



Appeal Decision

Site visit made on 13 June 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2019

Appeal Ref: APP/R5510/X/18/3213915

41 Park Lane, Hayes UB4 8AB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (hereinafter "certificate").
 - The appeal is made by Mr Taj Bains against the decision of the Council of the London Borough of Hillingdon.
 - The application ref. 5337/APP/2018/2885, dated 6 August 2018, was refused by notice dated 18 September 2018.
 - The application was made under section 192(1) (b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate is sought is described at section 4 of the application form as "*Single storey garage to rear*".
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Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed operation which is considered to be lawful.

Matters of clarification

2. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant in the context of an appeal made under section 195 of the 1990 Act as amended. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probabilities.

Main issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

4. The appeal property is a 2-storey, semi-detached house with a long rear garden and a single garage, paired with the garage at no. 39. There is a shared driveway between nos 39 and 41. According to the plans and from what I saw on site, the house has been extended at the rear at ground floor level only. The Council approached the case on the basis that the existing garage would be demolished and I have done likewise.
5. It is proposed to erect a detached garage at the far end of the back garden. This metal-framed building would be used to accommodate 4 classic cars. It

would be built to a maximum height of 2.5 m with a shallow pitched roof of corrugated cement fibre sheets and have an agreed footprint of 78 sq. m. The walls would be clad with corrugated galvanised metal sheets.

6. The main issue turns on whether the proposed single storey garage to the rear would have amounted to permitted development at the time of the application.
7. At that time, subject to various limitations, Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permitted the provision within the curtilage of a dwellinghouse of "any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such ...". It is common ground that the garage would be within the curtilage of the dwellinghouse and that the physical limitations in paragraph E.1 of Class E, relating to such matters as height, location and the proportion of the curtilage covered, would be met by the proposed development.
8. The Council maintains in its decision notice that the proposal does not constitute permitted development "... as the proposed outbuilding is not considered to be of a size reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such." Hence, the Council considered that the relevant permitted development right would not be engaged. More specifically, the Council was concerned about the outbuilding's footprint in comparison to that of the original dwelling (agreed at 39.41 sq. m). The Council found it "... difficult to see this as a minor accompaniment to the original dwelling."
9. The appellant refers to the court case of *Emin v SSE & Mid Sussex DC [1989] JPL 909*. This confirmed that regard should be had to the use to which it was proposed to put a building and to consider the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be an important consideration but this was not by itself conclusive. It would be wrong to find that an outbuilding could not be said to be required for a use reasonably incidental to the enjoyment of a dwellinghouse as such because it would provide more accommodation for secondary activities than the dwelling provided for primary activities. It was necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building was genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. These issues are to be assessed with an element of objective reasonableness and as a matter of fact and degree.
10. With regard to size, that the footprint of the new garage would significantly exceed the footprint of the original dwelling cannot be determinative by itself. Moreover, buildings are three-dimensional structures so a more appropriate comparison of size would be of the volumes of the new garage and the dwelling. Any comparison should be with the existing dwelling as extended since the new garage would be associated with that and not the original dwelling. The Council may have included that extension in its calculations but I cannot be sure. Arguably, the existing garage should also have been factored in to the comparison in the appellant's favour given that it is to be demolished and that it is very close to the house. The only direct constraint on the size of

the new garage is imposed by the limitation at paragraph E.1 (b) of Class E, which the Council confirmed would not be breached.

11. Having regard to the case law referred to in paragraph 9 above, it is more important to show that what is proposed, including the floor space attributed to the use, is genuinely and reasonably required for a purpose incidental to the enjoyment of the dwelling as such.
12. It seems entirely reasonable to me that the storage of a collection of classic cars would fall within the wide range of incidental purposes that are permitted by Class E. Such cars are best kept under cover in a garage to protect them from the elements and for security reasons. This use would be connected primarily with the leisure interests of the occupiers of the house. The existing garage is not in a particularly good condition, can only accommodate one Triumph Stag as I saw and would hamper attempts at gaining vehicular access to the far end of the back garden where the proposed garage would be positioned.
13. The Council has not directly criticized the proposed use or suggested that it would be allocated an excessive amount of space on the submitted plans. It seems to me that the space, being roughly the same as 4 single garages, would fulfil its intended purpose and nothing more. Allowing for some space around the vehicles for maintenance work and valeting, the size of the garage would be no more than it needs to be. The front elevation of the garage would include bifold doors but that is the appellant's choice and the design of the garage is not really a relevant factor. Overall, I consider that this is not a case driven by the unrestrained whim of the appellant.
14. In the light of the above and having taken into account all other matters raised, I find on the balance of probabilities that the proposed single storey garage to the rear, in the form and for the use as proposed by the appellant, would be permitted development, being a building required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Dale

INSPECTOR

Lawful Development Certificate

APPEAL REF. APP/R5510/X/18/3213915

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 6 August 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shaded in colour 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 operations would constitute permitted development within the terms of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Andrew Dale

INSPECTOR

Date: 26 June 2019

First Schedule

Single storey garage to rear in accordance with the drawings numbered A101, A102, A103, A104, A105, A106 and A107, all submitted with application ref. 5337/APP/2018/2885 dated 6 August 2018.

