



Supporting Statement

Certificate of Lawfulness
for Residential Outbuilding
AT
Winterbrook, West End Road,
Waltham St Lawrence, RG10 0NL

Reference:
W-2346-01

Date:
22 January 2023

1. Introduction

- a. This Supporting Statement has been prepared by Just Planning to support an application for a certificate of lawfulness to confirm that a new outbuilding, comprising a pool house and gym, is permitted development under Class E, Part 1, Schedule 2 of the General Permitted Development Order 2015, as amended.
- b. Following a description of the site and the application proposal, this report will consider the planning history and provide an assessment of the proposal against the criteria set out in Class E.
- c. It will be demonstrated that the outbuilding is reasonably required for uses incidental to the main use of the dwellinghouse and that a certificate should therefore be issued.

2. Site Description

- a. The application property is a substantial, detached house centrally sited on a large plot on the eastern side of West End Road. The site is roughly rectangular in shape. The house is accessed by a driveway with a turning circle to the front of the house and a couple of outbuildings to the southern side of the main building. The site is shown in the satellite image in figure 1, below.



Figure 1: Satellite image of the application site (boundaries shown approximately).

- b. The site is located in the green belt. The building is not listed and the site is not located in a designated conservation area.

3. Relevant Planning History & Application Proposal

- a. The house and existing outbuildings at the site were built following grants of planning permission under 17/03090/FULL and 18/00673. Permission was granted without a condition removing householder permitted development rights.
- b. In November 2023, the council refused to issue a certificate of lawfulness for the replacement of an existing outbuilding with a new structure containing a pool, gym and plant room (reference: 23/02064). The application was refused for the following reason:

The proposal fails to comply with criterion (e) of Class E of the General Permitted Development Order. The building of its proposed use and scale would not be incidental to the enjoyment of the dwellinghouse. The proposal therefore does not meet the criteria for permitted development under Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

- c. The case officer's report argued that the height of the building exceeded the limits in Class E and that the building was too large to be considered incidental to the main use of the house. It also argues that a shower room should not be considered an incidental use.
- d. The current submission revises the proposal by substantially reducing the floor area of the outbuilding. The submitted floorplans shows clearly how each part of the building will be used. The roof design is altered so that it has a single, dual-pitched roof with an eaves height of no more than 2.5m and a ridge height of no more than 4m. The shower room in the previous proposal is removed.

4. Assessment

- a. The application proposes the demolition of an existing outbuilding and its replacement with a new structure to provide an indoor pool, hot tub, gym and plant room. The layout of the building is shown on the submitted plans.
- b. The outbuilding is to be used by the appellant and his family for leisure purposes only.
- c. The proposed outbuilding complies with the requirements of Class E, Part 1, Schedule 2 of the General Permitted Development Order (GPDO) 2015, as follows:

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.

Development not permitted

E.1 Development is not permitted by Class E if—

- 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);

complies

- 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);


The appeal site is very large and the site coverage is therefore very substantially less than 50%.

- 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;

complies

- d) the building would have more than a single storey;

complies

- 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; 

complies

- f) the height of the eaves of the building would exceed 2.5 metres;

complies (the eaves height is 2.5m)

- g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;

complies

- h) it would include the construction or provision of a verandah, balcony or raised platform;

complies

- i) it relates to a dwelling or a microwave antenna; or

complies

- j) the capacity of the container would exceed 3,500 litres.

complies

E.2 In the case of any land within the curtilage of the dwellinghouse which is within—

- a) an area of outstanding natural beauty;
- b) the Broads;
- c) a National Park; or
- d) a World Heritage Site,

development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

Not relevant

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.

Not relevant

- d. The proposal therefore meets all of the various requirements of Class E, Schedule 2, Part 1 of the GPDO 2015 relating to height and site coverage. In particular, the council's concern in the previous application (23/02064) that the building was too high is resolved. The shower room shown in the previous application is also omitted.
- e. The council's main concern in respect of the previous application was whether the outbuilding was reasonably required for purposes incidental to the main use of the dwelling.
- f. It argued that the building previously proposed was "*very large ... and would measure 26m by 12m*". The current proposal is substantially smaller. In addition, the case officer's analysis did not take account of the existing building that is demolished to make way for the new structure – the net increase in site coverage is lower than the council suggested.
- g. The officer's report for that application identified *Emin v SSE and Mid Sussex DC* [1989] as the main case law in this area. The key conclusion in *Emin* is that the size of an outbuilding is not, in itself, conclusive in an assessment of whether an outbuilding is reasonably required.
- h. In this case, the outbuilding is proportionate to the very large site and substantial main house. It has a floor area much lower than the house. Site coverage remains very low. The floorplans show clearly how each part of the outbuilding will be used. For a house of this size, the provision of a pool, hot tub and home gym in an outbuilding is 'reasonable'.
- i. The floor area allocated for these uses is commensurate with the nature of the uses. The gym room accommodates four separate pieces of gym equipment

