

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

DELEGATED APPLICATION

Application No: 6/2018/1967/LAWP
Location: Manor Cottage Vineyards Road Northaw Potters Bar EN6 4PQ
Proposal: Certificate of lawfulness for erection of outbuilding
Officer: Ms Lucy Hale

Recommendation: Refused

6/2018/1967/LAWP

Context	
Application Description	Certificate of Lawfulness for the erection an outbuilding to accommodate an office/study, storage area, wine cellar and a stable.
Relevant planning History	<p>Application Number: 6/2018/1886/PA Decision: Refused Decision Date: 05 September 2018 Proposal: Pre application advice follow up from 17/2044/PA For the erection of a new house following demolition</p> <p>Application Number: 6/2018/1666/LAWP Decision: Granted Decision Date: 04 September 2018 Proposal: Erection of single storey side extension</p> <p>Application Number: 6/2018/1107/LAWP Decision: Refused Decision Date: 21 June 2018 Proposal: Certificate of lawfulness for the erection of side extension and outbuilding</p> <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 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>
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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
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	N – see below	Y
E. The provision within the curtilage of the dwellinghouse of—		
(a) any building or enclosure, swimming or other pool required for a purpose	N	N

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.		
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
(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

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 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 approximately 10 metres away from the application dwelling and would measure approximately 129 square metres. It should be noted that the application follows a previously refused application under

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

reference 6/2018/1107/LAWP which proposed a larger outbuilding of approximately 227 square metres and was refused permission and which proposed to accommodate a shed, storage, larder and wine cellar. This application follows two previous refusals under references: 6/2018/0297/LAWP and 6/2017/2664/LAWP.

The outbuilding would accommodate an office/study, storage area, wine cellar and a stable. The proposed office/study would measure approximately 9.3 metres by 3.4 metres, the storage area would measure 9 metres by 3 metres, the wine cellar would measure 6.9 metres by 3 metres and the stable would measure 6.9 metres by 4.4 metres.

The existing dwelling has a footprint of 169 square metres. The proposed outbuilding would have a footprint of approximately 129 metres, 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 uses of the outbuilding which includes an office/study, wine cellar and stable, 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 still 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, it is noted that the annotations for the intended uses of the outbuilding have changed from the previous applications submitted under references 6/2018/1107/LAWP, 6/2018/0297/LAWP and 6/2017/2664/LAWP. For example, an office/study has now been proposed as well as a stable. No justification has been submitted to demonstrate why the intended use are required, and of such size for an office or study is required. In regard to the stable, no details and justification have been submitted for its intended use. Furthermore, the elevations submitted do not translate the intended use of a stable by means of access and ventilation. Details have not been provided to outline why the size of the stable is required.

On the evidence available, the LPA is not satisfied as a matter of fact and degree that the totality of the proposed building is genuinely and reasonably 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. Furthermore, the introduction of alternative intended uses to that previously proposed in the last three applications, begs the question of the genuine need of the outbuilding for the site.

Accordingly, the proposed outbuilding 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.

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 or genuinely required for a purpose incidental to the enjoyment of the dwellinghouse. On the evidence available, 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	26 July 2018
	MC-R00-PR-105		Outbuilding	26 July 2018

Determined By:

Mr Jonathan Murray
5 October 2018