Second Schedule

Land at 41 Park Lane, Hayes UB4 8AB

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.
4. 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 26 June 2019

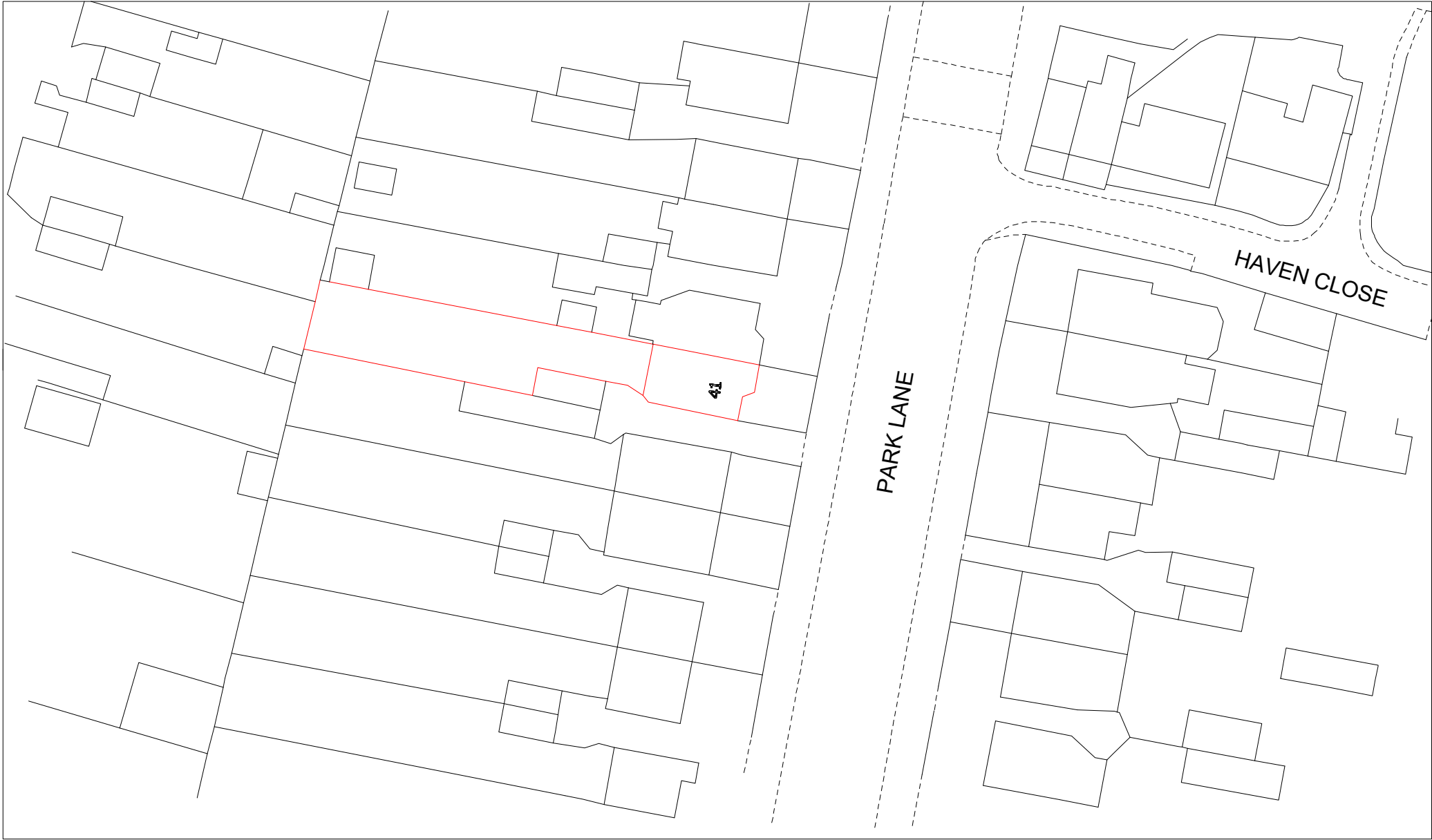
by **Andrew Dale BA (Hons) MA MRTPI**

Land at: 41 Park Lane, Hayes UB4 8AB

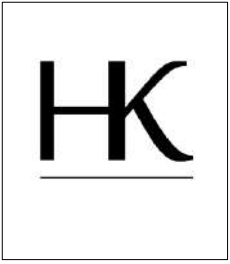
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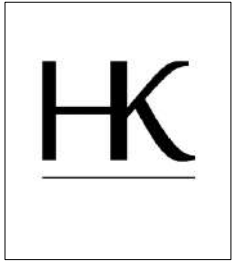


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Scale: 1:500

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2 Location Plan
Scale: 1:500



