

OFFICER REPORT FOR DECISION UNDER DELEGATED AUTHORITY

APPLICATION NO: D0540.24

WARD: Mawneys **Date Received:** 23rd December 2024

ADDRESS: 61 Havering Road
Romford

PROPOSAL: Certificate of lawfulness for proposed demolition of existing garage and erection of a rear outbuilding.

DRAWING NO(S): 61HR/01 Issue: C
61HR/02 Issue: C
61HR/03 Issue: A
61HR/04 Issue: C
61HR/05 Issue: C
61HR/06 Issue: C

RECOMMENDATION: It is recommended that a **Certificate of Lawfulness not be issued in this case** for the reason(s) given at the end of the report

SITE DESCRIPTION

The application site features a detached two storey dwelling. It benefits from a detached garage within its rear garden environment. The site is not listed nor is located within a conservation area.

DESCRIPTION OF PROPOSAL

A Certificate of Lawfulness for proposed demolition of existing garage and erection of a rear outbuilding.

1. The proposed outbuilding would contain a garage, storage area and WC.
2. The proposed outbuilding would measure approximately 14.4m wide, 10.2m deep, 2.4m high to the eaves and 4m high at its maximum point.

RELEVANT HISTORY

ES/ROM 327/57 - Development following Demolition of Existing (Refused)

487/58 - House + Garage (Approved)

318/59 - 40 Lock-Up Garages (Refused)

ENF/22/25 Change of use to a house in multiple occupation (HMO licence received)

D0025.25 Certificate of Lawfulness for for the change of use from dwelling (Use C3(a)) to a care home for the support of six people (Use Class C3(b)).

Awaiting Decision

CONSULTATIONS/REPRESENTATIONS

This is an application for a Certificate of Lawful Development (proposed), which is a request to the Council to confirm that the development as specified is Lawful. In assessing this application, the Council is making a determination of fact and as such, it is not considered to be necessary to undertake a public consultation.

RELEVANT POLICIES

Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

HAVERING & MAYORAL CIL IMPLICATIONS

The Havering and London Mayoral CIL payment is applicable as the development comprises of a proposed rear outbuilding that would create more than 100 square metres of additional floor space. The floor space created by the outbuilding would equate to 134.89 square metres which is rounded up to 135 square metres.

The Mayoral CIL has a charging rate of £25 per square metre of net additional floor space of the proposed development and therefore the liability equals $135 \times £25 \text{ per sq.m} = £3,375$.

The Havering CIL has been implemented from the 1st September 2019, which has a charging rate of £125 per square metre of net additional floor space of the proposed development in Zone A. The proposal would be liable for Havering Community Infrastructure Levy contributions of CIL of £16,875 ($£125 \times 135$) to mitigate the impact of the development.

Therefore, the total CIL liability to be paid is £20,250.

STAFF COMMENTS

In accordance with the Council's current criteria for site visits, an in-person site visit was not undertaken as one was not deemed to be necessary. Site photos were provided by the agent in support of this application. In determining this Lawful Development Certificate application, photos, Google Street View, aerial view images and submitted drawings were used to assess the site's constraints.

It is noted that the site is currently the subject of an enforcement investigation (reference:

ENF/22/25), which relates to the change of use to a house in multiple occupation.

The main issues are:

1. Whether the proposed works are permitted development by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Is the property a dwellinghouse? - Yes

Have permitted development rights been removed? - No

Is it within a conservation area? - No

Is the proposed use incidental to the use of the dwellinghouse? - No

(a) 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 - No

Officer Comments:

The onus is on the applicant to demonstrate that a building of the size proposed is reasonably required for purposes incidental to the enjoyment of the main house. Schedule 2, Part 1, Class E of the GPDO (2015) grants planning permission "for the provision within the curtilage of a dwelling-house of any building or enclosure ... required for a purpose incidental to the enjoyment of the dwelling house as such."

The courts have held that the word "required" in this context should be interpreted to mean "reasonably required", subject to various restrictions on size; these size restrictions are not met. Whilst it is a matter primarily for the occupier to determine what incidental purpose he/she proposes to enjoy, the test must retain an element of objective reasonableness. The Council has a duty to critically examine such applications, particularly where a substantial building is proposed, otherwise Class E would be open to abuse.

The key consideration, therefore, is whether the outbuilding is reasonably required for purposes incidental. The onus of proof (on the balance of probability) is on the applicant to show that what is proposed is reasonably required for a purpose incidental to the use of the dwelling house.

