



Officer Report

Application Number: HGY/2026/1556
Application Type: Lawful development: Proposed use
Address: 170 Westbury Avenue, Wood Green, London, N22 6RU
Proposal: Certificate of lawfulness for proposed use: Erection of single storey garden room outbuilding in the rear garden.
Case Officer: Daniel Boama
Valid Date: 23/06/2026
Applicant: Mr Gawain Ng
Agent: Mr Godson Egbo

RECOMMENDATION

Refuse

1. PLANNING HISTORY

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

HGY/2018/2979 - Proposal: Certificate of lawfulness for the formation of rear dormer extension, hip-to-gable roof alteration and insertion of 2 x rooflights to the front roofslope, including a single storey side extension - Decision Date: 11 October 2018 - Decision: Permitted Development

HGY/2019/0653 - Proposal: Certificate of lawfulness for the erection of a front porch. - Decision Date: 8 March 2019 - Decision: Permitted Development

HGY/2023/0418 - Proposal: Certificate of lawfulness for proposed rear dormer extension, hip-to-gable roof alteration and insertion of 2 x rooflights to the front roofslope, including a single storey side extension (similar to approved HGY/2018/2979). - Decision Date: 24 March 2023 - Decision: Permitted Development

2. 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.

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)

Existing floor area (not including the existing outbuilding to be demolished) = 112.6 sqm

Proposed floor area of outbuilding:

Outbuilding floor area

$8.60 \times 4.09 = 35.17$

$7.49 - 4.09 = 3.40$

$3.40 \times 4.368 = 14.86$

$35.17 + 14.86 = 50.03 \text{ sqm}$

$(50.03/112.6) \times 100 = 44.4 \%$

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

The building would be in the rear garden.

Complies

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

The building would be 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;

The building would be 2.5 metres in height with a flat roof.

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

(l) 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 Local Planning Authority must consider whether the space proposed is genuinely incidental to the enjoyment of the dwellinghouse. There is no statutory definition of "incidental" within the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPD0). Instead, relevant case law provides guidance on how such judgements should be made.

In *Emin v Secretary of State for the Environment and Mid Sussex District Council* (1989), the Courts held that the term "incidental" connotes an element of subordination in land-use terms in relation to the enjoyment of the dwelling itself. The relevant test is whether, in the context of the planning unit, the uses of the proposed building are intended to remain incidental or subordinate to the primary residential use of the dwellinghouse. In applying this test, regard must be had to the proposed use, the nature and scale of the accommodation proposed, and the relationship between the outbuilding and the host dwelling.

In this case, officers must consider, as a matter of fact and degree, whether it has been demonstrated that the extent of floorspace proposed is genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The relevance of size lies not solely in the physical dimensions of the building itself, but in what that size indicates about the scale and intensity of activities it would accommodate and whether those activities would remain subordinate to the main dwelling.

It is noted that the proposed outbuilding would have a footprint of approximately 50.03 sq.m, occupying a significant proportion of the rear garden. While size alone is not determinative, the circumstances of the host dwelling are highly relevant. The application property is not an original family house of the street but a small two-bedroom residential unit created through the vertical subdivision of No. 172, including the conversion of former garage space to form part of the residential accommodation. Consequently, the unit provides a substantially smaller quantum of accommodation than the original housing stock within the locality.

Given the modest scale of the dwellinghouse, officers consider it difficult to conclude that a detached outbuilding of approximately 50 sq.m is reasonably required for purposes that are genuinely incidental to the enjoyment of the dwelling. The proposed outbuilding would provide an amount of floorspace which is significant when considered against the size of the host unit and would represent accommodation approaching the scale of the dwelling itself. In these circumstances, it is not considered credible that a building of this size would function solely in a subordinate and ancillary manner to the residential use of such a small dwellinghouse.

Furthermore, the proposed floorspace is capable of accommodating a level of activity and occupation considerably in excess of what would ordinarily be expected from accommodation that is merely incidental to the enjoyment of a dwelling of this size. The building could accommodate a wide range of activities and would provide a quantum of floorspace comparable to that required for independent residential accommodation under current national space standards.

Taking all of the above into account, and having regard to the specific characteristics of the planning unit, officers are not satisfied that the applicant has demonstrated on the balance of probabilities that the proposed building is genuinely incidental or subordinate to the enjoyment of the dwellinghouse. Accordingly, the proposal fails the incidental use test required under Class E of Part 1 of Schedule 2 of the GPDO.

Conclusion

In conclusion, whilst the proposed development complies with the dimensional limitations set out under Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, compliance with those physical limitations alone does not establish lawfulness.

Having regard to the size of the proposed outbuilding, the modest scale of the host dwelling, and the fact that the property comprises a small two-bedroom unit formed through the subdivision of the original dwelling at No. 172, officers are not satisfied that the proposed building would be genuinely incidental or subordinate to the enjoyment of the dwellinghouse. The applicant has failed to demonstrate, on the balance of probabilities, that the extent of accommodation proposed is reasonably required for incidental purposes.

It is therefore considered that the proposal would not benefit from permitted development rights under Class E of the GPDO and would require express planning permission.

3. RECOMMENDATION:

Refuse the application for a Certificate of Lawful Proposed Use or Development.

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 the balance of probabilities, the proposed outbuilding is of such a scale relative to the host dwellinghouse, a small two-bedroom unit formed through the subdivision of No. 172, that it cannot reasonably be regarded as required for purposes incidental to the enjoyment of the dwellinghouse. The proposal therefore fails to satisfy the requirements of Class E of Part 1 of Schedule 2 of the GPDO.

