

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	261153
Site Address:	Millgate House, Ruscombe Lane, Ruscombe, Wokingham, RG10 9JT
Expiry Date:	15 July 2026
Proposal: Application for a certificate of lawfulness for the proposed changes to fenestration to north elevation at ground floor level, plus installation of a path with retaining wall	

1. Relevant Planning History

Application Number	Proposal	Decision Date	Decision	Relevant Conditions
261165	Full application for the proposed creation of a new direct pedestrian access route from adjoining highway (Millgate Court) into curtilage of the site.	N/A	Pending consideration	N/A
050268	Proposed variation to condition 20 of consent F/2004/2412 for the erection of 8 apartments and one office building. Amendment to visibility splays. (Retrospective)	22/06/05	Approved	N/A
041842	Proposed erection of 8 apartments (2 of which are duplex units) and a 2 storey office building. Amendment to consent F/2003/9870	09/02/05	Approved	Condition 32
030379	Proposed erection of B1 Office building plus erection of 8 x 2 bedroom apartments. Demolition of existing storage buildings plus new site entrance from Ruscombe Lane.	23/09/04	Approved	N/A

2. Site Description

The application site is a two storey commercial building. To the west is Millgate Court, a block of residential apartments.

3. Proposal and Background

A certificate of lawfulness is submitted under Classes A and E of Part 7 of Schedule 2 and Class A of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The proposal is for the proposed changes to fenestration to north elevation at ground floor level, plus installation of a small section of path with a retaining wall either side. The works are in connection with a commercial building.

As can be seen in the planning history, the building was original constructed as an A2 use building. Since then, the Use Classes Order has changed with A2 ceasing to exist. An A2 use was formerly one that covered financial and professional services. Such uses now fall under Class E of the current use classes order.

4. Land/ Property Designations

- There are no listed buildings at the site and the property is not within 'Article 2(3) land' (Town and Country Planning (General Permitted Development) Order 2015).
- The site is not subject to any wildlife or habitat designations.

5. Legislation

Town and Country Planning Act 1990 (as amended)

- s.55 Provides that '*development*' includes the carrying out of building operations on land, and '*building operations*' includes structural alterations or additions to buildings.
- s.57 Planning permission is needed for all development of land.
- s.187a Enforcement for breach of conditions
- s.192 Applications for Certificates of Lawfulness of proposed use or development.
- s.191 Defines operations as 'lawful' if:
 - (a) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
 - (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Town and Country Planning (General Permitted Development) Order 2015 (GPDO)

- Article 3 In conjunction with Schedule 2 (Part 1) (Class E) grants planning permission for the erection of certain outbuildings, pools and fuel storage containers within the curtilage of a dwellinghouse.
- Article 4 Provides that the planning authority may give direction to restrict the effect of Article 3.

6. The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

7. Assessment against legislation

			Yes	No
s.55	1	Does it constitute development?	✓	
s.191	2	Would it be contrary to an enforcement notice?		✓
s.187a Art.3	3	Would it be contrary to any condition imposed by any planning permission granted or deemed to be granted? **		✓
Art.3 (5)	4	Are the building operations involved in the construction of the dwellinghouse lawful?	✓	
Art.4	5	Is there an 'Article 4 Direction' in effect for the site?		✓

** As noted in the planning history, condition 32 of planning permission ref. 041842 was raised as being a relevant condition to this application in principle. The condition reads as follows:

Notwithstanding the provisions of the Town and Country Planning, (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification) no additional windows or similar openings shall be constructed in the roof of the building hereby permitted except for any which may be shown on the approved drawing(s).

Whilst the condition refers to the removal of permitted development rights relating to windows/ fenestration, the rights are only removed within the roof of the building. The condition does not remove or restrict permitted development rights in the remainder of the building. As this proposal is for fenestration changes at ground floor level, the proposal is not prevented by way of this condition.

Accordingly, the proposal is now required to be assessed under the relevant class of the General Permitted Development Order. In this case, it is:

- Class A (extensions etc of commercial, business or service premises) for the proposed fenestration alteration
- Class E (Hard surfaces for commercial, business or service etc premises) of Part 7 of Schedule 2 for the proposed path
- Class A (Minor operations) of Part 2 of Schedule 2 for the retaining wall

The criteria for each of the above classes is below and taken in turn, with discussion on the proposal's compliance or not indicated in **bold**.

Class A, Part 7 Schedule 2 - Extensions etc of commercial, business or service premises

Permitted development

A. The extension or alteration of a commercial, business or service establishment.

Development not permitted

A.1 Development is not permitted by Class A if—

(a) the gross floor space of the original building would be exceeded by more than—

(i) in respect of an original building or a development on—

(aa) article 2(3) land, or

(bb) a site of special scientific interest, 25% or 50 square metres (whichever is the lesser);

(ii) in any other case, 50% or 100 square metres (whichever is the lesser);

The gross floor space of the original building would not be extended and so the proposal complies with the above

(b) the height of the building as extended would exceed 4 metres;

The height of the building would not be exceeded as a result of the proposal

(c) any part of the development (other than an alteration)—

(i) is on land which—

(aa) adjoins other premises which are used for a purpose falling within any of the classes in Part C (residential premises or institutions) of Schedule 1 of the Use Classes Order,

(bb) is article 2(3) land, or

(cc) is a site of special scientific interest, and

(ii) is within 2 metres of any boundary of the curtilage of the premises;