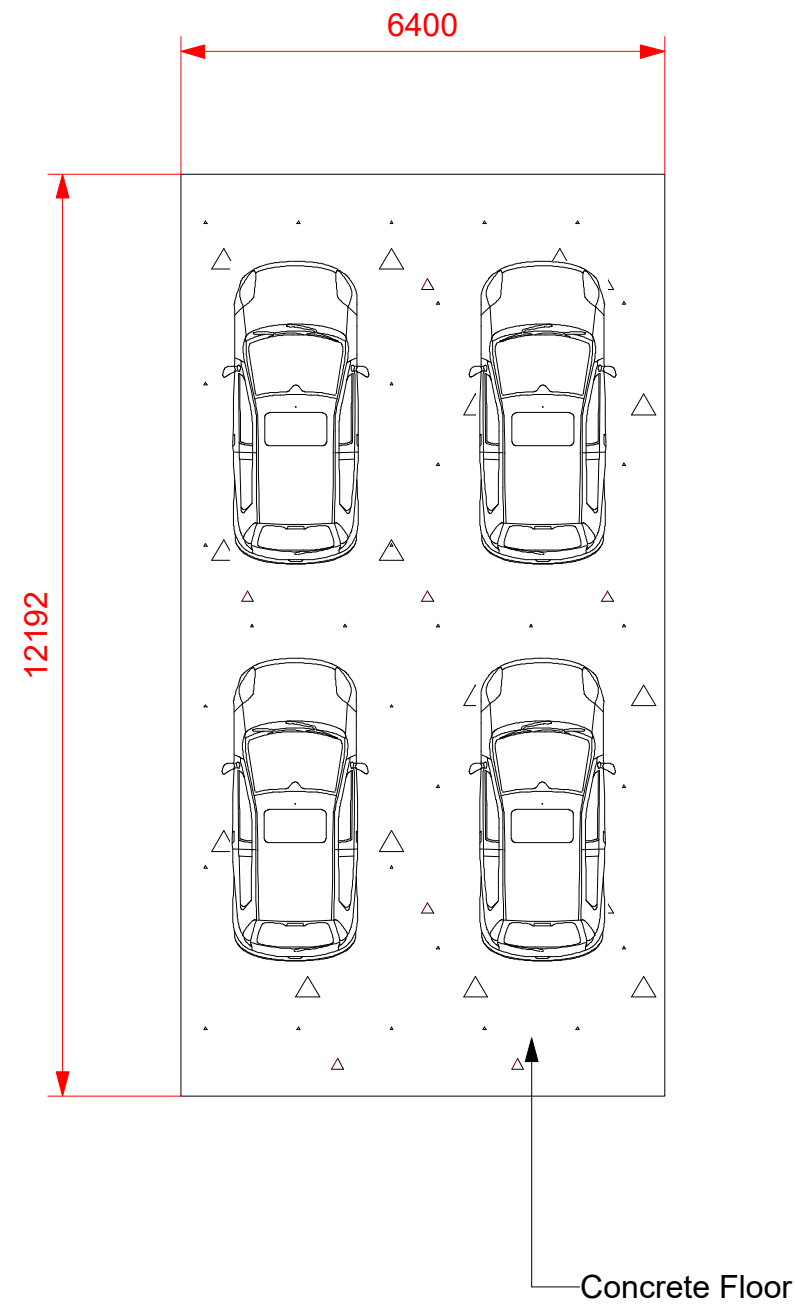
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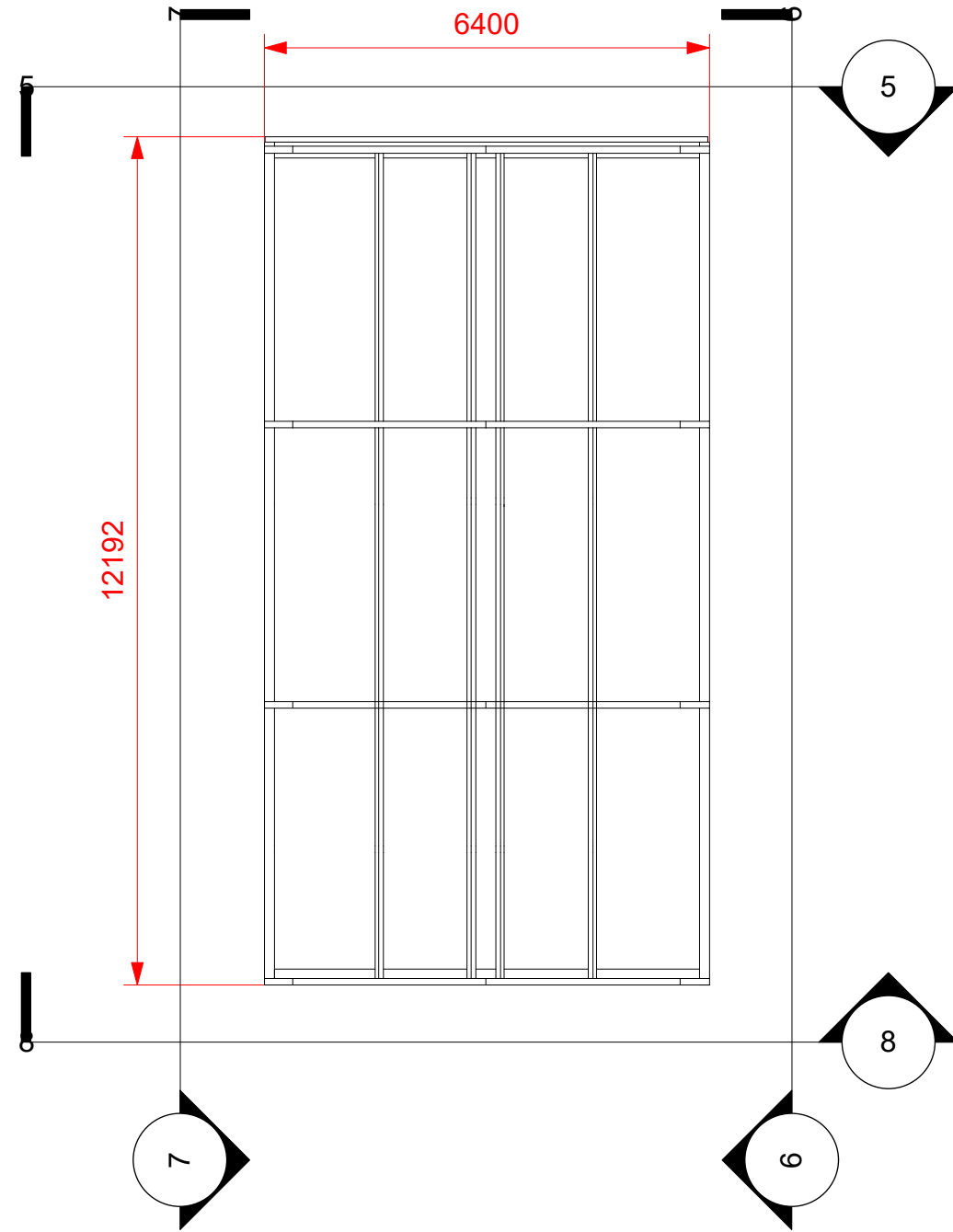
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Hayes
Middlesex
UB4 8AB

