

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

DELEGATED APPLICATION

Application No: 6/2018/0297/LAWP
Location: Manor Cottage Vineyards Road Northaw Potters Bar EN6 4PQ
Proposal: Certificate of lawfulness for the erection of two single storey side extensions and an outbuilding
Officer: Mr David Elmore

Recommendation: Refused

6/2018/0297/LAWP

Context	
Application Description	Certificate of Lawfulness for the erection of two single storey side extensions and an outbuilding.
Relevant planning History	<p>Application Number: 6/2017/2664/LAWP Decision: Refused Decision Date: 15 January 2018 Proposal: Certificate of Lawfulness for the erection of 2x single storey side extensions, erection of outbuilding and the installation of dormer window</p> <p>Application Number: 6/2017/2646/PN8 Decision: Prior Approval Refused Decision Date: 22 December 2017 Proposal: Prior approval for the erection of a single storey rear extension measuring 8m in depth, 2.8m in height and 2.541m to the eaves.</p> <p>Application Number: S6/2009/1131/FP Decision: Refused Decision Date: 04 September 2009 Proposal: ERECTION OF TWO STOREY SIDE EXTENSION AND NEW FRONT GABLE TO ROOF</p> <p>Application Number: E6/1969/0499/ Decision: Granted Decision Date: 27 March 1969 Proposal: Extension to bungalow.</p> <p>Application Number: E6/1968/0856/ Decision: Refused Decision Date: 13 June 1968 Proposal: Extension to form living room, 4 bedroom and bathroom.</p> <p>Application Number: E6/1957/1479/ Decision: Granted Decision Date: 23 January 1958 Proposal: Extension to bungalow.</p>

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) (England) Order 2015 as amended		
	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?		
Is it within a conservation area		
(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	Y	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
until 30th May 2019		
(g) is the development outside of article 2(3) land (conservation area) or outside of a site of special scientific interest	N/A	Y
(g) cont_ would it have a single storey (previous extensions to the rear need to be taken into account)	N/A	
(i) Would it extend beyond the rear wall of the original dwellinghouse by up to or the equivalent of 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse		
(ii) Be less than or equal to 4 metres in height	N/A	
Have any representations been received from adjoining premises	N/A	
(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 of the enlarged part would exceed 3 metres	N	N
(j) would the enlarged part of the dwellinghouse extend beyond a wall forming a	Y	N

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		
(ja) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j); <u>Reasoning:-</u> <i>The original dwellinghouse has been enlarged through a front extension, side extension and complete roof enlargement under planning permissions: E6/1957/1479/ & E6/1969/0499/.</i> <i>The proposed side extension (south-east flank) would join onto a non-original front extension and roof enlargement. As a result, the total enlargement would extend beyond a wall which forms the principal elevation of the original dwellinghouse, exceed 4 metres in height and have more than one storey. The proposed side extension (north-west flank) would join onto a non-original front and side extension and roof enlargement. As a result, the total enlargement would extend beyond a wall which forms the principal elevation of the original dwellinghouse, exceed 4 metres in height and have more than one storey. The proposed side extensions would fail to comply with Schedule 2, Part 1, Class A, A.1(e, j and ja) of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended.</i>	Y	N
(k) 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 (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;	N/A	Y
(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
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

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.

	Yes/No	To be PD
(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;	N	N
(f) the height of the eaves of the building would exceed 2.5 metres; <u>Reasoning:-</u> <i>The Government sought to provide clarity on matters relating to the interpretation of householder permitted development rights through the publication of Permitted development for householders: Technical Guidance; Department for Communities and Local Government (April 2014) (the Technical Guidance). Where there is a flat roof, the Technical Guidance states on page 12 that “eaves height is measured from the ground level at the base of the outside wall to the point where that wall would meet the upper surface of the flat roof...”</i> <i>In accordance with the Technical Guidance, the proposed outbuilding has an eaves height of 2.866m and exceeds this limitation. The proposed outbuilding is unlawful.</i> <i>The Technical Guidance is intended to provide consistency and to help those involved in the process understand permitted development rules. As Government guidance it is afforded significant weight. Thus, whilst individual builders or architects may have their own views of what constitutes the eaves height of a building it is considered that the advice in the Technical Guidance should be used for the purposes of determining eaves height in relation to the permitted development regime.</i>	Y	N
(g) the building, enclosure, pool or container would be situated within the	N/A	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/A	N

Whether the outbuilding is incidental to the enjoyment of the dwellinghouse?

There is no statutory definition of the word “incidental”. However, case law provides authority for how this should be interpreted by decision makers. In the leading case of Emin v SSE [1989] it was held that it was wrong to conclude 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. Nevertheless, the test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier: Wallington v SoS for Wales [1990]; Holding v FSS [2004]; Croydon LBC v Gladden [1994]. On the other hand, a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. These judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on the particular circumstances: Peche d’or Investments v SSE [1996].

The proposed outbuilding would be situated within the rear garden of the application site and measure 285sqm. It would accommodate a wine cellar, larder, shed and two storage areas. The existing dwelling has a footprint of 169sqm. This proposed outbuilding would therefore have a footprint over one and a half times the footprint (68% to be precise) of what is a large chalet-style bungalow which is substantial. Size alone is not necessarily a determining factor and a wide range of outbuildings, for different purposes may be permitted under Class E, depending on the specific circumstances. Those principles have been established through the Courts, including the cases of Emin and Wallington. The Courts have also established that the term ‘required’ should be interpreted as meaning ‘reasonably required’.

The shed and storage areas of this outbuilding are of an acceptable size to meet the reasonably required test. However, the sheer size of the proposed wine cellar and larder, at 52sqm and 53sqm respectively (measured as gross internal floor area), would be way in excess of what could be considered reasonably required as an incidental use for what is a 4-bedroom family house. Consequently, the proposed outbuilding would fail to accord with Schedule 2, Part 1, Class E of the 2015 GPDO.

Conclusion

The proposed side extensions would join onto existing enlargements of the original dwellinghouse, exceeding the limits set out in Schedule 2, Part 1, Class A, A.1, e, j and ja, of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended.

The proposed outbuilding, by virtue of the size of its wine cellar and larder, would not be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. Also, the height of the eaves of the proposed outbuilding exceeds 2.5 metres. This building would fail to accord with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended.

Reasons for Refusal:

1. The proposed side extensions would join onto existing enlargements of the original dwellinghouse, exceeding the limits set out in Schedule 2, Part 1, Class A, A.1, e, j and ja, of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended.

2. The proposed outbuilding, by virtue of the size of its wine cellar and larder, would not be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. Also, the height of the eaves of the proposed outbuilding exceeds 2.5 metres. This building would fail to accord with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended.

REFUSED DRAWING NUMBERS

3.

Plan Number	Revision Number	Details	Received Date
MC-R00-PR-100		Site Plan	30 January 2018
MC-R00-PR-101		Location Plan	30 January 2018
MC-R00-PR-103		Proposed Elevations	14 February 2018
MC-R00-PR-105		Proposed Outbuilding	14 February 2018
MC-R00-PR-102		Proposed Floor Plans	14 February 2018
MC-R00-PR-104		Proposed 3D Views	14 February 2018
MC-R00-EX-101		Existing Location Plan	30 January 2018
MC-R00-EX-103		Existing Elevations	30 January 2018
MC-R00-EX-102		Existing Floor Plans	30 January 2018
MC-R00-EX-104		Existing 3D Views	30 January 2018

Determined By:

Mr Bright Owusu
11 April 2018