



Officer Report

Application Number:	HGY/2023/2256
Application Type:	Lawful development: Proposed use
Address:	45 Cholmeley Crescent, Hornsey, London, N6 5EX
Proposal:	Certificate of lawfulness for the proposed erection of an outbuilding in the rear garden.
Case Officer:	Cameron Sturges
Valid Date:	18/08/2023
Applicant:	Mr & Mrs Dmitry and Marina Podpolny
Agent:	Mr David Rieser

RECOMMENDATION

Refuse

1. DETAILS OF PROPOSAL

This application seeks a lawful development certificate for the erection of an outbuilding to be used for purposes incidental to the enjoyment of the dwellinghouse. The outbuilding is described as being proposed for a yoga room and home office.

2. PLANNING HISTORY

No relevant planning history is available for this site.

3. 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.

4. ANALYSIS/ASSESSMENT OF THE APPLICATION

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 not been granted only by virtue of Class G, M, MA, N, P, PA 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 not 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 not be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

Complies.

(d) the building would not have more than a single storey;

Complies.

(e) the height of the building, enclosure or container would not 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.

As confirmed in the Ministry of Housing, Communities and Local Government's Technical Guidance on permitted development rights for householders (September 2019), if any part of the building, container or enclosure is within 2 metres of the boundary of the curtilage of the house, then the height limit for the total development is restricted to 2.5 metres if it is to be permitted development. The same technical guidance states that references to height in Part 1, of Schedule 2 of the Town and Country Planning (Generally Permitted Development) (England) Order 2015, (for example, the heights of the eaves on a house extension) is the height measured from ground level. Ground level is the surface of the ground immediately adjacent to the building in question. Where ground level is not uniform (e.g. if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.

(f) the height of the eaves of the building would not exceed 2.5 metres;

Complies.

(g) the building, enclosure, pool or container would not be situated within the curtilage of a listed building;

Complies.

(h) it would not include the construction or provision of a verandah, balcony or raised platform;

Complies.

(i) it does not relate to a dwelling or a microwave antenna;

Complies.

j) the capacity of the container would not exceed 3,500 litres.;

Complies.

(k) the dwellinghouse was not built under Part 20 of this Schedule (construction of new dwellinghouses).

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.

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.

Interpretation of Class E - E.4. 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.

N/A

5.SUMMARY AND CONCLUSION:

While the LPA accept the legislation as outlined above makes for the provision within the curtilage of the dwellinghouse for “a 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” thereafter, in this instance given the specific nature of the site it is considered necessary to assess as to whether any engineering works required to enable such a structure to be build would be permitted under Class E.

It is accepted that this legislation is silent on this issue however, in light of the *Eatherley v Camden LBC & Ireland* [2016] EWHC 3108 (Admin) it is reasonable to consider engineering works required to enable a development to be constructed and whether they are ‘permitted development’.

In this instance given the significant incline/ differences in levels in the area of the rear garden in question the associated site levelling/ building up, building of retaining walls and necessary party wall agreements with neighbouring properties etc; these constitute significant works needed to support and enable the building of such a structure. Such works are viewed to be different in character from the typical building of a garden structure incidental to the enjoyment of a dwellinghouse as intended/ permitted by the legislation.

As such for the purpose of delivering such an outbuilding there are two activities and not one. In this instance the necessary engineering operations constitute a separate activity of substance as a matter of fact and degree which are not conferred/ permitted by Part 1, Class E of the Town and Country Planning (General Permitted Development) (Amendment)(England) Order 2015.

The proposed development therefore does not constitute permitted development by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 and requires planning permission.

6. CIL

The increase in internal floor area would not exceed 100sqm and therefore the proposal is not liable for the Major's CIL charge.

7. RECOMMENDATION

Refuse Certificate for the following reason(s):

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 the necessary engineering operations required to enable the development constitute a separate activity of substance which are not conferred/ permitted by Part 1, Class E of the Town and Country Planning (General Permitted Development) (Amendment)(England) Order 2015 and rather constitute development and require planning permission.