SHEET:
Location Plan

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3 **Garage Floor Plan**
Scale: 1:100



4 **Garage Frame Plan**
Scale: 1:100

HK

NO:	NOTES:	DATE:

DRAWING NOTES:

METAL FRAME BOLTED ONTO CONCRETE FLOOR

HEIGHT DIMENSIONS TO GARAGE FRAME MAX 2000MM
HEIGHT DIMENSIONS FOR GARAGE ROOF MAX 500MM
HEIGHT DIMENSIONS FOR OVERALL GARAGE MAX 2500MM

PROJECT:
41 Park Lanes
Hayes
Middlesex
UB4 8AB

SHEET:
Garage Extension

CLIENT:
Taj Bains

DATE:
30-07-2018

DRAWN BY:
HK

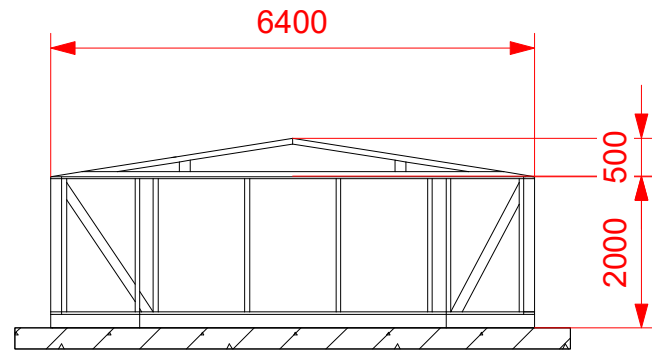
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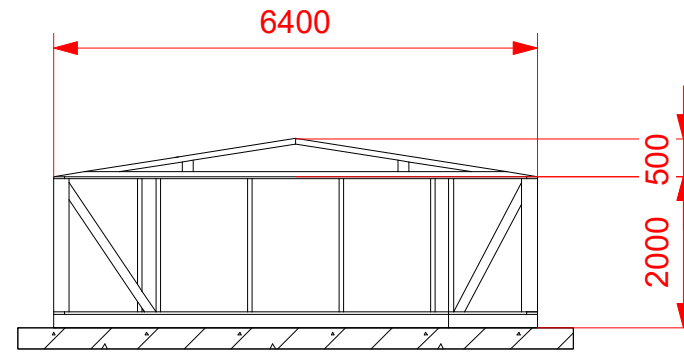
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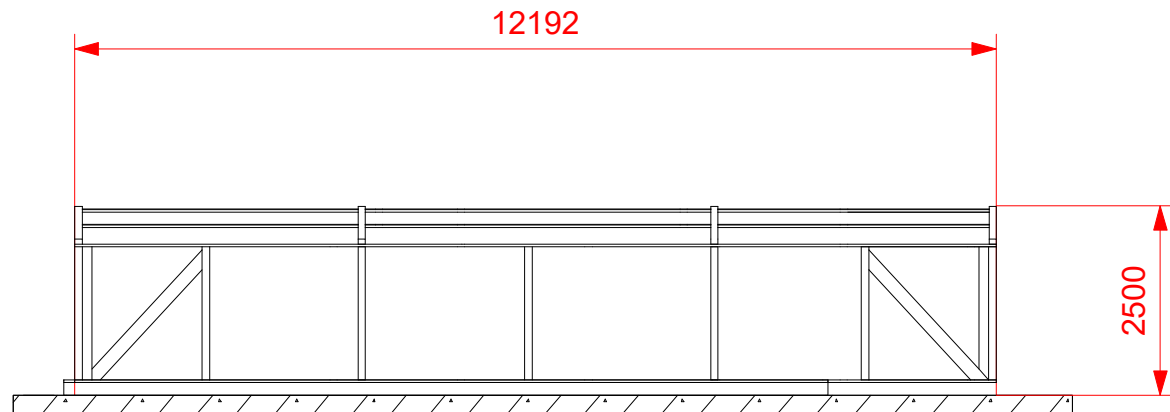
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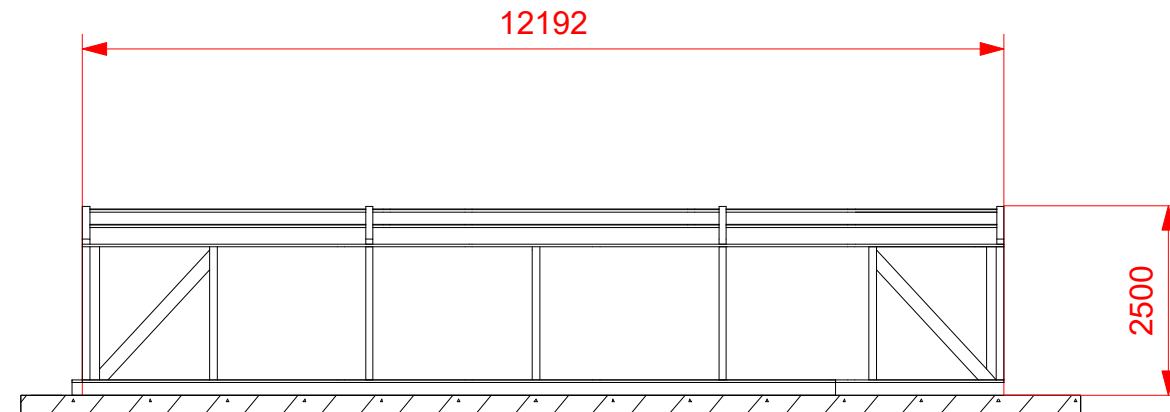
5 Garage Frame Front Elevation
Scale: 1:100



8 Garage Frame Rear Elevation
Scale: 1:100



6 Garage Frame Side Elevation
Scale: 1:100



7 Garage Frame Side Elevation
Scale: 1:100

HK

NO:	NOTES:	DATE:

DRAWING NOTES:

METAL FRAME BOLTED ONTO CONCRETE FLOOR

HEIGHT DIMENSIONS TO GARAGE FRAME MAX 2000MM
HEIGHT DIMENSIONS FOR GARAGE ROOF MAX 500MM
HEIGHT DIMENSIONS FOR OVERALL GARAGE MAX 2500MM

