

DELEGATED DECISION

- Please select each of the categories that enables this application to be determined under delegated powers
 - Criteria 1 to 5 or criteria 7 to 9 must be addressed for all categories of application, except for applications for Certificates of Lawfulness, etc.

APPROVAL RECOMMENDED: GENERAL

Select Option

- | | |
|--|--------------------------|
| 1. No valid planning application objection in the form of a petition of 20 or more signatures, has been received | ☐ |
| 2. Application complies with all relevant planning policies and is acceptable on planning grounds | ☐ |
| 3. There is no Committee resolution for the enforcement action | ☐ |
| 4. There is no effect on listed buildings or their settings | ☐ |
| 5. The site is not in the Green Belt (but see 11 below) | ☐ |

REFUSAL RECOMMENDED: GENERAL

- | | |
|--|--------------------------|
| 6. Application is contrary to relevant planning policies/standards | ☐ |
| 7. No petition of 20 or more signatures has been received | ☐ |
| 8. Application has not been supported independently by a person/s | ☐ |
| 9. The site is not in Green Belt (but see 11 below) | ☐ |

RESIDENTIAL DEVELOPMENT

- | | |
|--|--------------------------|
| 10. Single dwelling or less than 10 dwelling units and/or a site of less than 0.5 ha | ☐ |
| 11. Householder application in the Green Belt | ☐ |

COMMERCIAL, INDUSTRIAL AND RETAIL DEVELOPMENT

- | | |
|--|--------------------------|
| 12. Change of use of retail units on site less than 1 ha or with less than 1000 sq m other than a change involving a loss of A1 uses | ☐ |
| 13. Refusal of change of use from retail class A1 to any other use | ☐ |
| 14. Change of use of industrial units on site less than 1 ha or with less than 1000sq.m. of floor space other than to a retail use. | ☐ |

CERTIFICATE OF LAWFULNESS

- | | |
|---|--------------------------|
| 15. Certificate of Lawfulness (for proposed use or Development) | ☐ |
| 16. Certificate of Lawfulness (for existing use or Development) | ☐ |
| 17. Certificate of Appropriate Alternative Development | ☐ |

CERTIFICATE OF LAWFULNESS

- | | |
|---|--------------------------|
| 18. ADVERTISEMENT CONSENT (excluding Hoardings) | ☐ |
| 19. PRIOR APPROVAL APPLICATION | ☐ |
| 20. OUT-OF-BOROUGH OBSERVATIONS | ☐ |
| 21. CIRCULAR 18/84 APPLICATION | ☐ |
| 22. CORPSEWOOD COVENANT APPLICATION | ☐ |
| 23. APPROVAL OF DETAILS | ☐ |
| 24. ANCILLARY PLANNING AGREEMENT (S.106 or S.278) where Heads of Terms have already received Committee approval | ☐ |
| 25. WORKS TO TREES | ☐ |
| 26. OTHER (please specify) | ☐ |

The delegation powers schedule has been checked. Director of Residents Services can determine this application.

Case Officer

Signature:

Date:

A delegated decision is appropriate and the recommendation, conditions/reasons for refusal and informatives are satisfactory.

Team Manager:

Signature:

Date:

The decision notice for this application can be issued.

Director / Member of Senior Management Team:

Signature:

Date:

NONE OF THE ABOVE DATES SHOULD BE USED IN THE PS2 RETURNS TO THE ODPM

Report of the Head of Planning, Sport and Green Spaces

Address 23 MINET DRIVE HAYES

Development: Single storey detached outbuilding to rear for use as a shed (Application for a Certificate of Lawful Development for a Proposed Development)

LBH Ref Nos: **25274/APP/2014/1911**

Drawing Nos: LW/VP/21119-03
LW/VP/21190-02 Rev. A
LW/PP/2119-01

Date Plans Received: 03/06/2014 **Date(s) of Amendment(s):**

Date Application Valid: 20/06/2014

1. RECOMMENDATIONS

1.1 Recommendations

That a certificate of lawful use or development be **REFUSED** for the proposed development described above in respect of the land edged red on the attached plans for the following reasons:

The proposed development does not constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008 as the proposed building, by reason of its overall size and scale, is considered not to represent a development required for a purpose incidental to the enjoyment of the dwellinghouse.

