

**WELWYN HATFIELD BOROUGH COUNCIL
EXECUTIVE DIRECTOR - PLANNING, PUBLIC PROTECTION AND GOVERNANCE**

DELEGATED APPLICATION

Application No: 6/2017/0430/LAWE
Location: The Warren, 8 Carbone Hill Northaw Potters Bar EN6 4PL
Proposal: Certificate of lawfulness for existing outbuilding to be ancillary to the existing dwelling
Officer: Mr S Dicocco

Recommendation: Refused

Context	
Application Description	The site contains a large detached dwelling set in a wooded area with some outbuildings. The site location plan indicates a large residential curtilage leading up to some woodland to the rear which is under the same ownership as the site. The application seeks a certificate of lawful development for an outbuilding which has already been constructed within in the eastern corner of the site.
Relevant planning History	<p>Application Number: E6/1973/5564/ Decision: Granted Decision Date: 12 February 1974 Proposal: Two storey side extension.</p> <p>Application Number: S6/1974/0495/ Decision: Granted Decision Date: 19 August 1974 Proposal: Basement extension</p> <p>Application Number: S6/1992/0144/FP Decision: Granted Decision Date: 21 April 1992 Proposal: Extensions and alterations to existing dwelling; alterations to vehicular access</p> <p>Application Number: S6/1993/0226/FP Decision: Granted Decision Date: 10 May 1993 Proposal: Alterations to elevations and new front porch (re-submission)</p> <p>Application Number: S6/2011/1670/LUP Decision: Granted Decision Date: 21 September 2011 Proposal: Erection of proposed swimming pool building</p> <p>Application Number: S6/2014/1982/FP Decision: Granted Decision Date: 03 November 2014 Proposal: Erection of single storey rear extension and new porch following demolition of existing sun room</p> <p>Application Number: S6/2014/2447/LUP Decision: Granted Decision Date: 10 December 2014 Proposal: Certificate of lawfulness for the proposed erection of a single storey side and two storey rear extension</p> <p>Application Number: S6/2015/0331/FP Decision: Granted Decision</p>

	Date: 15 April 2015 Proposal: Erection of single storey front extension	
The main issues are:		
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) (England) Order 2015 as amended		
	Yes / No	To be PD
Is the property a dwellinghouse	Y	Y
Have permitted development rights been removed	N	N
Is it within a conservation area	N	
Is the proposed use incidental to the use of the dwellinghouse	Y	Y
E. The provision within the curtilage of the dwellinghouse of—		
(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse ¹ as such, or the maintenance, improvement or other alteration of such a building or enclosure; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.	Y	N
Development not permitted		
E.1 Development is not permitted by Class E if—		
(a) Has permission to use the dwellinghouse as a dwellinghouse been granted only by virtue of Class M, N, P or Q of Part 3	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;	N N/A Y 3.8m N/A	N
(f) the height of the eaves of the building would exceed 2.5 metres;	2.2m	N
(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;	N	N
(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/A	N
E.2 deliberately excluded		
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	N

¹ "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

DISCUSSION

The height of the building

It is noted that the building is constructed on an uneven surface. In accordance with page 43 of the Permitted development rights for householders: Technical Guidance, *“the height of the building ... should be measured from the highest ground level immediately adjacent to the building to its highest point”*. Accordingly, the height of the building, as well as the height of eaves, have been measured on site, and indicate that the measurements provided within the drawing Number PD10A are accurate.

The curtilage of the dwellinghouse

Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) allows

*“E. The provision within the curtilage of the dwellinghouse of—
(a) 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 or enclosure; or
(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.”*

The wording here is key, in that the provision does not apply for buildings outside of the curtilage of the dwellinghouse. There is no statutory or other definition of ‘curtilage’ in the GPDO or in planning legislation but the parties agree that the ‘leading cases’ in terms of defining curtilage are *Dyer* and *Skerritts*. In *Dyer* the Court of Appeal held that in the absence of any statutory definition, the word ‘curtilage’ should connote a small area forming part and parcel with the house or building which it contained or to which it was attached. The judgment endorsed the definition in the Oxford English Dictionary which says “a small court, yard, garth, or piece of ground attached to a dwellinghouse, and forming one enclosure with it, or so regarded by law; the area attached to and containing a dwellinghouse and its outbuildings.” *Skerritts* refined the term so that smallness was not an essential characteristic and confirmed that the assessment of whether land fell within the curtilage of a building was a question of fact and degree.

It is considered that the outbuilding in its current location is likely, on the balance of probabilities, within the curtilage of the residential dwelling. The grounds around the house up to the woodland provides formal gardens, mown with a mix of herbaceous and fencing borders with no intervening uncultivated land or physical separation. Notwithstanding the above, the photographs taken on-site indicate a relatively recent alteration in the boundary treatment between the formal garden and the woodland.

The photographs taken on site show that the fence has been manipulated to the south east of the outbuilding to show a 2m spacing in order to comply with the height limitations within paragraph E.1(e) of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Whilst it is accepted that a residential curtilage, on a fact and degree basis, is malleable over time, the evidence gathered on site does not indicate that a sufficient amount of time has passed in order to assimilate the land to the south east of the shed into the residential curtilage.

By virtue of the proximity of the outbuilding to the boundary of the curtilage of the dwellinghouse, the outbuilding is limited in height by paragraph E.1(e)(ii) of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) to 2.5m in height. The outbuilding as measured from the highest ground level is approximately 3.8m

in height, thereby exceeding the limit in height imposed by the buildings proximity to the boundary of the curtilage of the dwellinghouse.

Reasons for Refusal:

1. The height of the building would exceed 2.5 metres in the case of a building within 2 metres of the boundary of the curtilage of the dwellinghouse. The building as it exists fails to comply with the height limitation contained within paragraph E.1(e)(ii) of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). No evidence has been put forth to suggest that the building has been in-situ for a period of time exceeding the time limit for enforcement action on operational development defined within section 171B of the Town and Country Planning Act 1990 (as amended). The Local Planning Authority are not satisfied that the operational development involved in the erection of the outbuilding would have been lawful at the time of application, and as such, the application should be refused.

REFUSED DRAWING NUMBERS

2.

Plan Number	Revision Number	Details	Received Date
732/SP5	A	Block Plan	24 April 2017
732/LP2	A	Location Plan	24 April 2017
PD10	A	Proposed Plans & Elevations	24 April 2017

Determined By:

Mr B Owusu
17 May 2017