

GPDO

Class A

WELWYN HATFIELD BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT

DELEGATED REPORT

APPLICATION No: S6/2015/0727/LUP

SITE ADDRESS: The Spinney High Road Hatfield

DESCRIPTION OF DEVELOPMENT: Certificate of lawfulness for a proposed single storey basement and the erection of two storey rear extension, a porch, alterations to windows and insertion of new windows, erection of single storey garage and single storey outbuilding

RECOMMENDATION: Certificate of lawfulness given

PLANNING HISTORY: S6/2015/0594/HH - Construction of single storey side extension on each side of dwelling following the demolition of existing garage and two outbuildings

S6/611/74 - Proposed garage & alterations

REPRESENTATIONS: N/A

ANALYSIS:

The main issues are:

1. Whether the proposed works are permitted development by virtue of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015

	Yes / No	To be PD
Have permitted development rights been removed	N	N
Is the property a dwellinghouse	Y	Y
Is it detached?	Y	
Is it semi-detached or terraced?	N	

Is it within a conservation area	N	
(a) Has permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use)	N	N
Development not permitted by Class A		
(b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)	N	N
(c) would the height of the part of the dwellinghouse enlarged, improved or altered exceed the height of the highest part of the roof of the existing dwellinghouse	N	N
(d) would the height of the eaves of the part of the dwellinghouse enlarged, improved or altered exceed the height of the eaves of the existing dwellinghouse	N	N
(e) would the enlarged part of the dwellinghouse extend beyond a wall which:- (i) forms the principal elevation of the original dwellinghouse; or (ii) fronts a highway and forms a side elevation of the original dwellinghouse	N	N
(f) would, subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and— (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height	N	N
(h) would the enlarged part of the dwellinghouse have more than one storey and:- (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or (ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse	N	N
(i) would the enlarged part of the dwellinghouse be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves	N	N

of the enlarged part would exceed 3 metres		
(j) would the enlarged part of the dwellinghouse extend beyond a wall forming a side elevation of the original dwellinghouse, and:- (i) exceed 4 metres in height, (ii) have more than one storey, or (iii) have a width greater than half the width of the original dwellinghouse	N	N
(i) it would consist of or include:- (i) the construction or provision of a veranda, balcony or raised platform, (ii) the installation, alteration or replacement of a microwave antenna, (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or (iv) an alteration to any part of the roof of the dwellinghouse	N	N
A.2 In the case of a dwellinghouse on article 2(3) land, development is not permitted if:- (a) it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;	N/A	N
(b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse;	N/A	N
(c) the enlarged part of the dwellinghouse would have more than one storey and extend beyond the rear wall of the original dwellinghouse	N/A	N
A.3 Development is permitted by Class A subject to the following conditions:- (a) would the materials used in any exterior work (other than materials used in the construction of a conservatory) be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse	Y	Y
(b) would any upper-floor window located in a wall or roof slope forming a side elevation of the dwelling house be:- (i) obscure-glazed, and	Y	Y

(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed;		
(c) would, where the enlarged part of the dwellinghouse has more than one storey, the roof pitch of the enlarged part, so far as practicable, be the same as the roof pitch of the original dwellinghouse	Y	Y

2. Whether the proposed works are permitted development by virtue of Schedule 2, Part 1, Class D of the Town and Country Planning (General Permitted Development) Order 2015

D.1 Development is not permitted by Class D if—		
(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);	N	N
(b) the ground area (measured externally) of the structure would exceed 3 square metres;	3M ²	N
(c) any part of the structure would be more than 3 metres above ground level; or	2.9M	N
(d) any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway.	N	N

3. Whether the proposed works are permitted development by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015

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 or Q of Part 3 of this Schedule (changes of use);	N	N
(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);	N	N
(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;	N	N
(d) the building would have more than a single storey;	N	N
(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;	4M N/A NA	N
(f) the height of the eaves of the building would exceed 2.5 metres;	2.5M	N
(g) the building, enclosure, pool or container would be situated within the	N	N

curtilage of a listed building;		
(h) it would include the construction or provision of a verandah, balcony or raised platform;	N	N
(i) it relates to a dwelling or a microwave antenna; or	N	N
(j) the capacity of the container would exceed 3,500 litres.	N	N
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.	N/A	
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.	N/A	
Interpretation of Class E 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.		

4. Whether the proposed works are permitted development by virtue of Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) Order 2015

F.1 permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);	N	N
F.2 Development is permitted by Class F subject to the condition that where— (a) the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and (b) the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres, either the hard surface is made of porous materials, or 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 dwellinghouse.	Y	Y

DISCUSSION

The curtilage of a listed building

The dwellings were originally given consent on the 29th November 1948 as buildings to house personnel who are employed on the estate. In 1974, permission was granted for the erection of a garage, and other associated works which resulted in the amalgamation of the dwellings into one in 1974. PL LONDON GOLF CLUB was registered as a listed building on 22nd August 1972. S1 (5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states

“In this Act “listed building” means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act—

(a) any object or structure fixed to the building;

(b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948,

shall be treated as part of the building.”

