

**WELWYN HATFIELD BOROUGH COUNCIL
ASSISTANT DIRECTOR (PLANNING)**

DELEGATED APPLICATION

Application No: 6/2023/1497/LAWP
Location: Woodlands Well Road Northaw Potters Bar EN6 4BN
Proposal: Certificate of Lawfulness for the erection of side and rear extensions on the main dwelling and managers cottage
Officer: Ms Kirsty Shirley

Recommendation: Refused

6/2023/1497/LAWP

Context	
Application Description	Certificate of lawfulness for the erection of side and rear extensions on the main dwelling and Managers Cottage.
Relevant planning History	<p>Application Number: E6/1965/0426/ Decision: Granted Decision Date: 24 May 1965 Proposal: Site for church education dwelling.</p> <p>Application Number: E6/1965/0427/ Decision: Granted Decision Date: 24 May 1965 Proposal: Use of residence as annexe to seminary.</p> <p>Application Number: E6/1972/1456/ Decision: Granted Decision Date: 26 July 1973 Proposal: Site for church educational building.</p> <p>Application Number: S6/1974/0054/ Decision: Granted Decision Date: 14 February 1974 Proposal: Use of existing building as an annexe to a seminary</p> <p>Application Number: S6/1979/0778/ Decision: Granted Decision Date: 29 November 1979 Proposal: Extensions and alterations</p> <p>Application Number: S6/1981/0353/ Decision: Granted Decision Date: 08 June 1981 Proposal: Pool and ancillary accommodation</p> <p>Application Number: 6/2019/1972/FULL Decision: Granted Decision Date: 14 February 2020 Proposal: Retention of a driveway</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 – <u>Main Dwelling</u>		
	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, PA 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/A	N
(g) is the development outside of article 2(3) land (conservation area) or outside of a site of special scientific interest	Y	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	
(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 being enlarged which is opposite the rear wall of that dwellinghouse	Y	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	Y	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);	Y	
(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
(d) 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 (b) and (c).	N/A	
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	N	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	Y
(c) where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.	Y	Y

Discussion

Residential Curtilage

There is no dispute that the occupiers of the main dwelling have access to a large area of land. But whether or not the land is 'curtilage' is a matter of fact and degree. Included within in the red line on the site location plan are formal gardens, a walled garden, various terraces / patio areas, swimming pool, guest house, Manager's Cottage, a courtyard, areas of hardstanding, two separate driveways, an orchard, stables, a manège and part of field which could be a paddock or agricultural land. A large area of grassland, trees and a lake to the south of the main dwelling could be described as parkland. There is also clear physical division between various parts of the land such that it does not form a single enclosure with the main house.

There is no statutory or other definition of 'curtilage' in the GPDO or in planning legislation but the 'leading cases' in terms of defining curtilage are *Dyer*⁵ and *Skerritts*⁶. 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.

Based on the submitted evidence and the case officer's observations, it is considered that the application site does not in its entirety, as a matter of fact and degree, form residential curtilage.

Extensions

The main dwelling features curved projections within each elevation. These projections are considerable in size which allow for usable living space within the dwelling. While the Technical Guidance is only guidance, it makes it clear that any a wall forming a side elevation of a house will be any wall that cannot be identified as being a front or rear wall. Houses will often have more than two side elevation walls.

As a result of the east facing curved projection, the proposed east facing extension would infill an area between a side elevation and rear wall exceeding 4 metres in height and have more than a single storey, contrary to j (i) and (ii). The extensions on the north and south facing elevations would also exceed 4m in height and have more than a single storey, out of accordance with part j (i) and (ii).

Amendments to the Town and Country Planning (General Permitted Development) Order (GPDO) 2015 came into force on the 6th April 2017 and included an amendment to Part 1 Class A of Schedule 2. After paragraph A.1 (j), the following part has been inserted '*(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 paragraph (e) to (j)*'. Therefore, where a proposed extension would be joined to an existing extension, some limitations and conditions apply to only the proposed extension, whereas other limitations and conditions apply to the combined structure. The south facing extension would be adjoined to an existing single storey structure which leads to guest accommodation. The south facing extension adjoining this single storey structure would result in the south facing extension to have a width greater than half the dwelling of the house, contrary to part j (iii) and ja.

The submitted information does not demonstrate that the materials used in exterior work would be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse, out of accordance with part A.3 (a).

The submitted information does not demonstrate that the upper floor windows in the side elevation would be obscure-glazed and non-opening, out of accordance with part A.3 (b) (i) and (ii).

Conclusion

The proposed development at the main dwelling would be contrary to part A.1 j (i) (ii) and (iii), part ja and part A.3 (a) and (b) (i) and (ii) of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

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 – Managers Cottage**

Discussion

The proposal includes a two-storey side and rear extension for the Managers Cottage. The applicant states that the Managers Cottage is separate dwelling from the host dwelling.

The judge in *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207 found that a planning unit should be determined by identifying the unit of occupation and whether there is physical and/or functional separation of primary uses as a matter of fact and degree. Long standing case law, notably *Uttlesford D.C. v SSE & RJ White* 1992, has established that even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the host dwelling – it remains a matter of fact and degree.

Information available to the Council and from online sources demonstrates that the application site was sold in 2022, with the Managers Cottage included in the sale and described as having a service occupancy agreement with council tax not applicable. The Welwyn Hatfield Council Tax team have advised they have no records of the Managers Cottage registered as a separate dwelling paying council tax.

The Managers Cottage is located approximately 20 meters from the host dwelling and shares the same vehicular access, grounds and garden area with no separate delineation. The Managers Cottage therefore has a clear functional link with the host dwelling.

Information has not been submitted with this application to demonstrate whether the Managers Cottage ownership is not the same as the application site, nor has it been shown whether the Managers Cottage is currently occupied, and what the relationship of any occupiers is to the owner of the site. It has also not been established whether the Managers Cottage has a separate utility supply from the host dwelling.

A fact and degree judgement has to be made on the specific circumstances of each case. The key issue is whether the Managers Cottage is a separate planning unit. On the basis of information available, it is considered that the Managers Cottage is not a separate planning unit to the host dwelling. As such, the Managers Cottage does not benefit from the relevant 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.

Conclusion

The Managers Cottage does not benefit from the relevant permitted development rights of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Reasons for Refusal:

1. The proposed development at the main dwelling would be contrary to part A.1 j (i) (ii) and (iii), part ja and part A.3 (a) and (b) (i) and (ii) of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

2. The Managers Cottage does not benefit from the relevant permitted development rights of Schedule 2, Part 1, Class A 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
2755-0001	P3	Location plan	17 July 2023
2755-0002	P3	Site plan	17 July 2023
2755-1070	P1	Existing site plan	17 July 2023
2755-1072	P1	Proposed site plan	17 July 2023
2755-1076	P1	Existing plans and elevations main house	17 July 2023
2755-1078	P1	Existing plans managers cottage	17 July 2023
2755-1086	P1	Proposed main house	17 July 2023
2755-1088	P1	Proposed managers cottage	7 August 2023

Determined By:

Mr Mark Peacock
9 October 2023