

Item No.	Application No. and Parish	8 Week Date	Proposal, Location, Applicant
(2)	18/02512/HOUSE Bradfield	13 November 2018 <sup>1</sup>	Two-bay garage to front of property (Section 73 application to vary Condition 1 of Planning Permission 17/01646/HOUSE).  Pightles, Tutts Clump, Reading, Berkshire, RG7 6JU  Chris Newman and Lindsey McNeil

<sup>1</sup> Extension of time agreed with applicant until 21<sup>st</sup> December 2018

The application can be viewed on the Council's website at the following link:  
<http://planning.westberks.gov.uk/rpp/index.asp?caseref=18/02512/HOUSE>

**Recommendation Summary:** To **DELEGATE** to the Head of Development and Planning to **GRANT PLANNING PERMISSION** subject to conditions

**Ward Member:** Councillor Quentin Webb  
Councillor Graham Pask

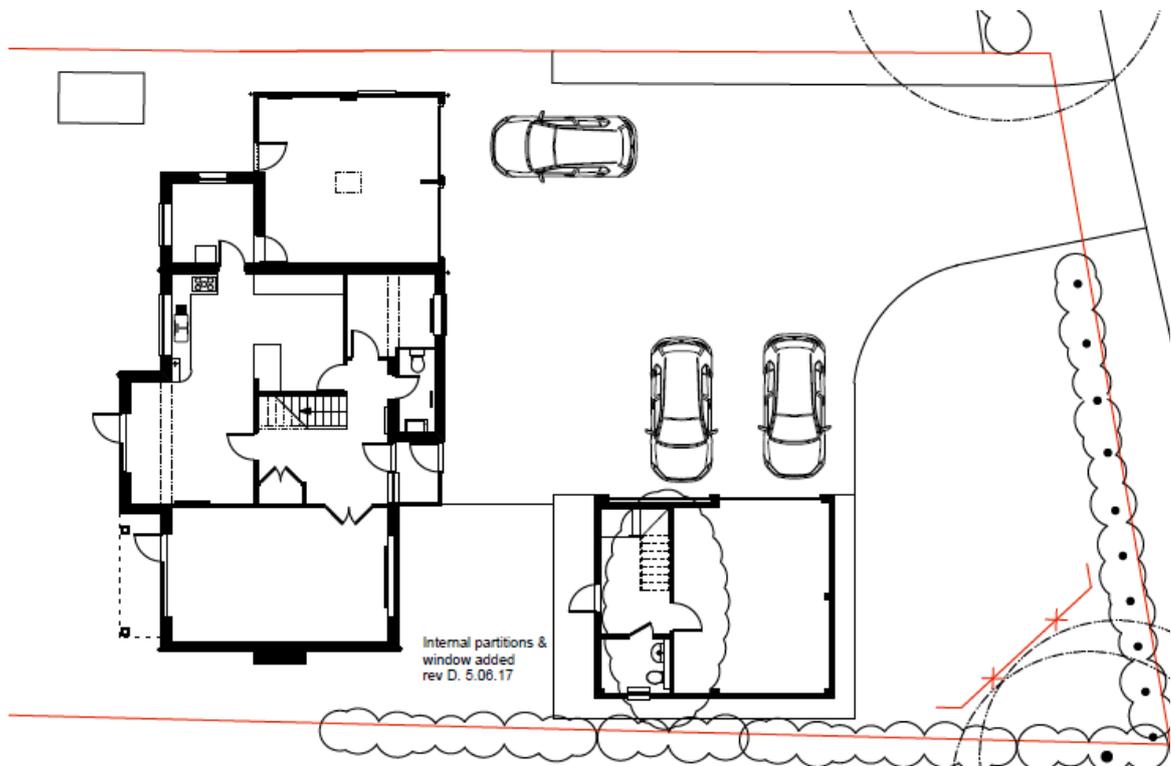
**Reason for Committee Determination:** Call-in by Councillor Webb

**Committee Site Visit:** 12<sup>th</sup> December 2018

Contact Officer Details	
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# 1. INTRODUCTION

