

OFFICER DELEGATED REPORT

Reference No.: 23/03120 **Cert of Lawfulness of Proposed Dev**
Proposal: Certificate of lawfulness to determine whether the proposed single storey detached garage is lawful.
Location: Bath Cottage Bath Road Littlewick Green Maidenhead SL6 3QR
Applicant: Mr And Mrs Werakso
Agent: Mrs Bronwen Gombert
Date Received: 15 December 2023
Case Officer: Aneesah Iftikhar
Recommendation: Refuse
Parish/Ward: White Waltham Parish Hurley And Walthams

SUMMARY REPORT ON APPLICATION

1.0 INTRODUCTION

- 1.1 This application is of a nature where the Council's Constitution delegates the authority to make the decision to the Head of Planning rather than it being determined by a Panel of Councillors.
- 1.2 By indicating that the development proposal complies with the relevant provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), the planning officer is taking into account the information submitted with the application and any previous relevant applications.
- 1.3 The property's permitted development rights are intact and there are no restrictive conditions or outstanding Enforcement notices covering the property.
- 1.4 No neighbours were consulted as the application is for a Certificate of Lawfulness of a proposed development the determination of which is based only on the legal issues involved and is not a discretionary matter.

2.0 SUMMARY OF MAIN ISSUES

This application is for a Certificate of Lawfulness for a proposed development. This decision is based only on legal issues involved and is not a discretionary matter. As such Local Plan Policies are not relevant for this application with the determination made in relation to the relevant provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which can be viewed below.

Does the site benefit from permitted development rights: Yes

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);

Permission to use the dwellinghouse as a dwellinghouse has not been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use). **The proposal 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 total area of ground covered by buildings within the curtilage of the dwellinghouse will not exceed 50%. **The proposal complies.**

- (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;

No 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. **The proposal complies.**

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

The building will not have more than one storey. **The proposal 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;

The building would **not** be within 2m of the boundary of the curtilage of the dwelling house, and the height of the building would not exceed 4m (dual pitched). **The proposal complies.**

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

The height of the eaves of the building **would** exceed 2.5 metres (approx. 2.67m). According to the 'Permitted development rights for householders technical guidance', eaves height is measured from ground level at the base of the outside wall to the point where that wall would meet the upper surface of the roof slope. **The proposal fails to comply.**

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

The building, enclosure or container would **not** be situated within the curtilage of a listed building. **The proposal complies.**

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

The proposal does **not** consist of or include the construction or provision of a verandah, balcony or raised platform. **The proposal complies.**

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

The building does not relate to the dwelling.

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

N/A

Condition 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.

The proposal is not within the curtilage of any land which is within (a), (b), (c) or (d). **The proposal complies.**

Condition 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.

The land is not article 2(3) land. **The proposal complies.**

Interpretation of Class E

Condition E.4

Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 relates to 'The provision within the curtilage of the dwellinghouse of 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'.

For the purposes of Class E, "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.

Consideration of what is 'incidental to the enjoyment of the dwellinghouse' raises two questions: is the purpose of the proposed outbuilding incidental to the enjoyment of the dwellinghouse as such and, if so, is the proposed outbuilding reasonably required for that purpose.

Previous Court decisions have held that the term 'incidental to the enjoyment of the dwellinghouse' should not rest solely upon the unrestrained whim of the householder and that there should be some connotation of reasonableness in the circumstances of each case.

In terms of whether an outbuilding of the size proposed is reasonably necessary for the stated purpose, the outbuilding would measure approximately 10.14 metres by approximately 3.94 metres, which gives circa 39.9 square metres of internal floorspace for a garage. The size of the proposed outbuilding is not considered subordinate in relation to the footprint of the dwellinghouse and cannot be justified as reasonably required for the use proposed. The building would fail to be incidental to the enjoyment of the dwellinghouse by virtue of the size (in particular excessive depth) and use of the proposed outbuilding.

For an outbuilding to be permitted development under Class E, it must be demonstrated that the proposed outbuilding is proposed to be used and be reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The term incidental suggests an element of subordination to the primary planning unit, in this instance, the dwellinghouse. Given the size and use of the building, it is not considered that a proposed

outbuilding of this size would be reasonably required for the purposes incidental to the enjoyment of the dwellinghouse.

3.0 COMMENTS FROM INTERESTED PARTIES

No neighbours were consulted as the application is for a Certificate of Lawfulness of a proposed, rather than an existing, development the determination of which is based only on the legal issues involved and is not a discretionary matter.

4.0 RECOMMENDATION

- 4.1 The proposal is not automatically granted planning permission under Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The proposed eaves height of the building would exceed 2.5 metres and would therefore fail to comply with paragraph (f).
- 4.2 By virtue of its overall proposed size, the outbuilding is not considered to be reasonably required for the purpose(s) of being incidental to the enjoyment of the dwelling house. The proposed size of the building would be larger than would be reasonably required to serve the dwellinghouse for any incidental purposes. As such it would not be permitted development by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Planning permission is therefore required.

Refuse Certificate of Lawfulness

Reasons

- 1 The proposal is not automatically granted planning permission under Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The proposal fails to comply with paragraph (f) as the proposed outbuilding would have an eaves height which exceeds 2.5 metres. Planning permission is therefore required.
- 2 By virtue of its overall proposed size, the outbuilding is not considered to be reasonably required for the purpose(s) of being incidental to the enjoyment of the dwelling house. The proposed size of the building would be larger than would be reasonably required to serve the dwellinghouse for any incidental purposes. As such it would not be permitted development by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Planning permission is therefore required.