This determination is based on your submitted plans. All measurements are taken from existing ground level.

INFORMATIVES

2.0 Planning Considerations

The application seeks a certificate of lawful development for the erection of a detached outbuilding to the rear for use as a shed.

The application site does not lie within a conservation area and the permitted development rights have not been removed.

Submitted plans confirm that the proposed outbuilding would:-

i) Not result in the total ground area covered by buildings (etc.) within the curtilage (other than the original dwellinghouse) exceeding 50% of the curtilage (excluding the original dwellinghouse);

ii) Not be situated forward of the principal elevation of the original dwellinghouse;

- iii) Not have more than one storey;
- iv) Not exceed 2.5 metres in height within 2 metres of the boundary; and
- v) Not exceed 2.5 metres at the eaves.

However at a footprint of some 47.56m², the proposed outbuilding would represent marginally over 100% of the footprint of the original dwellinghouse. This is considered to not represent a development 'for a purpose incidental to the enjoyment of the dwellinghouse' as the scale and appearance would not be commensurate to the size of an ancillary structure.

The proposed size of the building

The interpretation of the permitted development order has arisen as a result of a number of appeal/court decisions for this type of proposal.

In two appeal decisions (January 2010) relating to similar proposals, the inspector made the following comments/observations:

APP/R5510/X/09/2111737:

In summary, the appellant's case is that the outbuilding would be ancillary to the main dwellinghouse and would constitute lawful development under the Town and Country Planning (General Permitted Development) Order 1995, as amended in 2008 (the "GPDO"). The section of the GPDO relied upon is Class E of Part 1 of Schedule 2 of the recently amended GPDO.

This contention is flawed. The reasons for this view are set out.

The appellant's case concentrates on the various criteria relating mainly to building dimensions and location as set out in Class E, but ignores the basic terms of Class E. Under these terms, planning permission is granted "for the provision within the curtilage of a dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such". The courts have held that the word "required" here should be interpreted to mean "reasonably required". The words "as such" are also important. Thus in this type of case the applicant or appellant must show that what is proposed is reasonably required for a purpose incidental to the use of the dwellinghouse as a dwellinghouse. The onus of proof (on the balance of probability) is on the applicant or appellant.

Class E of the GPDO does not permit the erection of outbuildings for use as additional residential accommodation of the sort which would normally be found in a house, for example as an additional bedroom or living room. It is therefore appropriate to examine the reasons for development being "required" under Class E - otherwise the GPDO would be open to abuse by sham proposals, involving buildings being constructed for one stated purpose and then being used for another purpose. The proposed building would also be quite substantial in size, having nearly the same floor area as the original ground floor area of the semi-detached house at 86 Hitherbroom Road. (The original house has evidently been extended at the side and a rear conservatory has also been added.)

The appellant has not explained why a building of the size proposed is required. The description "exercise/playroom", with oblique stroke punctuation which could be interpreted as meaning "and" or "or" (or perhaps both), is also imprecise. Quite apart from the vagueness of the claimed intended use, merely making an application for a certificate

of lawfulness and stating a proposed use does not provide a case that what is proposed is or would be reasonably required. No evidence has been put forward on which I could base a finding that the building is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse at 86 Hitherbroom Road as a dwellinghouse.

I therefore find that the proposed development would not be permitted by Class E of Part 1 of Schedule 2 of the GPDO. The proposal would not be permitted under any other part of the GPDO and has not been the subject of a specific planning permission.

