

<u>APPLICATION NO:</u>	23/02813/CLD	<u>CASE OFFICER:</u>	Maxine Wishart
<u>WARD:</u>	Halewood North	<u>PARISH:</u>	Tarbock Parish Council
<u>LOCATION:</u>	Alderley , Water Lane, Tarbock Green		
<u>PROPOSAL:</u>	CONSTRUCTION OF BUILDING FOR GARAGE SPACE AND SPACE INCIDENTAL TO ENJOYMENT OF THE DWELLINGHOUSE		

Site Description

The property is allocated within the Green Belt and Tarbock Green Conservation Area on the Knowsley Local Plan Policies Map.

Alderley is a non-designated heritage asset dating originally from probably 18th century which has undergone a number of changes and additions through the years; including the latter extension granted and erected under planning reference 20/00061/FUL, granted in September 2020.

The host property sits within a large plot with land to the north occupied by a neighbouring dwelling 'Dentdale'. Located to the west on Water Lane there is a dwelling, 'Cherry Cottage' and to the southern boundary 1 and 2 Barn Cottage and Netherley House which are located on Netherley Road. Immediately to the east of the site the land comprises agricultural fields.

The application site is accessed from Water Lane and permission has recently been granted for alterations to the access and for the installation of wall and gates (Ref: 23/00037/FUL). A detached garage to the north of the host dwelling was recently granted consent for its demolition (23/00040/FUL) and it is understood that the demolition works have been completed.

Towards the north east corner of the site there is an existing disused open pool. Within the south east corner of the site there is an existing large timber shed with concrete hardstanding fronting its double access doors.

Proposal

The application under consideration is an attempt to overcome the policy restrictions that the applicant was advised of for an earlier planning application which related to the demolition of an existing garage (believed to have been completed) and the erection of a new detached garage. The applicant removed the proposed garage from that planning application (Ref: 23/00040/FUL) and permission was granted 20 November 2023 for the demolition of the existing garage.

The now proposed outbuilding differs significantly from that which was originally submitted and withdrawn from a previous planning application and is only referred to for the sake of completeness. The applicant's position is that the proposed building

under consideration of this current application would accord with the terms of - *buildings etc incidental to the enjoyment of a dwellinghouse* of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Consultations

None required although Merseyside Fire and Rescue Authority have forwarded comments which can be forwards to the applicant as an informative if a Certificate of Lawfulness is granted.

Representations

There is no statutory requirement to consult third parties including parish councils or neighbours.

Planning History

APP. NO: K/APP/3947 (Alt Ref: 74/04071/HIST)
PROPOSAL: CONSERVATORY
DECISION: Granted
DECISION DATE: 18 May 1979

APP. NO: 05/00851/FUL
PROPOSAL: ERECTION OF PART TWO STOREY/PART SINGLE STOREY EXTENSION TO SIDE, SINGLE STOREY EXTENSION TO FRONT AND TWO STOREY EXTENSION TO REAR OF DWELLING. CONSTRUCTION OF NEW VEHICULAR ACCESS.
DECISION: Granted
DECISION DATE: 11 October 2005

APP. NO: 05/00854/CON
PROPOSAL: DEMOLITION OF SINGLE STOREY EXTENSION TO SIDE AND CONSERVATORY TO REAR OF DWELLING TOGETHER WITH DETACHED GARAGE.
DECISION: Granted
DECISION DATE: 13 October 2005

APP. NO: 13/00123/FUL
PROPOSAL: ERECTION OF TWO STOREY EXTENSION TO SOUTH ELEVATION, SINGLE STOREY EXTENSION TO NORTH ELEVATION, PART SINGLE, PART TWO STOREY EXTENSION TO EAST ELEVATION (EXISTING EXTENSIONS TO BE DEMOLISHED) TOGETHER WITH ERECTION OF DETACHED GARAGE (EXISTING TO BE DEMOLISHED) AND NEW VEHICULAR ACCESS ARRANGEMENTS.
DECISION: Refused
DECISION DATE: 30 May 2013

APP. NO: 13/00124/CON
PROPOSAL: DEMOLITION OF SINGLE STOREY EXTENSION TO EAST ELEVATION, CONSERVATORY TO SOUTH ELEVATION, REMOVAL OF CHIMNEY STACKS AND