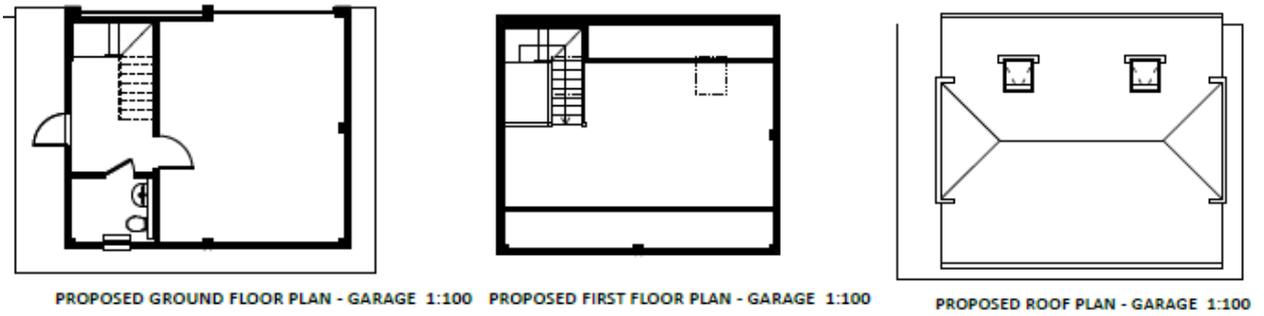
- 1.1 This application is made under Section 73 of the Town and Country Planning Act 1990 to vary Condition 1 on approved Planning Permission 17/01646/HOUSE. The approved development is a two-bay garage to the front of the property.
- 1.2 Following a series of planning permissions, which are detailed in Section 2 of this report, a garage building is permitted within the frontage of Pightles. The garage building has now been constructed. Figures 1 to 3 show the latest approved plans for the garage building. Separate planning permission has also been granted to raise the ridge height of the house roof in conjunction with loft conversion and new velux windows, new front gable extension, (existing) garage conversion, and a replacement workshop to the rear. Figures 4 and 5 illustrate this associated development to provide some additional context to this application.



**Figure 1: Latest approved site plan for garage building (17/01646/HOUSE)**



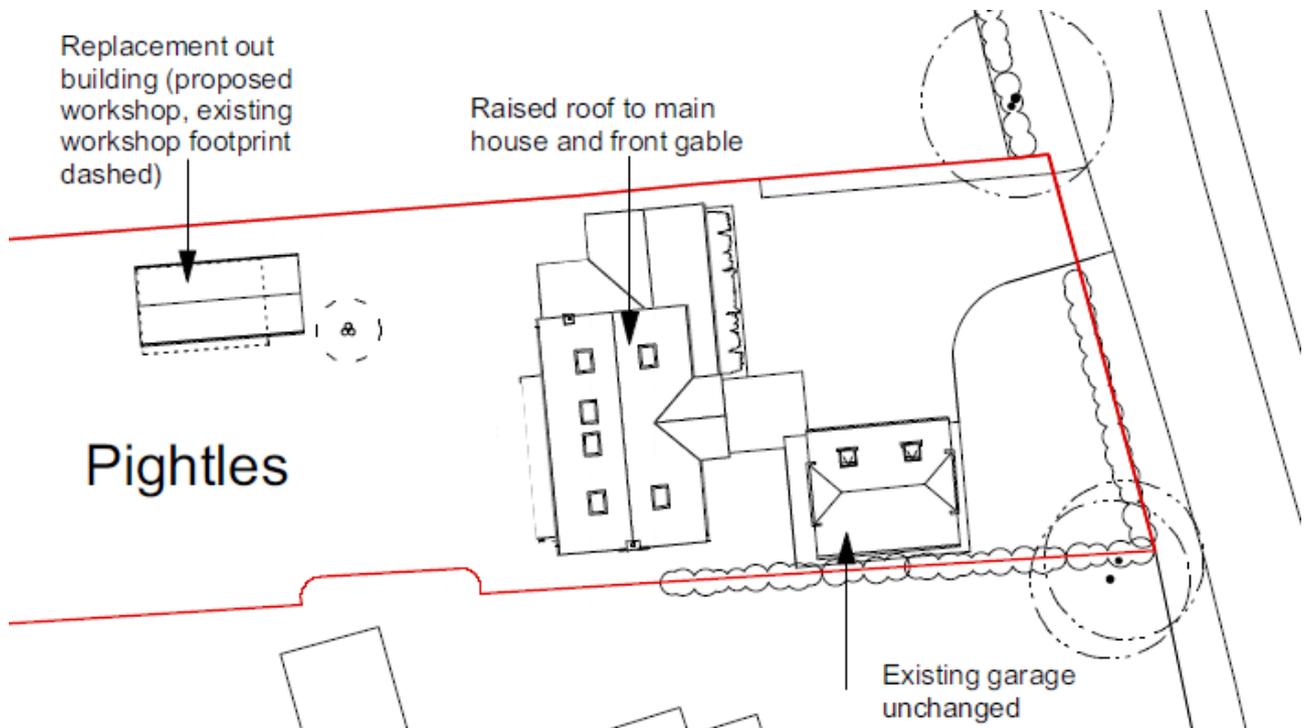
**Figure 2: Latest approved elevations for garage building (17/01646/HOUSE)**