Furthermore, the LPA are mindful of comments made by an Inspector in the appeal of a Lawful Development Certificate for a large outbuilding at 16 Lodge Lane (appeal reference: APP/B5480/X/23/3328255). In paragraph 7, the Inspector states "It has been established by case law that an incidental use should be functionally related to the primary use (as a dwellinghouse). The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a use should be regarded as incidental will be a matter of fact and degree. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse and answer the question as to whether the building is genuinely and reasonably required or necessary in order to accommodate the use or activity and thus achieve that purpose."

During the application process, the officer invited the agent to provide details about what would be

stored in the outbuilding as well as why it would be built to such a large size. The agent was also asked to explain why they considered the outbuilding would be incidental to the main dwellinghouse.

In an email to the officer dated 12/02/2025, the agent replied that "The client asked us to utilise the permitted development right to cover as much as possible of that part of garden to help with ongoing maintenance and to be able to provide a combination of summer house, gym and storage for garden equipment and bikes which all are likely incidental to the main dwelling house. The use will all be within PD rights and won't be used for accommodation/business purposes."

It is noted that reference is made to the usage of the outbuilding as a gym though this particular use is not indicated on the submitted plans.

Whilst size is not itself a determining factor in considering whether the proposed outbuilding would be used for purposes incidental to the main dwelling house, it is nevertheless a material consideration. To that end, the floorspace of the proposed outbuilding measures approximately 135 sqm and based on the plans submitted for a separate Certificate of Lawfulness application for the site (application reference: D0025.25), the dwellinghouse has a floor space of about 89 sqm. This means that outbuilding is about 1.5 times the size of the original dwelling-house on site.

It is accepted that the size of an outbuilding may vary based on personal preference but the matter for consideration is whether the outbuilding shown on submitted plans would be genuinely incidental to the main dwelling house.

Based on the information provided, it is unclear why such a large outbuilding is required for the purposes indicated on the submitted plans. Reference is made to the storage garden equipment and bikes but no explanation was provided as to why approximately 97 square metres of floorspace is required for the storage of such items.

On the balance of probabilities, therefore, it is judged that insufficient information has been provided to conclude that its size and use would be incidental to the enjoyment of the dwelling house and therefore it is considered that the size of the proposed outbuilding would not be genuinely and reasonably required to achieve the purpose of accommodating the proposed incidental activities, and would therefore not fall within the parameters of Class E, Part 1, Schedule 2 of the GPDO.

(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas? - N/A

Development not Permitted

E.1 Development is not permitted by Class E if -

(a) Has permission to use the dwellinghouse as a dwellinghouse been granted only by virtue of Class M, MA, N, P, PA or Q of Part 3? - No

(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)? - No

(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? - No

(d) the building would have more than a single storey? - No

(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? - No

(f) the height of the eaves of the building would exceed 2.5 metres? - No

(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building? - No

(h) it would include the construction or provision of a verandah, balcony or raised platform? - No

(i) it relates to a dwelling or a microwave antenna? - No

(j) the capacity of the container would exceed 3,500 litres? - N/A

(k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses) - No

E.2 Deliberately Excluded

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? - NA

KEY ISSUES/CONCLUSIONS

The proposed development is considered to not be in accordance with the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015, as amended.

It would therefore require planning permission, and as such, it is therefore recommended that a Certificate of Lawfulness should not be issued in this instance.

RECOMMENDATION:

It is recommended that a **Certificate of Lawfulness not be issued in this case** for the following reason(s)

1 Cert of Lawfulness - Reason for Refusal

The size of the outbuilding relative to the main dwelling in the absence of any compelling evidence otherwise is an indicator that its uses would not be incidental or subordinate to the main use of the dwellinghouse. As such, it is not considered that the totality of the proposed outbuilding is genuinely and reasonably required to achieve the purpose of accommodating incidental activities. The building would be set within 2m of the boundary with No. 59 Havering Road and having an overall height of over 2.5m. The proposed development is therefore not considered to be in accordance with the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015.

INFORMATIVES

1 CIL informative for refused proposal - Residential For Residential Development Only

Please be advised that approval of this application from 1st September 2019 (either by London Borough of Havering, or subsequently by PINS if allowed on appeal following a refusal by London Borough of Havering) will attract a liability payment of £3,375 plus indexation in Community Infrastructure Levy (CIL). This charge has been levied under s.206 of the Planning Act 2008 and includes both the Mayor of London's CIL and Havering Council's CIL.

London Borough of Havering, as CIL collecting authority, has responsibility for the collection of the Mayoral CIL, in addition to Havering's CIL, on commencement of the development.

Your proposal is subject to a CIL Liability Notice indicating a levy of £16,875 plus indexation for the application, based on the Mayoral CIL levy rate for Havering of £25/sq.m plus Havering's charging rate for residential of £125/sq.m (Zone A), and the floorspace of 135 square metres.

Authorising Officer:



Raphael Adenegan

12th March 2025