	PARTIAL REMOVAL OF EXTERNAL WALLS OF DWELLING TOGETHER WITH DEMOLITION OF DETACHED GARAGE
DECISION:	Refused
DECISION DATE:	30 May 2013
APP. NO:	20/00061/FUL
PROPOSAL:	ERECTION OF SINGLE STOREY SIDE / REAR EXTENSION, FRONT PORCH EXTENSION, TWO STOREY SIDE / REAR EXTENSION INCORPORATING BALCONIES TO THE EAST ELEVATION
DECISION:	Granted
DECISION DATE:	8 September 2020
APP. NO:	23/00033/FUL
PROPOSAL:	EXTENSION OF EXTERNAL FIRST FLOOR BALCONY TO THE SOUTH ELEVATION
DECISION:	Refused
DECISION DATE:	25 October 2023
APP. NO:	23/00037/FUL
PROPOSAL:	INSTALLATION OF A 2.1M HIGH BOUNDARY BRICK WALL WITH 4 NO. BRICK PILLARS TOGETHER WITH THE INSTALLATION OF VEHICULAR AND PEDESTRIAN GATES
DECISION:	Granted
DECISION DATE:	10 November 2023
APP. NO:	23/00040/FUL
PROPOSAL:	DEMOLITION OF EXISTING GARAGE
DECISION:	Granted
DECISION DATE:	20 November 2023

The original dwelling Alderley (the dwellinghouse), pre-dates 1 July 1948. The relevance of this date is found in the terms of Class E - buildings etc incidental to the enjoyment of a dwellinghouse of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) the Interpretation states that "original" means—

(a) in relation to a building, other than a building which is Crown land, existing on 1st July 1948, as existing on that date...

Relevant to parts of Class E as detailed in the assessment below.

Background

An application was submitted last year which involved the demolition of an existing detached garage and the erection of a new detached garage. The applicant was informed that the proposed development would not be supported and as such the new garage was deleted from the scheme. This was based on the applicant's agent's main argument being focused on that if permission was refused, other options making use of permitted development rights, or 'fallback' position would be exercised and that a larger, possibly more obtrusive development could be erected.

Article 35 Statement

N/A

LEGAL CONTEXT OF THE APPLICATION

The key statutory framework for lawful development certificates and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 (as amended).

The application is made under s192 of the Town and Country Planning Act 1990 (as amended). An application under s192 seeks to establish whether:

- a) Any proposed use of buildings or land; or
- b) Any operations to be carried out in, on, over or under land, would be lawful.

S192 (2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

It is therefore not an application for planning permission. Instead, it is a legal determination based upon evidence and facts presented by the applicant as to whether the stated activity would be lawful. In such cases, the local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Issues such as the planning policies do not fall to be taken into consideration as the decision is based on fact and not on policy grounds and therefore planning merits are not relevant at any stage in this particular application process.

Essentially the application is asking for a formal determination from the local planning authority as to whether or not a use can proceed without the need for planning permission. Planning Policy Guidance (PPG) advises that the applicant is responsible for providing sufficient information to support an application.

Assessment

The application is made on the basis that the proposal falls within The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

The issues in determining the certificate are considered to be:

1. Whether the proposal constitutes "development";
2. If so, whether the proposal requires planning permission.

Whether the proposal constitutes 'development'

Section 55 (1) of the Act provides 'Subject to the following provisions of this section, in this Act, except where the context otherwise requires. 'development' means the carrying out of building, engineering, mining or other operations in, on or under land, or the making of any material change of use in the use of any buildings or other land'.

The proposed works constitute development under the Act.

Whether the proposal requires planning permission

If the proposal falls within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) express planning permission is not required.

The applicant indicates that the anticipated usage of the outbuilding would be limited to:

- a) Garage for two motor cycles, two cars, one lawn tractor (and other larger garden machinery e.g. log splitter) and workspace for repairs / maintenance;
- b) Leisure – plunge / swimming pool / swim spa, sauna, gym equipment, sun lounge area; and
- c) Plant room – electrical equipment.

The applicant contends that the works are to provide a building within the curtilage of a dwellinghouse which falls to be under Class E - '*Class E – buildings etc incidental to the enjoyment to the dwellinghouse*' of Part 1 - Development within the curtilage of a dwellinghouse of Schedule 2 (Permitted development rights) of the Town and Country Planning (General Permitted Development Order 2015 (as amended)).