(not an excessive number for use by a family) and some floor area for stretching, yoga and similar activities. The pool is not, in fact, a full-sized pool, but a resistance swimming pool, designed for the very purpose of taking up less space. The hot tub is a standard size. The plant room is a small area and is required solely to serve the pool and hot tub.

- j. It would not be practical for a swimming pool, hot tub, home gym and plant room to be provided in a smaller space than that shown on the submitted plans.
- k. In a number of appeal decisions, inspectors have accepted appellants' arguments that a proposed outbuilding is intended for conventional domestic uses and is not oversized for those uses.
- l. In appeal decision APP/G5180/X/15/3011495, the inspector considered whether a pair of outbuildings (one a garage housing five motor vehicles, the other a games room, work room, store and utility room) with a footprint of 190sqm could be considered reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The inspector concluded that the appellant reasonably required the garage for the storage of his collection of cars and the other outbuilding was appropriate in the context of the needs of the family. He opined:

"...it is primarily for the occupier of the dwellinghouse to determine what incidental uses he wishes to enjoy subject to the test of objective reasonableness. In this instance, the main dwelling is large, it is set within a large plot and, for the reasons mentioned, I find it reasonable that the appellant wishes to provide a separate building for recreational and other uses associated with the use of the main property as a dwellinghouse. I am, therefore, satisfied that the appellant has proven on the balance of probabilities that the games room and other rooms within this second building are required for a purpose incidental to the enjoyment of the dwellinghouse as such."

- m. In a similar appeal (reference: APP/H4505/X/14/3001056), an inspector considered the case for a 200sqm outbuilding to house a lobby, plant/store room, shower/changing room and a swimming pool. Though the outbuilding would be 183% larger in footprint than the main dwelling, the inspector concluded that *"the building is not overlarge for its intended purpose"*, and would represent *"only 10% of the curtilage of dwellinghouse"*. In any case, he decided:

"...the size of the proposed building is an important consideration but is not by itself conclusive."

- n. In appeal reference APP/P5870/X/14/2227399, an inspector issued a certificate for an outbuilding for use as a double garage, garden store and swimming pool with shower and changing rooms. The inspector noted:

"The size of the outbuilding in relation to that of the dwellinghouse is an important consideration in this regard but is not by itself conclusive. The Court held that the term 'incidental to the enjoyment of the dwellinghouse as such' should not be interpreted on the unrestrained whim of the householder but connotes some sense of reasonableness in the circumstances of the particular case. The judgment also makes clear that the appropriate question to be asked is '...whether the proposed buildings are genuinely and reasonably required or necessary in order to accommodate the proposed use or purpose and thus achieve that (incidental) purpose'. This general principle was reiterated in LB Croydon v Gladden [1994] 1 PLR 2."

- o. He went on to say:

"I am satisfied that, in principle, facilities such as a double garage, garden store and swimming pool with shower and changing rooms may be regarded as reasonably required for incidental purposes. All are facilities that residential occupiers might reasonably aspire to in seeking to improve their quality of life. Nor is it unreasonable to assume that such facilities would be genuinely incidental to the domestic enjoyment of the property by future occupiers as well as the Appellants."

- p. Commenting specifically on the Council's concerns in relation to the size of the building:

"Moreover, I do not find a disparity between the size of the envisaged outbuilding, the scale of the proposed facilities and the contention that it would be put to purposes incidental to the enjoyment of the dwellinghouse. Having been extended, the property is now very substantial and capable of accommodating a large family. The outbuilding would be set a considerable distance from the main dwelling, albeit still within the residential curtilage and, unquestionably, would be subordinate to it in terms of volume. The fact that its footprint would be about 45% larger than the cumulative area covered by the structures that are proposed to be, or have already been, demolished does not of itself signal that its use could not be required for genuinely 'incidental' purposes."