PROJECT:
41 Park Lanes
Hayes
Middlesex
UB4 8AB

SHEET:
Garage Extension

CLIENT:
Taj Bains

DATE:
30-07-2018

DRAWN BY:
HK

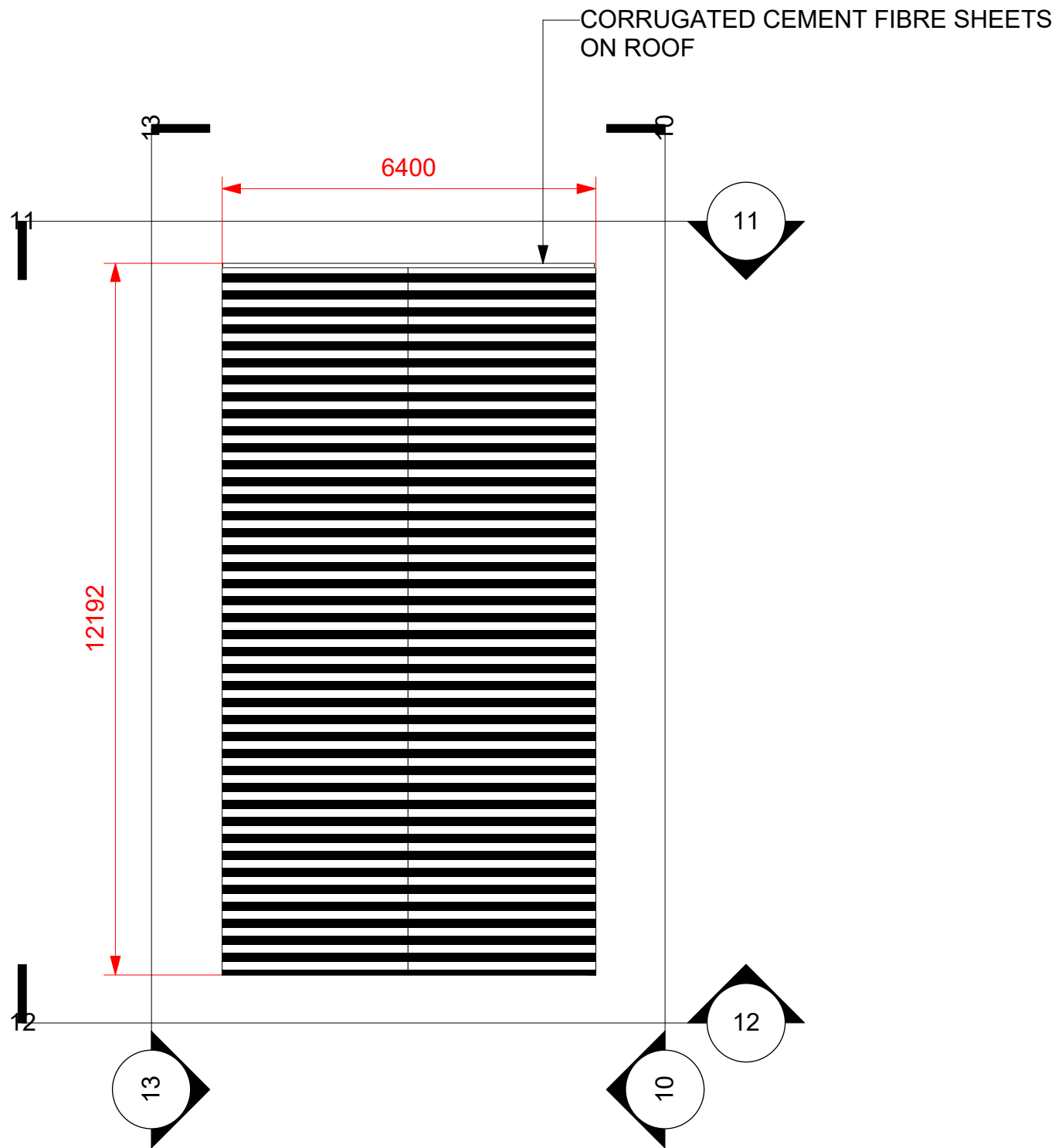
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