An assessment of whether the development is permitted under the terms of the Class E is detailed below.

Class E – buildings etc incidental to the enjoyment of a dwellinghouse

Permitted development

E. The provision within the curtilage of the dwellinghouse of—

- (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; or*
- (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.*

ASSESSMENT:

Development not permitted -

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 G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);***

Assessment:

The host dwelling was not created under the permitted development rights set out in the above Classes of the Order.

- (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);***

Assessment:

The proposed development would not cumulatively exceed 50% of the curtilage of the total area of the curtilage of the host dwelling.

- (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;***

Assessment:

In order to assess whether the proposal would be situated on land forward of a wall forming the principal elevation of the 'original' dwellinghouse historic records of the dwelling need consideration ('original' here means in relation to a building...existing on 1st July 1948, as existing on that date -GDPO).

The dwellinghouse, Alderley, has been significantly extended, the former attached stables have been converted, and a large side extension also projects forward of the south facing elevation. Plans for alterations clearly show that the entrance to the house and associated entrance porch give access through an entrance hall off the northern elevation.

The Permitted development rights for householders: Technical Guidance defines the principal elevation as:

"in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation."

On this basis, the principal elevation of Alderley might appear to be the north facing elevation where the primary functional entrance is located. However, the issue is whether what might now appear to be the principal elevation (north) was the 'original' principal elevation of Alderley.

Alderley is noted in the HER with reference MME6216 and described thus:

"Alderley, Water Lane, Tarbock Green, Tarbock. (1) The building is shown on the Molyneux Estate Survey map of 1769, but the plot is not numbered.

(2) It is shown on the Tithe map of 1849, and according to its apportionment the 'House, Outbuilding, Yard and Garden' at Plot No. 375 were owned by the Earl of Sefton and occupied by John and Elizabeth Ashton at that time. (3-4)."

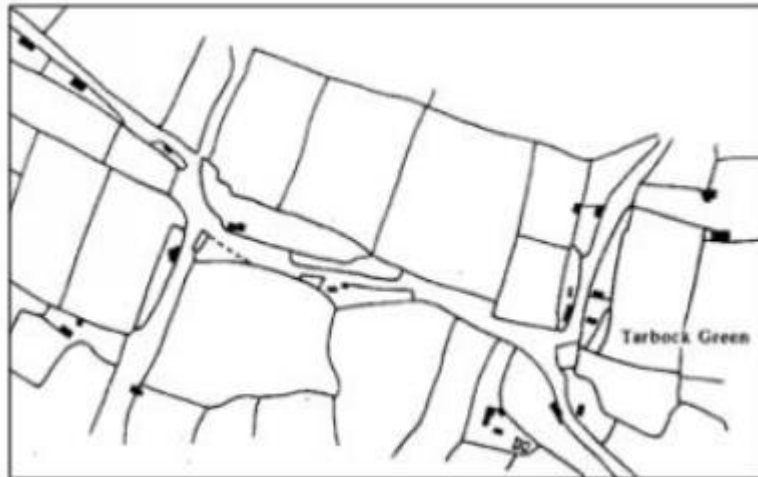


Figure 1 Molyneux Estate Surey 1769

As presented in a number of Inspector's decisions the 'principal' elevation of a dwelling is the principal elevation of the 'original' building - in this case, as it existed on 1 July 1948. Under current legislation it cannot be argued the principal elevation of a dwelling can change over time, with or without planning permission.

Historic photographs (see image below) show Alderley's original appearance which shows the original (south facing) frontage.



Figure 2 Extract from photograph dated 1926 showing Alderley from the South

This shows a typical vernacular frontage set out in a semi-regular formal arrangement, including the front door. A historic aerial image indicates that the primary access to the plot and house was historically to the south.



Source Historic England Archive (RAF photography) Historic England Photograph:
Historic England Photograph: raf_106g_uk_626_rs_4259 flown 10/08/1945

Therefore, in light of the evidence available, and on the balance of probability no part of the proposed building would be situated on land forward of a wall forming the principal elevation of the original dwelling.

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

Assessment:

The proposed building would not have more than a single storey.

