

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

DELEGATED APPLICATION

Application No: 6/2018/1107/LAWP
Location: Manor Cottage Vineyards Road Northaw Potters Bar EN6 4PQ
Proposal: Certificate of lawfulness for the erection of side extension and outbuilding
Officer: Ms Lucy Hale

Recommendation: Refused

6/2018/1107/LAWP

Context	
Application Description	Certificate of Lawfulness for the erection of a single storey side extensions and an outbuilding.
Relevant planning History	<p>Application Number: 6/2018/0048/PN8 Decision: Prior Approval Required and Refused Decision Date: 15 February 2018 Proposal: Prior approval for the erection of a single storey rear extension measuring 8 in depth, 2.843m in height and 2.543m to the eaves</p> <p>Application Number: 6/2018/0297/LAWP Decision: Refused Decision Date: 11 April 2018 Proposal: Certificate of lawfulness for the erection of two single storey side extensions and an outbuilding</p> <p>Application Number: 6/2018/0713/PN8 Decision: Prior Approval Not Required Decision Date: 19 April 2018 Proposal: Prior approval for the erection of a single storey rear extension measuring 8m in depth, 2.441m in height and 2.280 to the eaves</p> <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</p>

<p>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>		
<p>The main issues are:</p> <p>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</p>		
	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
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	N/A	
(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 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 N	N
(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>Discussion</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 previous application under reference 6/2018/0297/LAWP was refused as a result of a proposed side extension which would adjoin onto the east side of the dwelling. This side extension has now been removed from the proposal.</i> <i>The proposed side extension to the west side of the extension would adjoin to an original side wall of the dwelling and therefore would not adjoin onto any existing enlargement and would not exceed the limits set out in sub-paragraphs (e) to (j);</i>	N	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	Y	Y

construction of the exterior of the existing dwellinghouse		
(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	N/A	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;	N 2.4M	N
(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;	N/A	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
<u>Whether the outbuilding is incidental to the enjoyment of the dwellinghouse?</u>		
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 <i>Emin v SSE</i> [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 application site consists of a detached chalet style bungalow on a large plot which according to the existing plans benefits from a detached garage to the front of the dwelling and detached double garage to the side. It is noted on the plans that one of these garages to the side of the dwelling would be removed.

The proposed outbuilding would be situated within the rear garden of the application site and would measure approximately 227 square metres. It would accommodate a wine cellar, larder, shed and two storage areas. The proposed shed would measure 7.2 metres by 11.9 metres internally, storage 1 would measure 9.3 metres by 3.4 metres and storage 2 would measure 9.3 metres by 3.1 metres. The proposed larder would measure 6.9 metres by 4.3 metres and the wine cellar would measure 6.9 metres by 3 metres.

The existing dwelling has a footprint of 169 square metres. The proposed outbuilding would have a larger footprint than the existing dwelling, over and above its size by 34%, and therefore, when compared to the existing dwelling, the outbuilding is considered to be significant in size. Size alone is not necessarily a determining factor, however, it is an important factor to take into account. 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'.

Whilst the proposed use of the outbuilding which includes a shed, storage area, wine cellar and larder, are considered to be uses that may be incidental to the main dwelling under Class E, the key test is whether the proposed outbuilding is reasonable for its intended purpose. The proposed size of the outbuilding is very large for its intended use and no details, other than an annotation on the drawing labelling the use of each room has been provided. Furthermore, no justification has been submitted to demonstrate why the building and proposed uses of that building, of such size, is required.

Without an explanation of the intended uses so as to make clear the justification of the size and scale of the building, it cannot be ascertained that the outbuilding is reasonably required for purposes incidental to the enjoyment of the dwelling. The proposed outbuilding therefore fails to accord with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Conclusion

The proposed side extension meets the criteria of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

The proposed outbuilding, by virtue of its size, would not be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. No justification has been submitted to demonstrate why a building of such size is required. This building therefore fails 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 outbuilding, by virtue of its size and failure to demonstrate why such size is required for the intended use, is not considered to be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse Accordingly, the Certificate of lawfulness fails to accord with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and is refused.

REFUSED DRAWING NUMBERS

2.

Plan Number	Revision Number	Details	Received Date
Mc R00 Ex 101		Location Plan	27 April 2018
Mc R00 Ex 102		Existing Plans	27 April 2018
Mc R00 Ex 104		Existing 3D Views	27 April 2018
Mc R00 Ex 103		Existing Elevations	27 April 2018
Mc R00-PR-102		Proposed Floor Plans	27 April 2018
Mc R00-PR-105		Outbuilding	27 April 2018
Mc R00-PR-103		Proposed Elevations	27 April 2018

Determined By:

Mr Mark Peacock
21 June 2018