2023/0387
Mrs Carey Sizer-Coy

Erection of detached outbuilding (Application for a Lawful Development Certificate for a Proposed Development)

Bruce Lodge, Pilley Hills, Pilley, Barnsley, S75 3AU

Site Description

The application site refers to a large detached, two storey dwelling house located on a substantial plot (measuring c. 0.7 hectares) on Pilley Hills, in the rural settlement of Pilley. The site is located in the Green Belt, with access from Pilley Hills into two driveway/parking areas. There are several outbuildings on site already including detached garage located to the South of the dwelling, a domestic outbuilding to the South-east of the dwelling and a rectangular-shaped outbuilding to the North-East of the dwelling which is used for tree management operations. The dwelling has been extended in the past (ref. 2012/1016) for a two storey side and rear extension.

The application site itself previously consisted of substantial tree cover but has largely been cleared prior to the application being submitted. The land where the outbuilding is proposed to be sited is on a higher ground level than the dwelling and the rest of the site. The site is fairly close to other residential properties, primarily in the main village of Pilley (c.700m to the East) with several scattered residential uses on Pilley Hills and Hemit Hill, however the immediate surrounding area is predominantly woodland and agricultural land.

Background

2012/0199 – Fell 8 no. Yew Trees within TPO 2/1950 (Approved with Conditions

2012/1016 – Erection of side and rear two storey extension to dwelling (Approved with Conditions)

2023/0445 – Erection of an open fronted steel frame, steel clad single storey shed (Application to determine if prior approval is required for a proposed: Erection, Extension or Alteration of a Building for Forestry use) (Prior Approval Required – Refused)

Proposed Development

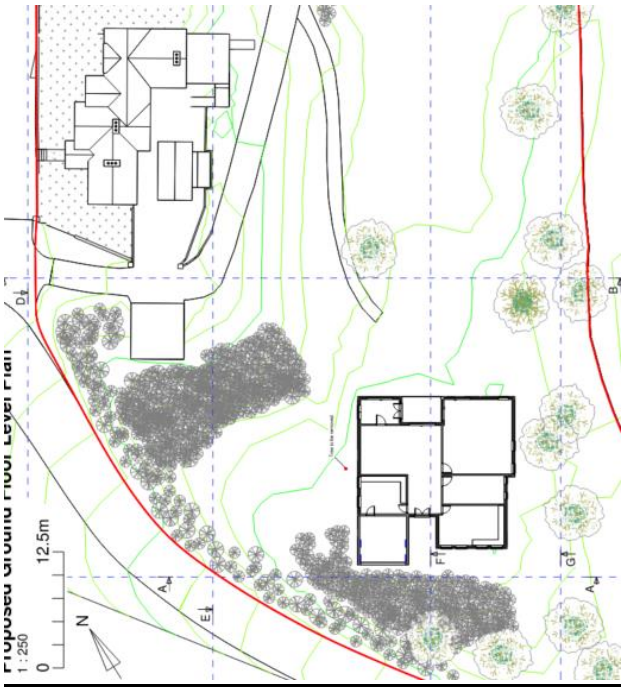
The applicant has submitted a Lawful Development Certificate for the erection of a single-storey outbuilding which is argued to meet the criteria and provisions of Class E (buildings incidental to the enjoyment of the dwellinghouse) of Part 1 (Development within the curtilage of a dwellinghouse) of the General Permitted Development Order (GPDO).

