



Officer Report

Application Number:	HGY/2023/0818
Application Type:	Lawful development: Proposed use
Address:	10 Grange Road, Hornsey, London, N6 4AP
Proposal:	Certificate of lawfulness for the erection of a single storey outbuilding in the rear garden for use as a storage space- proposed use
Case Officer:	Mercy Oruwari
Valid Date:	23/03/2023
Applicant:	Mr Stephen Mac Cabe
Agent:	Ms Niamh Bruen Lynagh

RECOMMENDATION

Refuse

1. DETAILS OF PROPOSAL

This application seeks a lawful development certificate for the erection of an additional outbuilding to be used for purposes incidental to the enjoyment of the dwellinghouse. As submitted the proposed use was for storage space. The use as amended is now described as a space to be used as a gym.

2. PLANNING HISTORY

- HGY/2019/2435 - Certificate of lawfulness for existing use of rear garden building as a self-contained residential unit Withdrawn
- UNW/2019/00658 – Unauthorised developments – Case closed as Appeal dismissed and Enforcement Notice upheld
- HGY/2018/3101 - Certificate of lawfulness for the retention of the refurbishment works to the property involving alterations to the front and rear elevations and garage Permission not required
- HGY/2018/1947 - Construction of a single storey rear extension, following the demolition of an existing rear projection. Re-build of boundary timber privacy screen. Approved with conditions
- HGY/2014/3115 - Improve an existing Tree House, by reducing its size, design and material used Withdrawn
- HGY/2014/1326 - Improvement to an existing tree house Withdrawn
- HGY/2009/0608 - Approval of Details pursuant to Condition 3 (foundations) and 4 (planting of trees and/or shrubs) attached to planning reference HGY/2006/2140 Not Determined
- UNW/2009/00858 – Unauthorised large structure in the garden - Case closed as no breach
- HGY/2008/1278 - Erection of single storey rear extension. Withdrawn
- HGY/2006/2140 - Construction of single storey summer house in rear garden. Granted
- HGY/2006/1262 - Construction of single storey summer house in rear garden. Refused

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

PART 1: Compliance with the 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 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.

(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

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

In considering this application, the Local Planning Authority (LPA) must equally assess whether the space proposed is genuinely incidental to the enjoyment of the dwellinghouse. Although the term has been interpreted above, there is no statutory definition of "incidental" in the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Instead, case law provides guidance on how decision-makers should make such judgments.

Regarding relevant case law, the courts in *Emin v Secretary of State for the Environment and Mid-Sussex County Council*, QBD, 1989, held that the term "incidental" connotes an element of subordination in land use terms, relative 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 to and would remain incidental or subordinate to the main use of the building as a dwellinghouse." In applying this approach, regard should be given to the proposed uses and the nature and scale of such uses. While the physical size of the building in comparison to the dwellinghouse might form part of that assessment, it is not, by itself, conclusive.

In this case, Officers must consider whether, as a matter of fact and degree, and taking into account the specific circumstances and information provided by the applicant, 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 the indication it provides of the scale of activities the building would generate, and whether those activities would be subordinate to the main dwellinghouse. It is noted that the proposed outbuilding would have a footprint of approximately 29 sq.m. Along with the existing 22 sq.m summerhouse and smaller sheds, it is considered that collectively these represent a significant amount of supposed "incidental space" relative to the current dwellinghouse.

In this case, the proposed building would accommodate a number of large pieces of gym equipment, as well as a large WC and extensive storage areas. While the LPA accepts that a home gym is a common aspiration and often constitutes an "incidental use" achievable under Class E, consideration of the collective scale of the outbuildings needs to be given particular attention. This is also especially relevant given that the site is located within a conservation area, where there is a statutory duty to protect its character, and that the site contains several mature and/or protected trees.

Considering the size of the house on this plot as extended (27.7 sq.m), as well as the presence of an existing reasonably sized outbuilding, it is questionable whether the provision of further extensive space, in the form of a gym of the size proposed, is genuinely required.

When taking into account the collective space of the outbuildings, which exceeds that of a typical one-bedroom/two-person accommodation unit, and the ongoing costs of heating and maintaining such space, it may be more rational to consider a smaller structure. For instance, a gym structure half the size of the proposed building could fulfil the applicant's aspirations, with the existing outbuilding already providing adequate storage space. On the point of reducing the size of this structure the applicant was advised of this and given the opportunity to submit amended plans.

The need for such extensive incidental accommodation is further questioned in light of the fact that the same applicant recently had an enforcement notice upheld for the conversion of an outbuilding into residential accommodation (Ref: UNW/2019/00658). While it is accepted that the merits of that case are a separate matter, the applicant's previous unauthorised works and their current proposal to build a very large structure for incidental use in the form of a home gym appear inconsistent. As such, the LPA must reasonably question the merits of this case so as to ensure appropriate decision making and to uphold public confidence in both the planning and enforcement systems.

5. SUMMARY AND 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 scale and size of the proposed building is reasonably required for purposes incidental to the enjoyment of this dwellinghouse.

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):

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 extended, and current outbuilding 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.

Refusal Reasons:

Reason for refusal

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 extended, and current outbuilding 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.