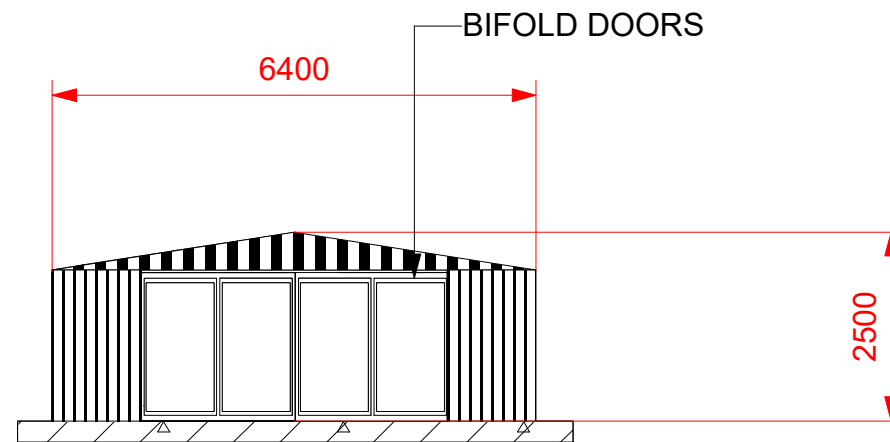
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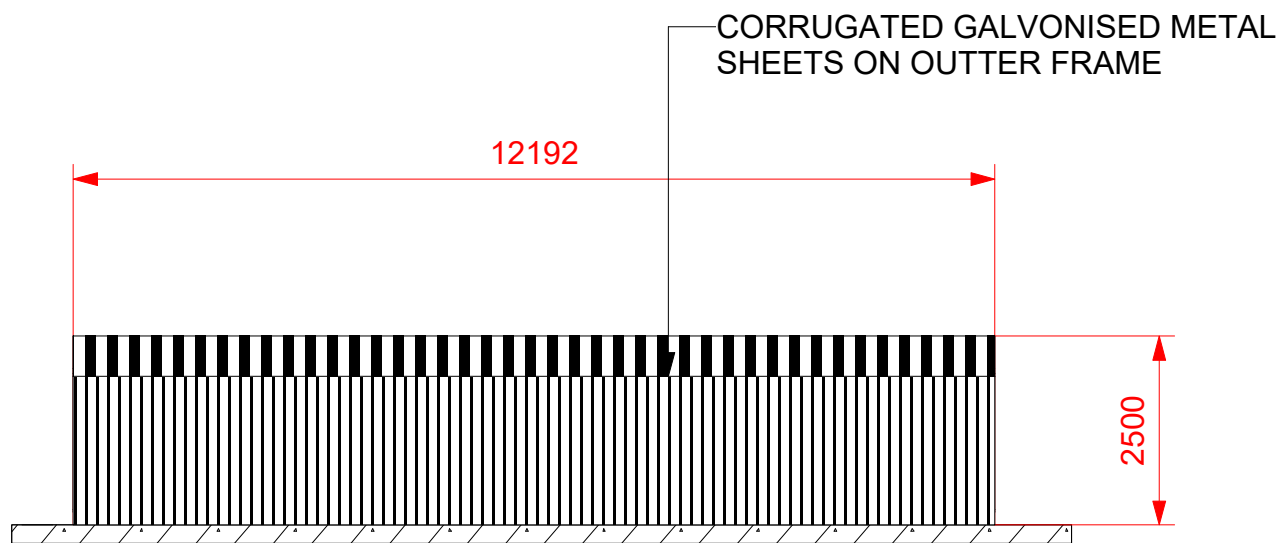
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9 Garage Plan
Scale: 1:100