(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,*

Assessment

The proposed building would have a dual-pitched roof which would attain a maximum height of 3.652 m.

(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,*

Assessment:

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 submitted plans indicate that height of the building would measure more than 2.5 m in overall height, however, the layout plan shows that the development would not be located within 2m of the boundary of the curtilage of the application site.

Or

(iii) 3 metres in any other case;

Assessment:

N/A

(e) *the height of the eaves of the building would exceed 2.5 metres;*

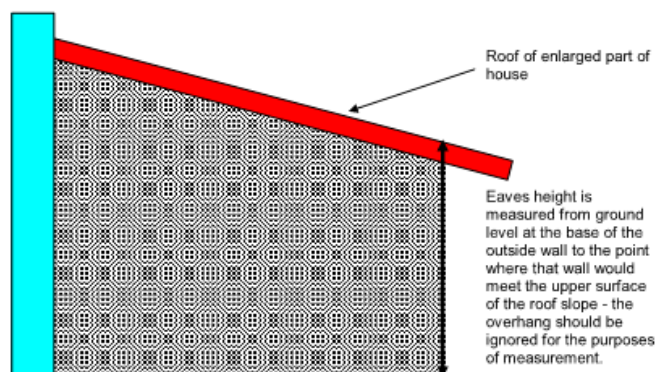
Assessment:

The Government's "Permitted development rights for householders: technical guidance" publication gives advice on interpreting permitted development rights.

Under Class E the maximum height of the eaves on any part of the building (irrespective of total height) is 2.5 metres.

The guidance clarifies that the eaves of a building will be the point where the lowest point of a roof slope, or a flat roof, meets the outside wall of the building. The guidance shows an example of side view of an extension with a pitch showing that the "eaves height is measured from the ground level at the base of the outside wall to the point where that wall would meet the upper surface of the roof slope – the overhang should be ignored for the purposes of the measurement."

The following example shows the side view of an extension with a pitched roof:



Having regard to the advice contained within the Government's technical guidance, the plans as submitted show that the proposed eaves would reach a height of 2.480 m which does not exceed the threshold allowed.

- (g) ***the building, enclosure, pool or container would be situated within the curtilage of a listed building;***

Assessment:

The host property is not a listed building.

- (h) ***it would include the construction or provision of a verandah, balcony or raised platform;***

- (i) ***it relates to a dwelling or a microwave antenna;***

- j) ***the capacity of the container would exceed 3,500 litres.; or***

Assessment:

The proposed development does not identify that it includes any of the development detailed in parts (h) – (j) above.

- k) ***the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).***

Assessment:

The host dwelling was not constructed under Part 20 of the GDPO.

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.

Assessment:

The application site is not located within any of the designated sites identified at (a) – (d) above.

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.

Assessment:

The host property is located within Tarbock Green Conservation Area.

Article 2(3) identified within the GDPO Schedule 1, Part 1 – Article 2(3) land 1. includes

“Land within—

- (a) an area designated as a conservation area under section 69 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (designation of conservation areas);”

As indicated above, the principal elevation of Alderley might appear to be the north facing elevation where the primary functional entrance is located. But as presented in a number of Inspector’s decisions the ‘principal’ elevation of a dwelling is the principal elevation of the ‘original’ building - in this case, as it existed on 1 July 1948. Under current legislation it cannot be argued the principal elevation of a dwelling can change over time, with or without planning permission.

Historic photographs show Alderley’s original appearance which shows the original (south facing) frontage. Therefore, in light of the evidence available, and on the balance of probability, the north facing elevation would consequently be the rear elevation. The proposed building would be sited to the north of the ‘rear’ elevation. The proposed building would therefore not be situated on land between a wall forming a side elevation of the dwelling house and the boundary of the curtilage of the dwellinghouse.

OTHER MATTERS

Is the outbuilding incidental to the enjoyment of the dwellinghouse?

Schedule 2, Part 1, Class E (a) of the GPDO allows for ‘any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...’

The application is submitted as the applicant considers that under this class, a building on land to the north of the dwellinghouse at the application property used for the purposes as described in the application would be permitted development.