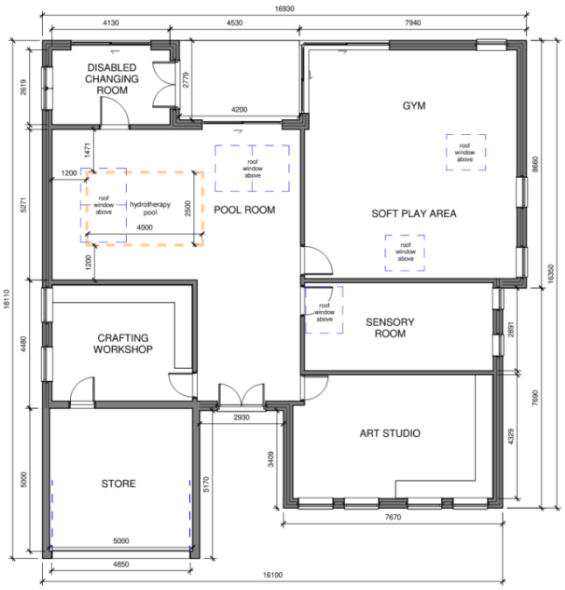
The proposed building is an irregular square-shape consisting of 7 rooms in total including the following:

- Gym/soft play area
- Sensory Room
- Art Studio
- Hydrotherapy pool room
- Crafting workshop
- Storeroom, and
- Disabled changing room

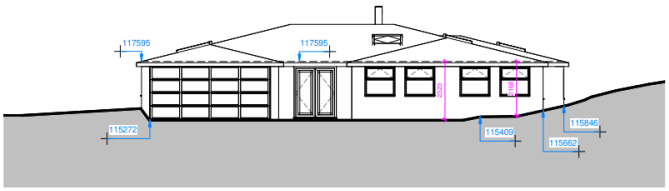
The intended use of the outbuilding is for a disabled member of the family.

Proposed Site Plan – showing proposed building to the South-East of the existing host dwelling and floor plans:

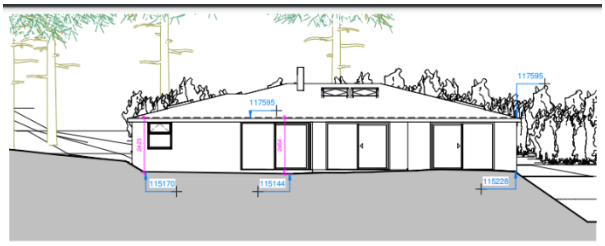




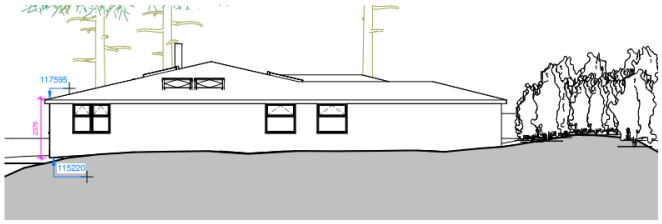
Proposed Elevations



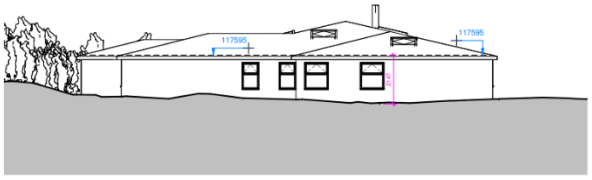
Proposed Front Elevation
1 : 100



Proposed Rear Elevation
1 : 100



Proposed LH Elevation
1 : 100



Proposed RH Elevation
1 : 100

Legal Context

The Town and Country Planning (General Permitted Development) (England) Order 2015 allows householders to extend their property or construct domestic outbuildings provided that certain criteria are met. Under Class E of Part 1 of Schedule 2 of this act, development is permitted for 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.

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);
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);
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;
d) the building would 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,
    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;
f) the height of the eaves of the building would exceed 2.5 metres;
g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;
h) it would include the construction or provision of a veranda, balcony or raised platform;
i) it relates to a dwelling or a microwave antenna; or
j) the capacity of the container would exceed 3,500 litres.

For the purposes of Class E, a purpose incidental to the enjoyment of the dwellinghouse 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. Other examples include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.

This is set out in the supporting text of the 'Permitted development rights for householders – Technical Guidance', a supplementary document to the General Permitted Development Order 2015.