11 Garage Front Elevation
Scale: 1:100



10 Garage Side Elevation
Scale: 1:100

HK

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DRAWING NOTES:

CORRUGATED GALVONISED METAL SHEETS ON OUTER FRAME

CORRUGATED CEMENT FIBRE SHEETS ON ROOF

PROJECT:

41 Park Lanes

Hayes

Middlesex

UB4 8AB

SHEET:

Garage Extension

CLIENT:

Taj Bains

DATE:

30-07-2018

REF:

TBEXT-06

SCALE:

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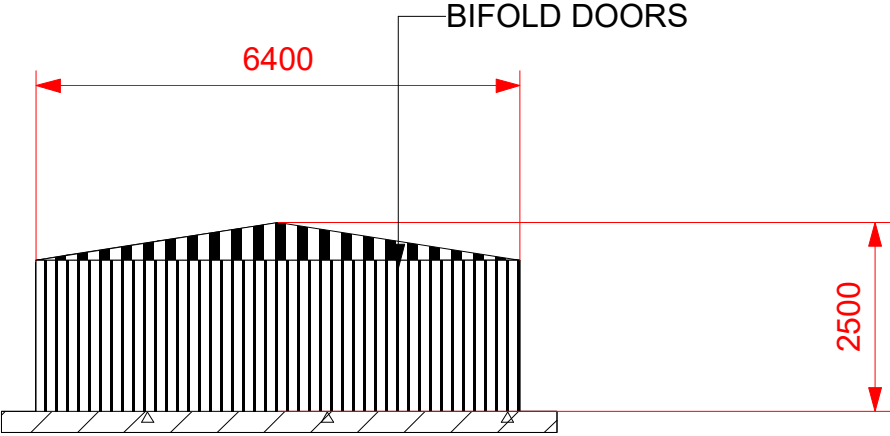
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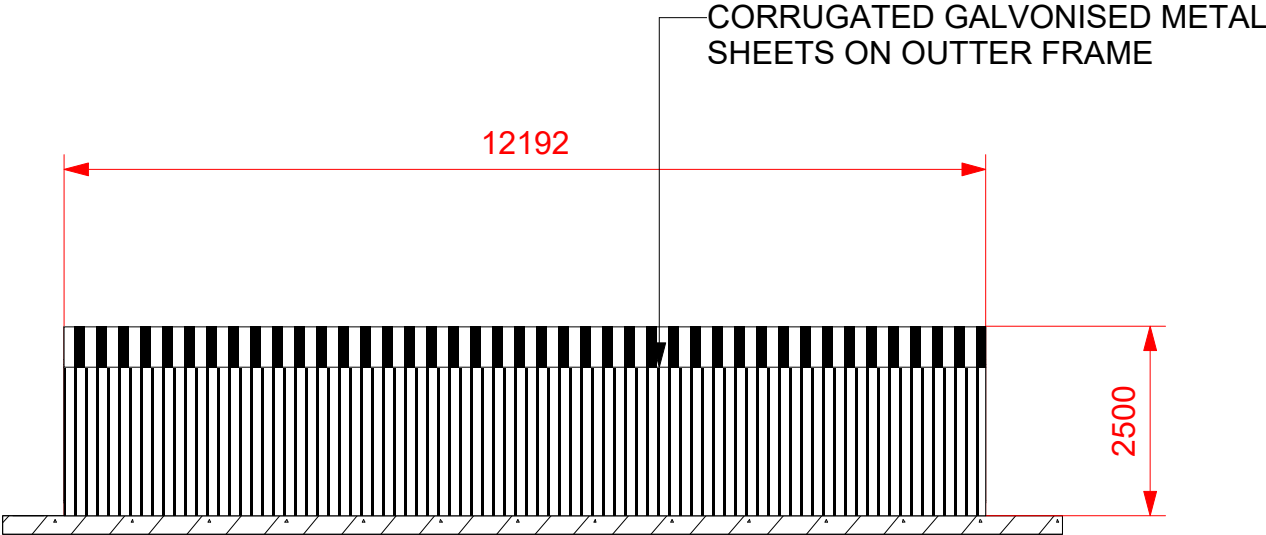
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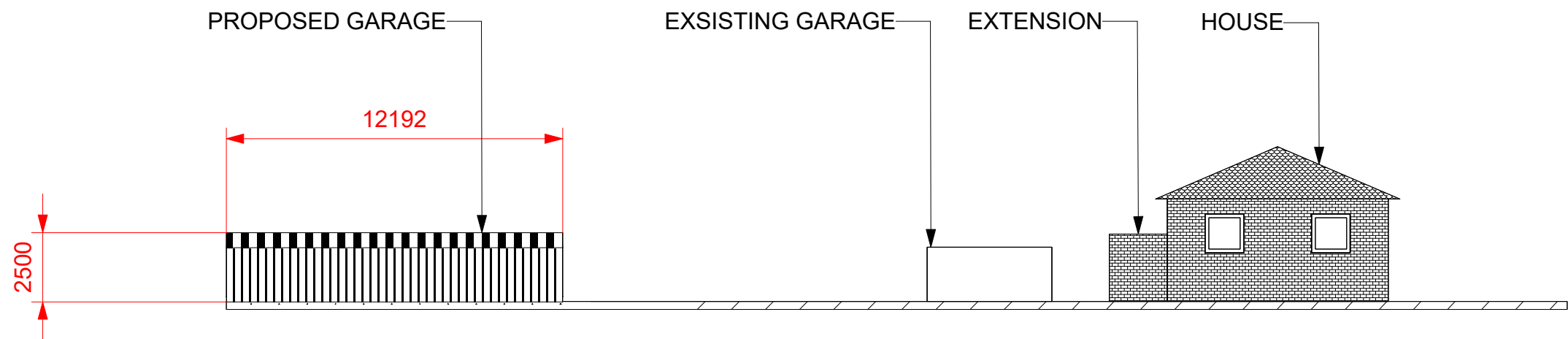