An incidental use is one which is functionally related to the primary use of the property. The functional relationship should be one that is normally found and not based on the personal choice of the user. For example, where the sole primary use is as a dwellinghouse, the parking of vehicles for the domestic use of the occupiers of the house would be an incidental or ancillary activity. This is because those are uses which differ in character to the residential use but are being carried out as a function of the enjoyment of the dwellinghouse, and the functional relationship is one commonly found.

There is no statutory definition of “incidental” in the GPDO. Case law provides guidance on how it should be interpreted by decision-makers. The *Emin* case [*Emin v SSE & Mid Sussex DC* [1989] JPL 909] held that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse.

The test to be applied is whether the uses of the proposed building, when considered in the context of the ‘planning unit’, were intended and would remain ancillary or subordinate to the main use of the property as a dwellinghouse. Whilst the physical size of the building in comparison to the dwellinghouse might be part of that assessment, the application of this test should not be solely by reference to the physical size of the proposed building and the relationship between its size and the physical size of the dwellinghouse. Size may be an important consideration but it is not by itself conclusive.

It is necessary to identify the purpose and the incidental quality in relation to the enjoyment of the dwelling and whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and would therefore achieve this purpose. The use of the building should be subordinate to the use of the house as a dwellinghouse. It is therefore reasonable to consider the justification as to the proposed building’s size in relation to the intended purpose even if the physical tolerance is satisfied.

The *Emin* case held that it is wrong to conclude that an outbuilding could not be said to be incidental as such because it would provide more accommodation for secondary activities than the dwellinghouse provides for primary purposes. However, the *Wallington* case [*Wallington v SSE & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942 (CoA)] established that it is necessary to consider whether the relevant purpose is incidental to the particular dwellinghouse in question rather than any dwellinghouse.

The case *Holding v First Secretary of State* [2003] EWHC 3138 (Admin)] relates to a very large incidental building (hanger for aircraft storage) within the curtilage of a dwellinghouse, and this confirmed that this is the correct approach. In this case it was considered that a permission granted under Class E was intended to allow for the accommodation of hobbies for which people need space, without having to apply for planning permission.

Nevertheless, the Inspector commented that the test that should be applied as to the wording of Class E must retain an element of objective reasonableness and should not be based on the unrestrained whim of the occupier. Albeit that a hard objective test should not be imposed on cases to frustrate the reasonable aspirations of an owner as long as they are sensibly related to the enjoyment of the dwelling.

Class E concessions do not define the size and scale of any building to any size relationship. However, the words ‘incidental to the enjoyment of the dwellinghouse’ convey some consideration of a relationship between the house and its outbuilding and it must be demonstrated that what is proposed is genuinely required for the intended purpose(s). There are therefore a number of factors relating to whether a building within the curtilage of a dwellinghouse is incidental, which include the physical size and scale, although this should not be determinative, the relevance of the size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse.

Having regard to the above, these judgements and findings illustrate that it is a matter of fact and degree of the circumstances of each case and that a number of factors need to be considered to determine whether the outbuilding proposed is incidental to the enjoyment of the dwellinghouse.

The application site comprises a two-storey dwelling which has undergone a number of changes and additions through the years. The property sits within large grounds (approx. 0.35ha). The property has recently been extended, planning permission was granted for a single storey side / rear extension, front porch extension, two storey side / rear extension incorporating balconies to the east elevation in 2020 (20/00061/FUL). According to the officer's report the volume increase to the original building was an increase of 52%.

The proposed outbuilding would be sited to the north of the dwelling at the 'rear', located approximately 16.4m from the dwellinghouse. It would have a footprint measuring 29 m by 6.5 m and would be 188.5 sq. m (not including the overhanging eaves). The proposed building would subsume the area currently occupied by the pool.



The proposed floor plan accompanying the application does not show precise detail of the internal layout although 3 no. garage doors and possibly some sliding patio doors to the south elevation and a glazed side (east) are shown and what seems to be the layout of a pool. The floor plan indicates a multi-purpose building which is split into 2 sections, rather than 1, 2 or 3 smaller structures with the proposed uses the applicant anticipates would comprise:

Garage and Garden Store and Repairs / Maintenance Space

- A 3-bay combined garage for vehicles, motorcycles, garden equipment including lawn tractor; log splitter etc. and workspace for repairs / maintenance;

Leisure Area

- To include a plunge / swimming pool / swim spa, sauna, gym equipment, sun lounge area; and
- Plant room – electrical equipment.

