

Officer's Report

Application Number	HGY/2022/2719
Type	Lawful development: Proposed use
Location	2, Woodside Avenue, London, N6 4SS
Proposal	Certificate of lawfulness for the demolition of existing garage, erection of detached outbuilding for incidental use as a double garage, home office and gym, and associated alterations to boundary enclosure and garage access on Lanchester Road.
Case Officer	Sarah Madondo
Valid Date	06/10/2022
Applicant	Ms Sonia Farhadi
Agent	Mr Christopher Wickham

RECOMMENDATION

Refuse

PLANNING HISTORY

The planning history of the site has been taken into account when coming to this decision.

CONSULTATION RESPONSE

This application is a Certificate of Lawfulness and therefore there is no requirement for neighbouring properties to be consulted on this application. Officer note that objections have been received from:

The Highgate Society
9 Lanchester Road N6
7 Lanchester Road N6
11 Lanchester Road N6

RELEVANT PLANNING LEGISLATION

The application has been made under section 192 of the Town and Country Planning Act 1990 and relevant amendments. This not a planning application but instead the applicant seeks confirmation that the proposed development is lawful. As such, the impact of the proposed development of the neighbour's amenities or the character of the area cannot be taken into consideration for this submission.

ANALYSIS/ASSESSMENT OF THE APPLICATION

PART 1: Compliance with criteria/ requirements outlined in legislation

Class E – buildings etc incidental to the enjoyment of a dwellinghouse

A Certificate of Lawfulness for 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 or a container used for domestic heating purposes for the storage of oil or liquid petroleum gas can be issued if the proposal meets all the criteria under The Town and Country

Planning (Generally Permitted Development) (Amendment) (No.2) (England) Order 2015 – Part 1, Class E 'buildings etc incidental to the enjoyment of a dwellinghouse'.

The current proposal will be assessed against these requirements as follows -

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)

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

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

(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;

N/A

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

N/A

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.

Complies

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.

Complies

PART 2: Is the space required for a purpose incidental to the enjoyment of the dwellinghouse

In considering this application the LPA equally need to consider whether the space proposed is genuinely incidental to the enjoyment of the dwellinghouse. There is no statutory definition of “incidental” in the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), rather Case law provides guidance on how decision-makers should make such judgements.

In terms of relevant case law, the Courts in *Emin v Secretary of State for the Environment and Mid-Sussex County Council*, QBD, 1989, 58 P&CR have held that the term ‘incidental’ connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling itself. The test to be applied is whether, in the context of the planning unit, “the uses of the proposed buildings are intended and would remain incidental or subordinate to the main use of the building as a dwellinghouse.” In taking that approach, regard is to be had to the proposed uses and to the nature and scale of such uses. The physical size of the building in comparison to the dwellinghouse might be part of that assessment, but is not by itself conclusive.

As such in this case, Officers have to consider whether as a matter of fact and degree and taking account of the specific circumstances and information provided by the applicant, as to whether it has been demonstrated that the floorspace attributed to the proposed building is genuinely and reasonably required or necessary. The relevance of size lies in that it indicates the scale of activities with such a building would generate and whether they would be subordinate to the main dwellinghouse. It is noted the proposed outbuilding would have a footprint of approximately 78 sq.m, occupying a large area of the rear garden and diminishing its size.

Taking account of the surrounding pattern of development, the size of the original house on this plot as well as the sizeable extensions already carried out to this property, which it is noted already provides space for incidental uses – i.e., a home office and pool room, it is brought into question as to whether the provision of further extensive space in the form of a gym, home office and a double garage are genuinely required.

Such a gym and office individually and collectively amount to a sizeable amount of space. It is questioned as to whether such space/ uses, or in part, could not be reasonably be accommodated within the main house. With ample space to park cars in the forecourt area to this property it is also questioned as to whether the need for a double garage is genuinely required.

The need for such incidental accommodation is also further brought into question as it is noted that the same applicant through the submission of an application for planning permission (Ref: HGY/2020/0673), sought to develop the land to the rear of this site in 2020, by way of demolishing the existing garage and erected a new single storey dwelling with basement. While it is accepted the merits of this case are a separate matter, the position/ intention of previously seeking to dispose of part of the site and now wanting to build a very large structure for incidental uses is contradictory.

Conclusion

In conclusion, having regard to the above and to all other matters raised, it is considered that the applicant has not produced evidence to justify that on the balance of probabilities, the proposed building is reasonably required for purposes incidental to the enjoyment of this dwellinghouse. The

proposed development is there considered to not be permitted development under Class E, but rather requires planning consent.

Refusal Reasons:

In pursuance of their powers under the above Acts and Order the London Borough of Haringey as local planning Authority hereby CERTIFY that the above proposal described by the applicant does not constitute PERMITTED DEVELOPMENT and is therefore UNLAWFUL. This is because on balance of probabilities the intended outbuilding and the facilities within it are of such a scale in comparison with the current dwellinghouse, as already significantly extended, to be viewed to be required for incidental purposes and as such do not fall within the parameters of Class E of Part 1 of Schedule 2 to the GPDO.