**Figure 3: Latest approved floor plans for garage building (17/01646/HOUSE)**



**Figure 4: Latest approved front elevation for extensions to house (18/02443/HOUSE)**



**Figure 5: Latest approved block plan for house extensions (18/02443/HOUSE)**

1.3 Condition 1 (to which this application relates) states:

*“The garage building hereby permitted shall be used solely for purposes ancillary to the use of the existing dwellinghouse. It shall not be used for additional bedroom accommodation or for any form of human habitation.”*

1.4 This application seeks the variation of this condition so that it reads:

*“The building hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the dwelling known as Pightles.”*

## 2. PLANNING HISTORY

2.1 There have been a series of planning applications which are relevant to this development, which are listed below.

Application	Details	Decision
15/03071/HOUSE	Raised ridge height to house roof in conjunction with loft conversion and new Velux windows, new front gable extension, garage conversion, addition of a detached car port to the front and replacement workshop to the rear.	Granted planning permission 19/02/2016
16/01472/HOUSE	Two-bay garage to front of property.	Granted planning permission 22/07/2016
16/02678/NONMAT	Addition of two small Velux windows to the north (front) elevation of the proposed garage granted planning permission by application reference 16/01472/HOUSE	Non-material amendment approved 27/10/2016
16/03470/COND1	Application for approval of details reserved by condition (3) samples of timber cladding of approved application 16/01472/HOUSE - Two-bay garage to front of property	Materials approved 15/02/2017
17/01646/HOUSE	Section 73a: Variation of Condition 2 'Approved plans', Condition 3 'Timber cladding and garage doors', Condition 4 'Bricks and Tiles to match' and Condition 5 'Garage to be retained for garage accommodation' of previously approved application 16/01472/HOUSE: Two-bay garage to front of property.	Granted planning permission 22/09/2017
18/02443/HOUSE	Replacement of planning permission 15/03071/HOUSE, raised ridge height to house roof in conjunction with loft conversion and new velux windows, new front gable extension, garage conversion, replacement workshop to the rear, in order to extend the time limit for implementation	Granted planning permission 28/11/2018

## 3. PROCEDURAL MATTERS

3.1 Given the nature and scale of this householder development, it is not considered to fall within the description of any development listed in Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. As such, EIA screening is not required.

3.2 A site notice was displayed on a fence at the application site on 12<sup>th</sup> October 2018. The deadline for representations expired on 2<sup>nd</sup> November 2018.

## 4. CONSULTATION

### 4.1 Statutory and Non-Statutory Consultations

Consultee	Response
Bradfield Parish Council:	OBJECT: Garage not suitable for conversion in the countryside.
Natural England:	Natural England currently has no comment to make on the variation of condition 1.
North Wessex Downs AONB:	No response.
WBC Highways Authority:	Provided the garage is tied to the existing dwelling I am satisfied that sufficient driveway parking is proposed and I would raise no highway objections.
WBC Tree Officer:	I have no objection to the application, as it's a change of use, which will have no further impact on trees or hedges.  <i>[Planning Officer Note: this application does not seek a "change of use", but it is understood that this no objection is made on the basis that no physical changes are proposed.]</i>
WBC Ecology:	No response.

### 4.2 Public representations

4.2.1 No public representations received.

## 5. PLANNING POLICY

5.1 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The following policies of the statutory development plan for West Berkshire are relevant to this application:

- West Berkshire Core Strategy 2006-2026 (WBCS):  
Policies: ADPP1, ADPP5, CS1, CS13, CS14, CS19
- Housing Site Allocations Development Plan Document (HSA DPD):  
Policies: C1, P1
- West Berkshire District Local Plan 1991-2006 Saved Policies 2007 (WBDLP):  
Policies: OVS.6, TRANS.1

5.2 The following documents are material considerations which are relevant to this application:

- National Planning Policy Framework (July 2018) (NPPF)
- Planning Practice Guidance (PPG)
- Annex A of Circular 11/95
- House Extensions SPG (2004)
- Quality Design SPD (2006)