12 Garage Rear Elevation
Scale: 1:100

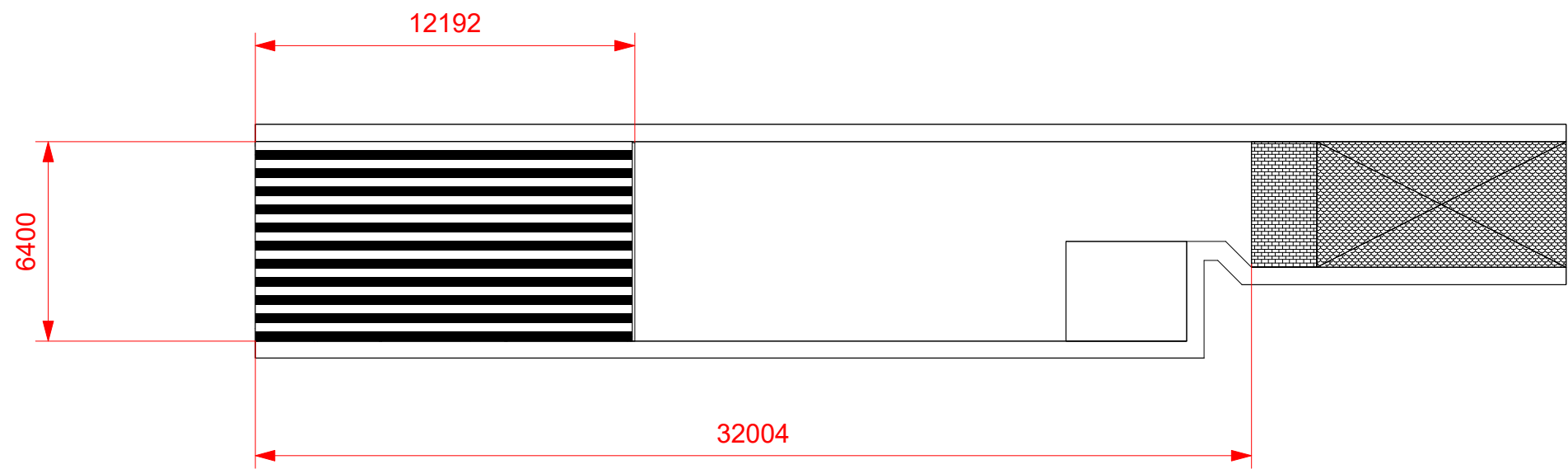


13 Garage Side Elevation
Scale: 1:100

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					SHEET: Garage Extension	DRAWN BY: HK	DRAWING REF: A106	PAGE: 6
						CHECKED BY: HK		



14 Site Elevation
Scale: 1:200



15 Site Plan
Scale: 1:200