Criteria (c) is not relevant to the proposal as it is not applicable to alterations, and this proposal is an alteration

(d) the development would be within the curtilage of a listed building; The development would not be within the curtilage of a listed building

(e) any alteration would be on article 2(3) land; The alteration would not be on article 2(3) land

(f) the development would consist of or include the construction or provision of a verandah, balcony or raised platform; The development would not consist or include the provision of a verandah, balcony or raised platform

(g) any part of the development would extend beyond the front of any existing building. The proposed alteration to the building would not extend beyond the front of any existing building

(h) the development would involve the insertion or creation of a new shop front or the alteration or

replacement of an existing shop front; or

(i) the development would involve the installation or replacement of a security grill or shutter on a shop front

The proposal does not relate to existing or proposed shopfronts

Conditions

A.2 Development is permitted by Class A subject to the following conditions—

*(a) any alteration is at ground floor level only; **The proposal only relates to development at ground floor level***

*(b) any extension is, in the case of article 2(3) land, constructed using materials which have a similar external appearance to those used for the building being extended; **No extension is proposed and the site is not article 2(3) land and***

*(c) any extension or alteration is only to be used as part of, or for a purpose incidental to, the use of the commercial, business or service establishment **The applicant has advised ‘The proposed alteration is solely associated with the lawful use of Millgate House for purposes falling within Use Class E (i.e. as a Commercial, Business or Service Establishment)’.** Based on the submission, Officers do not have reason to conclude that the alteration would be anything other than incidental to the commercial establishment*

Interpretation of Class A

A.3

For the purposes of Class A—

*“commercial, business or service premises” means a building, or part of a building, used for any purpose within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order and includes buildings with other uses in other parts as long as the other uses are not within the parts being altered or extended; **This is noted, and the existing building falls within Class E, as discussed earlier in the report (within the ‘Proposal and Background’ section)***

*“raised platform” means a platform with a height greater than 0.3 metres, **Noted, but not relevant to this case as no ‘raised platform’ is proposed***

*and where 2 or more original buildings are within the same curtilage and are used for the same undertaking, they are to be treated as a single original building in making any measurement. **Noted***

Overall, the proposed alteration to the north facing elevation of the existing building, with that alteration comprising the replacement of an existing window at ground floor level with a set of double entrance doors, constitutes ‘permitted development’ under

Class A of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Class E, Part 7, Schedule 2 – hard surfaces for commercial, business or service etc premises

Development consisting of

(a) the provision of a hard surface within the curtilage of a building used for a purpose falling within one of the following provisions of the Use Classes Order—

- (i) article 3(6)(p) (drinking establishments etc);*
- (ii) article 3(6)(q) (drinking establishment with expanded food provision);*
- (iii) article 3(6)(r) (hot food takeaway); or*
- (iv) Class E (commercial, business and service) of Schedule 2; or*

(b) the replacement in whole or in part of such a surface.

The hard surface would be within the curtilage of a building used for Class E purposes

Development not permitted

E.1 Development is not permitted by Class E if—

*(a) the cumulative area of ground covered by a hard surface within the curtilage of the premises (other than hard surfaces already existing on 6th April 2010) would exceed 50 square metres; **Complies** or*

*(b) the development would be within the curtilage of a listed building **The development would not be within the curtilage of a listed building***

Conditions

E.2 Development is permitted by Class E subject to the following conditions—

(a) where there is a risk of groundwater contamination, the hard surface is not made of porous materials; and

(b) in all other cases, either—

(i) the hard surface is made of porous materials, or

(ii) provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the undertaking.

The site is located on potentially contaminated land, as identified by the Council's mapping system. As such, the site could be susceptible to ground water contamination if porous materials are used. Consequently (a) is applicable, and the applicant has shown non-porous materials will be used. Provision is still made for run- off water to be directed a grated drain

Overall, the proposed hard-surfacing (path) constitutes 'permitted development' under Class E of Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Class A, Part 2, Schedule 2 – Gates, fences, walls etc.

Permitted development

A. The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

A.1 Development is not permitted by Class A if—

(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed—

*(i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons; **N/A***

*(ii) in any other case, 1 metre above ground level; **Complies; the height of the retaining wall would 0.26m***

*(b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level; **Complies, the retaining wall be under 2m in height***

*(c) the height of any gate, fence, wall or other means of enclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in paragraph (a) or (b) as the height appropriate to it if erected or constructed, whichever is the greater, **N/A** or*

*(d) it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building, **Complies, the site is not Listed***

Interpretation of Class A

A.2 For the purposes of Class A, “school” includes— (a) premises which have changed use under Class S or T of Part 3 of this Schedule (changes of use) to become a state-funded school or registered nursery as defined in paragraph X of Part 3; and

*(b) a building permitted by Class C of Part 4 of this Schedule (temporary buildings and uses) to be used temporarily as a school, from the date the local planning authority is notified as provided in paragraph C.2(b) of Part 4. **Both noted but not applicable***

Summary:

The proposed changes to fenestration to north elevation at ground floor level, installation of a path and erection of a retaining wall constitutes development requiring planning permission. Permission IS available under Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, the proposal being in accordance with Schedule 2 (Part 7) (Classes A and E) and Schedule 2 (Part 2) (Class A) of the Order respectively.

DRAFT APPROVED



Development Management Team Leader

Date: 15/07/26