## **6. APPRAISAL**

### **6.1 Legal and policy context**

- 6.1.1 Under a Section 73 application, the local planning authority should consider only the question of the conditions subject to which planning permission should be granted. If they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they should grant planning permission accordingly; whereas if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they should refuse the application.
- 6.1.2 Paragraph 55 of the National Planning Policy Framework states *“Planning conditions should only be imposed where they are:*
- 1. necessary;*
  - 2. relevant to planning and;*
  - 3. to the development to be permitted;*
  - 4. enforceable;*
  - 5. precise; and*
  - 6. reasonable in all other respects.”*

6.1.3 This policy requirement above is commonly referred to as the six tests. The covering letter to this application purports that the current condition fails the tests of necessity, relevance to the development permitted, enforceability and precision. The relevance to planning is not challenged (the use of a building is clearly relevant to planning).

6.1.4 In terms of precision and enforceability, the application submissions argue that the phrase “human habitation” has no standing in planning. A search of appeal decisions nationwide reveals that this phrase has frequent use in planning decision letters (albeit often in relation to the stationing of caravans). Moreover, the Collins Dictionary defines “habitation” as “the activity of living somewhere”. The additional clause within the condition preventing the building being used for additional bedroom accommodation further clarifies the current restricted use. The Pangbourne Lodge appeal decision letter (referred to by the applicant) does not take issue with the phrase “human habitation” in terms of its precision or enforceability. It is therefore considered that the proposed condition is sufficiently enforceable and precise. Nonetheless, the necessity of the condition and its relevance to the development permitted is considered in Section 6.2.

### **6.2 Necessity and relevance of the current condition**

- 6.2.1 The main issue is considered to be whether the condition is necessary to make the development acceptable and whether it is relevant to this development. The stated reason for the condition on the decision notice of 17/01646/HOUSE is *“in the interests of amenity and the creation of a separate unit would be unacceptable in the interest of ensuring a sustainable pattern of development”*.
- 6.2.2 The application submissions argue that *“even though the site is outside a settlement boundary, due to the existing property on the site, it can be considered that the site is a settlement in and of itself.”* However, the presence of the existing property does not alter the fact that the application site is located outside of any of the defined settlement boundaries. Nonetheless, this is a moot point as the physical freestanding building which now occupies land at the front of the property benefits from planning permission.
- 6.2.3 It is recognised that there has been a series of planning applications at the property, with incremental changes to the proposal. This has included the evolution of a detached outbuilding in this location; firstly as a car port, then as a garage. The insertion of windows

was then approved as a non-material amendment, and a restriction to use solely for garage accommodation has also been relaxed.

- 6.2.4 Although the manner of accommodation is currently restricted, the physical structure of the building is already authorised. As such, a case cannot be substantiated that the physical presence of the building is unacceptable. Similarly, advice in the House Extensions SPG regarding the impact of garages to the front of properties is not relevant to the use of this authorised building.
- 6.2.5 The focus of considerations on this application must therefore be on the use of the outbuilding. Any residual concerns relating to the siting, size, scale, design or appearance of the building are very unlikely to amount to a reason for refusing this application.
- 6.2.6 It appears that the primary concern with the garage building, maintained by the Parish Council, is the manner of domestic occupation of the garage that would be possible with a relaxed condition. The following potential adverse impacts are typically capable of arising from the use of any residential outbuilding:
1. Subdivision of the residential use.
  2. Introduction of a separate commercial use within the building.
  3. The loss of on-site parking resulting in adverse impacts to highway safety.
  4. A material increase in noise and disturbance resulting in an adverse effect on local amenity, especially the living conditions of neighbouring dwellings.

