proposed) can **NOT** be issued on the basis that the proposed ‘Erection of detached carport, garage and log store in rear garden following demolition of existing greenhouse and outbuildings’ does not constitute permitted development by virtue of E. (a) and E.1 (g) of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed


Anne McDonald

Development Management
North Hertfordshire District Council
Council Offices
Gernon Road
Letchworth
Herts
SG6 3JF

Determining Officer

Date: 12 December 2024