The proposed garage would be located more than 16m away from the dwellinghouse (further than the garage previously on the site) and the area between the house and the proposed garage is hard surfaced. The garage would have three garage doors and the application identifies that this area would be used for the parking of 2 no. vehicles and 2 no. motorcycles together with other larger garden equipment and workspace for repairs / maintenance.

On a large rural plot, such as the application site, a place to store large garden machinery is reasonable. A garage should be designed to be large enough to accommodate the average sized car. It is generally accepted, that to accommodate a modern family sized car with storage that a single garage space should be approx. 7.0 m x 3.0 wide. The garage / store / maintenance and repair section of the outbuilding would have internal dimensions of 12.1 m wide by 5.9 m deep (70.8 sq. m). As a point to note, the door openings measure 2.26 m wide and generally the door opening should be 2.4 m wide to provide reasonable access for an average sized car.

Having regard to the above, the application states the use of the building would be to house 2 no. cars and a double garage would be expected to be approximately 6.00m wide. The remainder of this part of the building is intended to accommodate 2 no. motor cycles and storage and repair / maintenance space.

The applicant contends in their supporting statement that *"It is obvious that once two cars and two motorcycles are in the garage section of the outbuilding, this will take up most of the space, demonstrating that it is suitable. Moreover, as the applicant does not have a garage, this will be the sole garage."*

Taking into account the average dimensions of a double garage, this would see the internal dimensions of the remaining part of this section of the building measuring 6.1m x 5.9m (35.99 sqm). Effectively, the remaining area would be marginally larger than the size of a double garage.

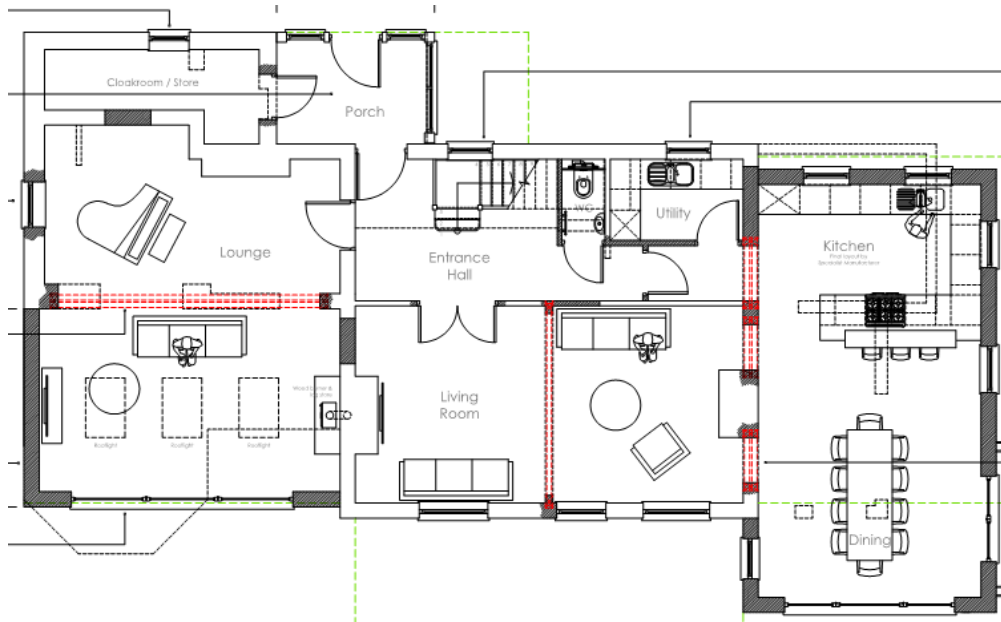
Turning to the remainder of the building which is intended for the leisure area which would include a swimming pool, the application details state that *"the portion of the existing (outdoor) pool that fits within the building will be used for swimming; the remaining portion will be covered over and utilised for pool services i.e. pipework"*. The supporting statement goes on to indicate that *"...It is recommended that a domestic pool for 1-2 people should be 7.6m x 4.3 at a minimum. A pool also requires underground drainage, a pool plant, and circulation around the pool. Bearing this in mind, the space for the pool is suitable..."*.