*Subdivision or a separate commercial use*

- 6.2.7 The subdivision of the residential use of Pightles would result in the introduction of a new dwelling within the open countryside of the AONB, contrary to the housing supply policies of the development plan (ADPP1, ADPP5, CS1, C1). Similarly, the introduction of a separate commercial use within the building would be contrary to the relevant policies of the development plan in this location (ADPP1, ADPP5, CS9, CS10). A commercial use would, in its own right, appear out of keeping with the residential character of the area, and would potentially result in additional traffic movements around Tutts Clump to the further detriment of the residential character of the area, and in addition to the amenity of local residents.
- 6.2.8 There is some merit to the argument within the application submission that a material change of use may occur if the building were used for purposes not ancillary to the main house, and this would need planning permission in its own right. However, for technical legal reasons<sup>1</sup>, this is not always the case. As such, conditions limiting the use of buildings to purposes ancillary or incidental to the use of the main house are frequently imposed by local planning authorities and planning inspectors, particularly where there is a degree of separation between the main and ancillary buildings which may lend the buildings to subdivision.
- 6.2.9 The House Extensions SPG advises that an extension forming ancillary accommodation should be of comparatively modest size, and integrated in design with the main house. The SPG encourages linking such accommodation to the main dwelling, although it does not preclude a separate entrance. It states that the accommodation should be designed in such a manner as to easily enable it to be later used as an integral part of the main dwelling. The SPG attracts some weight in this decision, but it is not considered that it provides a substantive reason on its own for refusing this specific application. The amount

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<sup>1</sup> Planning permission is required for a “material change of use”. Not every change in use will be “material” for planning purposes. For a material change of use to have occurred the new activity must be substantially different from that which preceded it (e.g. in terms of a change in the character of the use itself, including the land where it is located; and/or effects of the change upon neighbouring uses and the locality). As such, minor or incremental changes of use may not require planning permission. Hence a condition limiting the extent of future use may be justified.

of ancillary accommodation within the outbuilding is considered proportionate and subservient to the main house, and it well-related to the main house within its frontage.

- 6.2.10 Given the siting and size of the building it is considered unlikely – but, with some internal reconfiguration, conceivable – that it could be adapted to provide a level of accommodation which constitutes a separate self-contained unit which would not be ancillary to the main house, or be capable of accommodating a separate commercial use. A condition limiting future use is therefore justified in principle.

#### *Parking*

- 6.2.11 Given the size of the curtilage and the space available to park the occupants' vehicles off-road, the proposed building is not required as garage accommodation to comply with the residential parking standards set out in Policy P1 of the HSA DPD. In any event the policy does not count garages because they are often not used for parking.

#### *Noise and disturbance*

- 6.2.12 With any detached domestic outbuilding there will inevitably be movement of people between that building and the main house, the level of which may vary by occupant but rarely will such movement have an adverse effect on neighbouring amenity.
- 6.2.13 The applicant's proposed condition would allow the garage to be used for any purpose ancillary to the residential use of the main property. This could, for example, include purposes such as any additional ancillary living accommodation (bedrooms, living room, home office, occasional guest accommodation), or any other purpose incidental to the main house (e.g. storage, games room). It is increasingly commonplace for ancillary accommodation to be included within domestic garages and garden buildings, and doing so does not normally amount to "development".
- 6.2.14 The building is of permanent construction and building regulations would apply if used for human habitation, which ensures a minimum level of insulation which will attenuate most day-to-day noise that may occur internally. Unreasonably excessive and persistent domestic noise that is harmful to the wellbeing of neighbouring occupants may amount to a statutory nuisance under the Environmental Protection Act 1990, just the same as if such noise originated from the main house, and could therefore be enforced by Environmental Health. The planning system does not need to duplicate such controls.

#### *Conclusions on necessity and relevance*

- 6.2.15 Taking into consideration all of the above, it is considered that there are no substantive reasons to restrict the use of the garage building by condition in terms of parking levels or potential noise and disturbance.
- 6.2.16 However, the fact that the application was made under the Householder regime would not limit the extent of its future use. In this case, with the size of the building and its physical detachment from the main house, it is considered necessary to retain the restriction in the disputed condition limiting the use of the building to purposes ancillary to the residential use of Pightles.
- 6.2.17 This restriction alone would prevent residential subdivision or any separate commercial use of the building, so there is no need for that to be separately specified. Restricting human habitation or additional bedroom accommodation is not justified and cannot be sustained in this case.