Again a similar reasoning was used in the following appeal

APP/R5510/X/09/2110511:

The arguments put forward on behalf of the appellant focus on the physical features of the proposal. For example, the building would not exceed the 2.5 metre overall height limit specified in paragraph E.1(d)(ii), which applies to buildings within 2 metres of the curtilage boundary, or the 2.5 metre eaves height limit specified in paragraph E.1(e). The building would not be situated "forward of any wall forming the principal elevation of the original dwellinghouse" (proviso E.1(b)).

The criterion in paragraph E.1(a) of Class E concerns whether the total area covered by buildings other than the Original house would exceed 50% of the total area of the curtilage, excluding the ground area of the original house. Both sides have argued about the area of the proposed building compared with the floor area of the existing house, but the house has apparently been extended, and it is the ground area occupied by the original house which is important for the purposes of paragraph E.1(a). From the available evidence including my on-site checks, I estimate that if the proposed building were constructed, and allowing for the area taken up by non-original additions to the house, the ground area covered by buildings within the curtilage would approach, but would not exceed, the 50% limit. So this criterion would be met.

However, the physical dimensions discussed above are not by themselves decisive. Of more significance is the first part of Class E (in paragraph E(a)), which I have quoted in paragraph 2 above. I explain this point below.

The Courts have upheld that in the expression 'required for the purpose incidental to the use of the dwelling house as such', the word 'required' should be interpreted to mean 'reasonably required'. The words 'as such' are also potentially important. Thus in this type of case the applicant or appellant must show that what is proposed is reasonably required for a purpose incidental to the use of a dwellinghouse as a dwellinghouse. The onus of proof (on the balance of probability) is on the applicant or appellant.

Class E of the GPDO does not permit the erection of outbuildings for use as additional residential accommodation of the sort which would normally be found in a house, for example as an additional bedroom or living room. It is therefore appropriate to examine the reasons for development being "required" under Class E, otherwise there is a possibility of the GPDO being abused by sham proposals, involving buildings being constructed for one stated purpose and then being used for another purpose. The need for critical examination particularly applies where, as in this instance, a building is proposed which would be of quite substantial scale, in some respects at the extreme limit of GPDO permitted development allowances, and where the house has already been substantially enlarged.

As is apparent from the submitted location plan and site plan, the proposed building would have an area larger than the ground floor area of most of the terraced houses in the

neighbourhood. No real attempt has been made by the appellant to explain why a building of this size is required for use as a playroom. There is simply no evidence on which I could base a finding that what is proposed is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse at 81 Bourne Avenue as a dwellinghouse. I therefore find that the proposed development would not be permitted by Class E of Part 1 of Schedule 2 of the GPDO."

SUMMARY

In relation to this particular site it is considered the proposed size of the building (at 47.56m²) is excessive, and would exceed the footprint of the original house (47m²). It is considered due to the proposed size of the building it would not be considered subordinate/incidental but rather form the primary use on the site.

In view of the size and scale of the outbuilding, the proposed building is considered to not represent a development which is reasonable required 'for a purpose incidental to the enjoyment of the dwellinghouse' as the building would be of a scale and appearance which would not be commensurate to the scale of an ancillary structure.

As such, the development is considered to not fall within Class E of the Town and Country Planning (General Permitted Development) Order 2008. The application is therefore recommended for refusal.

3.0 Relevant Planning History

4.0 ALL CLASSES

Is the dwelling a flat or a maisonette?

NO

Is there a planning condition removing permitted development rights?

NO

Is the building listed/ in a Conservation Area?

NO

CLASS E - Outbuildings

Does the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)?

NO

Does 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

Does the building have more than one storey?

NO

Does the height of the building, enclosure or container 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?

NO

Does the height of the eaves of the building exceed 2.5 metres?

NO

Is the building, enclosure, pool or container situated within the curtilage of a listed building?

NO

Does it include the construction or provision of a veranda, balcony or raised platform (means a platform with a height greater than 300 millimetres)?

NO

Does the capacity of the container exceed 3,500 litres?

NO

In the case of any land within the curtilage of the dwellinghouse which is article 1(5) 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

N/A

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