The leisure section of the building measures 16.3m x 5.9m internally. The uses 'anticipated' includes plunge / swimming pool / swim spa, sauna, gym equipment, sun lounge area, plant room (electrical equipment) and circulation space.

The plan as submitted does not identify how the floorspace would be given over to the constituent activities other than showing what appears to be a pool outline, although this is not annotated on the plan. Nevertheless, although the statement indicates a pool size of 7.6 x 4.3 m, the outline on the submitted plan measures 8.98 x 4 m.

In this case, the 'leisure uses' noted above are not usually considered as primary living accommodation and a leisure use is capable of being incidental to the enjoyment of the dwellinghouse and not unreasonable.

In addition to the 'leisure uses' a sun lounge is proposed. It is considered that this use could reasonably be expected to be accommodated in the main dwellinghouse. This is also having regard to the fact that the dwellinghouse has recently been extended. The dwellinghouse has two reception rooms, one of which benefits from large bi-fold doors and three rooflights on the south facing elevation. It could reasonably be concluded that providing a sun lounge within the proposed outbuilding would not materially differ from the living accommodation within the existing dwellinghouse and as such considered to be primary living accommodation.





It is indicated in that previous planning application that the volume of the 'original' dwelling was 565 cubic m and as extended 861 cubic m and the footprint of the dwellinghouse measures approx.167 sqm, including the later extensions (20/00061/FUL). By comparison, the proposed outbuilding would have a footprint of 188.5 sq m with a cubic volume of approx. 612 cubic m. The outbuilding would therefore have a footprint almost 13 % greater than the dwellinghouse.

There is also an existing large timber shed to the south east corner of the site erected between April 2021 and March 2022 (Google Earth) which is not referred to in the application. This has double access doors and concrete hardstanding fronting the access point.





As detailed above the Courts have established that the term 'required' should be interpreted as meaning 'reasonably required'. The burden of proof rests with the applicant and the appropriate test of evidence is the balance of probabilities.

The application is accompanied by a supporting statement, however, whilst the supporting statement indicates that the additional space within the 'garage' would be used for repairs and maintenance, there is no detail of what this would involve and whether this would be related to a hobby or for that matter another use which may or may not be incidental to the dwellinghouse. There is no detail given in relation to the household make up i.e.; number of residents. No reference is made to the existing large timber shed with double access doors and concrete hardstanding; what the existing shed is used for and why the additional storage is required.

Although, when broken down, none of the proposed uses of the building appear obviously unreasonable (even though in scale all are more than generous), the activities indicated in the application, in the main fall into categories that, individually, may be acceptable as incidental to the enjoyment of the dwelling house, however taken together they occupy an unreasonable amount of space. It has not been demonstrated that the outbuilding is genuinely subordinate and reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Thus as a matter of fact and degree the proposals do not come within the terms of Class E of Part 1 of GPDO.

Solar Panels

The proposed details include the provision of solar panels for virtually the whole expanse of the south facing roof plane.

Part 14 – *Renewable Energy* of the GPDO covers the installation of domestic microgeneration equipment such as solar panels. Class A – installation or alteration of solar equipment on domestic premises includes for permitted development for ...*the installation, alteration or replacement of microgeneration solar*

PV or solar thermal equipment on...(b) a building in the curtilage....

Permitted development rights do not therefore exist for the installation of solar panels on a building unless it is an existing building which has first been occupied. In this instance the application proposes solar panels that would be integrated into the fabric of the building.

As the solar panels shown on the building would be an integrated part of the building fabric they would not constitute development.

Conclusion

Based on the available evidence, the LPA is not satisfied as a matter of fact and degree that the proposed building would be genuinely subordinate and reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

Accordingly, as a matter of fact and degree the proposals do not come within the terms of Class E of Part 1 of GPDO.

Recommendation

The proposed outbuilding fails to demonstrate that as a matter of fact and degree, due to its size and intended uses that it would be genuinely subordinate and reasonably required for purposes incidental to the enjoyment of the dwellinghouse. As such it does not constitute 'Permitted Development' under Schedule 2, Part 1, Class E of the Town and Country (General Permitted Development) Order 1025 (as amended) and a lawful development certificate should be refused.

Signed Case Officer¹: **M Wishart**

Signed Authorising Officer²: **K Foster**

Date: **19 March 2024**

¹ I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

² I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

Appendix 1 – Site Photographs

