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## Appeal Decision

Site visit made on 10 September 2019

**by Elizabeth Pleasant BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 September 2019**

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**Appeal Ref: APP/D2320/X/19/3224433**

**Bancroft Cottage, Higher Simpson Fold, Blackburn Road, Higher Wheelton, Lancashire PR6 8HW**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mark James against the decision of Chorley Borough Council.
- The application Ref 19/01178/CLPUD, dated 2 January 2019, was refused by a notice dated 27 February 2019.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is a detached garage.

**Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out in the Formal Decision.**

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### Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is found to be lawful.

### Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.
3. The proposed development is for a single storey detached garage to be sited at the side of Bancroft Cottage and within 2m of the boundary of the curtilage of the dwellinghouse. The provision within the curtilage of the dwellinghouse of 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 is permitted by Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO), subject to conditions at Class E.1, E.2, E.3.

4. The Council considered that the proposed development would not comply with the limitations at Class E.1 (e) of the GPDO, but is content that the proposal would accord with all the other conditions within Class E. In relation to the latter, I see no reasons to take a different view. I shall therefore focus upon whether the proposed development accords with the limitations at Class E.1 (e).
5. The limitation at Class E.1 (e) is that development is not permitted by Class E if 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.
6. The ground level adjacent to the side of the house and the site of the proposed garage is sloping. The proposal is to set the garage into the slope of the land and where the existing ground level is at its lowest, the front elevation of the building would extend to a height of 3.25 metres. However, the rear elevation of the proposed garage would only extend to a height of 2.1 metres above the existing ground level.
7. The assessment of the proposed development against the limitations in Class E.1 (e) first requires an understanding of how the height of the building should be calculated. Guidance on the interpretation of the GPDO is set out in the Department for Communities and Local Government publication *Permitted development rights for householders: Technical Guidance*, dated September 2019 (Technical Guidance)<sup>1</sup>. The Technical Guidance explains that references to "Height" in the GPDO is to be taken as the height measured from ground level. In addition, it clarifies that where ground level is not uniform (for example the ground is sloping), then the ground level is the highest part of the surface of the ground adjacent to the building.
8. There is no dispute between the parties that the proposed garage would be sited within 2 metres of the boundary of the curtilage of the dwellinghouse. Therefore, to meet criteria (ii) of Class E.1 (e), the height limit for the total development is restricted to 2.5 metres if it is to be permitted development. It is this criterion that the Council believe there would be conflict with, stating that the total development would exceed 2.5 metres in height and would be within 2 metres of the boundary.
9. I appreciate that some parts of the proposed garage would exceed 2.5 metres above the ground level at the lowest part of the surface of the ground level next to the building. However, applying the Technical Guidance set out above, it clear that where the existing ground level is not uniform, then the ground level to assess the height against is the highest part of the surface of the ground level next to the building. In this case the existing ground level is sloping and the highest part of the total development when measured from the highest part of the surface of the ground next to the building is 2.1 metres.

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<sup>1</sup> This is an updated version of the *Permitted development rights for householders: Technical Guidance*, dated September 2019.

Consequently, it is reasonable to conclude that the proposed garage accords with that limitation.

**Conclusion**

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a detached garage at Bancroft Cottage, Higher Simpson Fold, Blackburn Road, Higher Wheelton, Lancashire PR6 8HW was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*Elizabeth Pleasant*

INSPECTOR



The Planning Inspectorate

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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 2 January 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed garage would be permitted development under Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and therefore would benefit from planning permission granted by Article 3(1) of that Order.

Signed

*Elizabeth Pleasant*

INSPECTOR

Date: 17 September 2019  
Reference: APP/D2320/X/19/3224433

### **First Schedule**

Detached garage (as shown on Document 4 pages 1 and 2)

### **Second Schedule**

Land at Bancroft Cottage, Higher Simpson Fold, Blackburn Road, Higher Wheelton, Lancashire PR6 8HW

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



The Planning Inspectorate

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## Plan

This is the plan referred to in my decision dated: 17 September 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

**Land at: Land at Bancroft Cottage, Higher Simpson Fold, Blackburn Road, Higher Wheelton, Lancashire PR6 8HW**

**Reference: APP/D2320/X/19/3224433**

Scale: Not to Scale

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