### **6.3 Recommended conditions**

- 6.3.1 The application proposes a condition which simply seeks to limit the future use of the building to purposes ancillary to the residential use of Pightles.
- 6.3.2 Annex A of former Circular 11/95 contains model conditions, which are still relevant despite the replacement of the Circular, as they are still referred to by the PPG. The “annex” condition is frequently used and adapted by local planning authorities and planning inspectors to prevent limit the future use of buildings to purposes ancillary to residential use of a dwelling. This is the condition sought by the applicant.
- 6.3.3 In this case, the restriction imposed by this model condition is considered a sufficient restriction to protect local amenity, without placing unnecessary or unreasonable limitations of the use of the building.
- 6.3.4 Consideration has been given to whether permitting the garage building to be used for any purpose ancillary to the main house would have any inadvertent additional adverse impacts, and therefore whether any further or alternative restrictions would become necessary if this application were approved.
- 6.3.5 With the proliferation of a working from home culture and self-employment, it is increasingly the case that limited business activities may take place incidental to the use of a dwellinghouse and without causing material harm to surroundings, for example an occupant working on a home computer. As such, outright restrictions on trade and business are not necessary and are arguably unreasonable to place on a dwellinghouse. Nonetheless, a material change of use for business purposes would still require planning permission and as stated in paragraph 6.2.17 the proposed condition would provide a sufficient safeguard.
- 6.3.6 The “creation of a separate planning unit” or the “creation of a separate curtilage” are symptomatic of a material change of use having occurred. As such, specific additional restrictions within the condition along these lines are superfluous and unnecessary.
- 6.3.7 If this garage building is permitted to be allowed for any ancillary purpose, including human habitation, there would be an increased likelihood that the owner/occupants may wish to insert additional windows and/or openings to increase natural light and improve the internal living conditions. Given the siting of the building in relation to the neighbour, inappropriately located windows within the southern elevation could cause harmful overlooking to the detriment of neighbouring privacy, or a proliferation of windows may result in an overbearing impact on neighbouring occupants due to an increased perception of overlooking. As such, an additional condition withdrawing permitted development rights for the insertion of additional windows or other openings in the southern elevation (including roof), is necessary to protect the amenity of neighbouring occupiers. It should be noted that this does not prevent the insertion of any additional windows being considered on their own merits under a subsequent householder planning application.

## **7. CONCLUSION**

- 7.1 Whilst the current condition is considered to be relevant to planning and the development, and sufficiently enforceable and precise, following careful consideration of the implications of relaxing the condition it is concluded that the full terms of the current condition are not necessary to make the development acceptable, or therefore relevant to the development permitted.
- 7.2 Nevertheless, the fact that the application was made under the Householder regime would not limit the extent of its future use. In this case, with the size of the building and its physical detachment from the main house, it is considered necessary to retain a condition

limiting the future use of the building to purposes ancillary to the residential use of Pightles. However, the precise terms can be relaxed as proposed by the applicant without resulting in any of the adverse effects that may typically be associated with the use of a residential outbuilding.

- 7.3 Given the increased likelihood of the building being used for ancillary living accommodation following the relaxation of this condition, it is also considered necessary to also remove permitted development rights for additional windows in the southern elevation, which would directly overlook the neighbouring property.
- 7.4 The application is recommended for conditional approval in accordance with the above conclusions.

## **8. FULL RECOMMENDATION**

To delegate to the Head of Development and Planning to **GRANT PLANNING PERMISSION** subject to the following conditions.

### **1. Ancillary use**

The building hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the dwelling known as Pightles.

Reason: To limit the future use of the building to prevent uses which would not be ancillary to the main dwelling. This condition is applied in the interests of ensuring a sustainable pattern of development, and safeguarding neighbouring and local amenity. This condition is applied in accordance with Policies ADPP1, ADPP5, CS1, CS13, CS14, CS19 of the West Berkshire Core Strategy 2006-2026, Policies C1, C3 and C6 of the Housing Site Allocations DPD 2006-2026, and WBC House Extensions SPG (2004).

### **2. Removal of permitted development rights for windows on outbuilding**

Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order with or without modification), no windows/dormer windows (other than those expressly authorised by this permission) which would otherwise be permitted by Schedule 2, Part 1, Classes A, B and/or C of that Order shall be constructed on the southern elevation or roof slope of the garage building hereby permitted, without planning permission being granted by the Local Planning Authority on an application made for that purpose.

Reason: To prevent overlooking of adjacent property, in the interests of safeguarding the privacy of the neighbouring occupants. This condition is applied in accordance with the National Planning Policy Framework, Policy CS14 of the West Berkshire Core Strategy (2006-2026), Quality Design SPD (2006) and House Extensions SPG (July 2004).

## **INFORMATIVES**

### **1. Proactive actions of the LPA**

The Local Planning Authority (LPA) has worked with the applicant in a positive and proactive manner based on seeking solutions to problems arising in relation to dealing with a planning application. In particular, the LPA:

- a) Provided the applicant with a case officer as a single point of contact.

- b) Granted planning permission for a less onerous condition whilst ensure sufficient safeguards are retained for protecting local amenity and maintaining a sustainable pattern of development.