It is unclear why the Council has drawn comparison between the sizes of the proposed outbuilding and the original dwelling. The fact that the latter has a footprint smaller than that of the

proposal has very little relevance to my assessment, which must be made in relation to the dwelling as it stood on¹⁷_{SEP}23 July 2014. In any event, relative floor areas must also be taken into account. In doing so, it must be borne in mind that the dwelling comprises two storeys. Having regard to Wallington v SSW [1991] 1 PLR 87, the proposed facilities would not, in my assessment, exceed what might reasonably be required by a single household occupying a property of this size."

- q. In September 2017, an inspector granted a certificate at 52 Harlington Road in the London Borough of Hillingdon (reference: APP/R5510/C/17/3170575). The inspector observed that *"the proposed outbuilding would have a footprint larger than the footprint of the main dwelling"* and that the appellant proposed the building to be divided in 4 and be used for *"home working, fitness equipment and cake decoration and storage"*. The inspector reasoned as follows:

"It is primarily for an occupier of a dwellinghouse to determine what incidental uses he/she wishes to enjoy subject to the objective test of reasonableness. In this case I am satisfied that the Appellant has provided adequate explanation for the proposed uses and that those uses may be regarded as reasonably required for incidental purposes. I have taken into account the relatively large size of the proposed outbuilding compared to the main dwelling but this factor is not determinative. On the particular facts of this case the size of the proposed outbuilding and layout comprising four partitioned rooms does not of itself suggest that use would not be required for genuinely incidental purposes."

- r. In a pair of appeals at 20 The Avenue, in Woking, decided in August 2023, an inspector issued certificates of lawfulness for outbuildings containing a gym, home office, WC and play room (references: APP/D3640/X/22/3293629 and APP/D3640/X/22/3293630).
- s. In the decisions, the inspector pointed out the conclusion in Emin that the size of outbuildings is not conclusive and that the outbuildings would take up a small proportion of a large garden. He concluded that the proposed uses, including the WC, were incidental to the main use of the house and that the size of each room or space was *"proportionate for their intended purpose, without being excessive"*.
- t. In September 2023, an inspector allowed an appeal for an outbuilding with a floor area of 180sqm to house a gym and games room (on its own 81sqm), a garage, a large store room, a sauna and steam room and a shower room with

WC (reference: APP/A5270/X/22/3304371). In the decision, the inspector said that:

"Although the proposed outbuilding would have a large footprint, it would be single storey, and its overall floor area would be significantly less than that of the existing dwelling. Furthermore, when taking the footprint of the proposed outbuilding into consideration with the area covered by the dwelling's existing rear extension, garage and greenhouse, those developments would occupy only just over a quarter of the original garden/open space around the dwelling. I therefore consider that the outbuilding would be physically and visually subordinate to the existing dwelling."

- u. In the cases quoted above, the outbuildings were much larger the current proposal, both in absolute terms and relative to the host dwellings. They generally sought permission for several different uses in a single building. They included hobbies such as cake decorating and sculpture, leisure purposes like gyms and other appropriate activities likes offices for home working. In most of the cases they included WCs and shower rooms. The applicant considers the current proposal to be much more modest in scale.
- v. The appendices to this statement contain a copy of each of the appeal decisions mentioned above.



5. Conclusions

- a. The appellant wishes to demolish an existing outbuilding in his garden and replace it with a larger structure housing a gym, pool, hot tub and plant room.
- b. All of these uses are incidental to the use of the main house.
- c. In refusing a previous application, the council argued that the areas proposed exceed what is reasonably required by the appellant and his family.
- d. This revised proposal reduces the size of the outbuilding and makes clear how each part of it will be used. The gym is relatively small, housing just four pieces of equipment and a small area of floorspace. The pool is not full sized and the hot tub is a standard size. The plant room is small.
- e. The outbuilding is low in height, with an eaves height of just 2.5m. The outbuilding is proportionate to the substantial main house on the site and its very large garden.
- f. The case law in *Emin* establishes that the size of an outbuilding is not the key determining factor. The overwhelming weight of appeal decisions that explore this issue have concluded that large outbuildings are acceptable where they are of a scale commensurate with their site and where the intended purposes of the additional space is clearly indicated.
- g. For these reasons, the appellant respectfully requests that the application be approved and a certificate of lawfulness be issued.



Just Planning Limited
Tel: 020 3488 1525
Email: info@just-planning.co.uk

Just Planning HQ
42 Hampstead House
176 Finchley Road
London NW3 6BD

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