It is considered that, by virtue of the time of permission for the original dwellings, the dwelling, although associated with the building listed in 1972, does not fall within the curtilage of the listed building.

The curtilage of the dwellinghouse

The curtilage of the dwellinghouse has been outlined within the 1:1250 Site Location Plan submitted 30 April 2015. The site boundary submitted outlines a large triangular expanse of land as the curtilage. The curtilage that has previously been established for the dwelling is smaller, yet still extensive. The drawing entitled ‘Proposed Garage & Alterations to improve Cottages at The Spinney’ submitted as a part of application referenced S6/611/74 shows the curtilage of the dwelling when combined as a result of the aforementioned application to curve gradually around to the east at the start of the gate which was previously used to continue the path to what was Bedwell Park. Whilst this is a differing definition of the curtilage of the dwellinghouse, the curtilage as outlined above still encompasses the outbuildings and will not result in the built form covering above 50% of the site remaining.

For the purposes of clarity, any subsequent approval of this certificate of lawfulness does not pertain to the acceptance of the curtilage outlined in the 1:1250 Site Location Plan, and indicated in drawing numbers (EX)02 Rev PL1 & (GA)03 Rev PL1 as the defined curtilage of the dwellinghouse. The Local Authority retain that the curtilage, unless evidenced otherwise, remains as that outlined in the drawings submitted supporting application referenced S6/611/74.

Any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such

The outbuilding proposed is for a pool, sauna, steam room and changing room. These purposes are considered to be incidental to the enjoyment of the

dwellinghouse. The footprint of the outbuilding measures 192m². The footprint of the dwellinghouse to which it associates is 95.9m². The footprint of the outbuilding is therefore double the footprint of the dwellinghouse as it exists. In accordance with *Emin v Secretary of State for the Environment* (1989) JPL 909 (Emin) the comparative size of the outbuilding is not the only factor to consider in regards to whether the outbuilding is “required for a purpose incidental to the enjoyment of the dwellinghouse as such.” The Courts have held that the word “required” in this context should be interpreted to mean “genuinely and reasonably required or necessary in order to accommodate the proposed use or activity.”

The proposed use and activity is for the provision of a swimming pool, changing rooms (x2), plant room, toilet, store and seating/lounge area associated with the pool use. There is also a garden store measuring 5.6m². These uses and spaces are considered to be reasonably required, which has been upheld in previous appeal decisions

In this case, the outbuilding is felt to be reasonably required and necessary to accommodate a use which is considered to be incidental to the enjoyment of the dwellinghouse.

CONCLUSION

In accordance with Section 193 paragraph (4) (b) of the Town and Country Planning Act 1990 –

“A certificate under either of those sections may be issued—

(a) for the whole or part of the land specified in the application; and

(b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and shall be in such form as may be prescribed by a development order.”

As such, a the application for a certificate of lawfulness is part approved part refused as follows.

RECOMMENDATION

Certificate of Lawfulness Given

The proposal complies with Schedule 2, Part 1, Class A, D, E and F of The Town and Country (General Permitted Development) Order 2015 and **a certificate is issued**. The following conditions are applicable to the development¹:

1. The materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

REASON: In order to comply with A.3 (a) of the Town and Country Planning (General Permitted Development) Order 2015.

¹ Conditions may only be attached where they reasonably relate to the impact of the development on the amenity of adjoining premises.

2. C.13.3 – in accordance with plans and drawings: 1:1250 Site Location Plan & (EX)02 Rev PL1 & (EX)03 Rev PL1 & (EX)11 Rev PL1 & (GA)04 Rev PL1 & (GA)05 Rev PL1 received and dated 30 March 2015 (GA)03 Rev PL1 & (GA)06 Rev PL1 & (GE)12 Rev PL1 & (GE)13 Rev PL1 & (GE)14 Rev PL1 & (GE)15 Rev PL1 & (GS)01 Rev PL1 received and dated 25 May 2015
3. Any upper-floor window located in a wall or roof slope forming a side elevation of the dwelling house be:-
 - (i) obscure-glazed, and
 - (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.
4. The roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.

INFORMATIVE:

1. Whilst the submitted Site Location Plan shows a significant area of land to the south-west of the dwelling edged red, which appears to be used as residential gardens. Notwithstanding the use, the Council does not consider that this land forms part of the residential curtilage of the property. Accordingly the land does not benefit from the permitted development 'rights' contained in Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 2015.