Consultations

Legal – Should the building comply with the limitations of Class E of the GPDO, the only remaining grounds for not granting the LDC would be that the building is not reasonably incidental to the enjoyment of the dwellinghouse and therefore falls outside of Class E. Whether or not a proposed use is incidental is fundamentally a question of fact and degree to be determined by the planning decision maker adopting an 'objective' approach. The Legal Officer provided various case law and quotes from similar planning decision of this nature. The cases indicate that facilitates that are commonly found in dwellings (such as bedrooms and sitting rooms) are 'primary uses' and would therefore fall outside the scope of Class E. Incidental also connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse itself. As a result, the size and scale of the building can be a relevant consideration – in which the example of Emin v Secretary of State for the Environment 1989 was used.

Representations

Neighbour notification letters were sent to neighbouring properties and a site notice placed near to the site; no comments were received.

Assessment

The LPA can grant a certificate confirming that a proposed building is permitted development under Section 192 of the Town and Country Planning Act 1990. Section 192 (1) provides that if any person wishes to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful, may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question. Section 192(4) then provides that if, on an 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 shall refuse the application.

The applicant is seeking confirmation that the erection of a single storey outbuilding would meet the criteria within Class E – buildings etc. incidental to the enjoyment of a dwellinghouse – of Part 1 of the General Permitted Development Order (GPDO).

The proposed outbuilding is located in a substantial plot for a single domestic dwelling and meets the following criteria:

- Does not exceed 50% of the total area of the curtilage,
- Would not be situated on land forward of a wall forming the principal elevation of the original dwelling – the site visit showed that the principal elevation faces West, whilst the outbuilding is forward of the Southern elevation,
- The building does not have more than a single storey and does not exceed 4m in height, or 2.5m to the eaves,
- The building is not within the curtilage of a listed building,
- Does not include the construction of a veranda, balcony or raised platform,
- Does not relate to a dwelling or a microwave antenna,
- Is not a container (therefore the litres assessment is not relevant).

The Council therefore accepts that the building would fall within the above provisions. However, a large part of such Lawful Development Certificate assessment is whether the proposed building would be 'reasonably required' for a 'purpose incidental to the enjoyment of the dwellinghouse'. Naturally, such purposes is a broad concept and assessment of such is wide-ranging, being a fact of matter and degree in each case. The overriding purpose of the building must be limited to those that are 'required' for the incidental purpose and it is a matter primarily for the occupier to demonstrate what incidental purposes it is intended to enjoy, which are incidental to the main use of the dwellinghouse.

The amended statement goes into substantial detail in regard to the background of the applicant purchasing the property and its renovation, which is not relevant for this particular application, but goes into detail regarding the level of care which is currently required for the disabled family member. Associated documents (redacted and not included within the details above or made public on the Council website) have been provided, such as medical documents, outlining what disability this is. As such, this aspect of the development is not disputed, and some elements of the proposed outbuilding (such as a hydrotherapy pool) are certainly in line with what would be expected to support and aid a disability.

However, the initial assessment of such Class E outbuilding applications should be the scale, size and positioning of the proposed outbuilding, in comparison to the host dwelling. In this case, the proposed outbuilding is considered to be very large for a typical domestic outbuilding. The floor plans show that it measures 258sqm in footprint, which is larger than the footprint of the host dwelling (measuring 115sqm,

externally). For further comparison, the Council's SPD expects that 4/5+ bedroomed properties have a minimum floorspace of 107sqm, in line with the South Yorkshire Residential Design Guide. The proposed outbuilding would be greater than 2 times the size of such buildings. There is also a separation distance of 31.5m from the host dwelling at the nearest points, implying that it would have some form of independence from the host dwelling. Likewise, there is an independence sloped access from the existing parking/driveway area to the building.

Furthermore, the planning statement outlines that the proposed outbuilding would provide opportunities and benefits for care to be given within the domestic property. This is outlined within section 1.1, with a minimum of one-to-one care being given at all times and at often times, two-to-one care. Whilst it is appreciated that it is not uncommon for carers to visit domestic properties to provide such services, the sheer size and scale of the building is more akin to a formal healthcare building intended for the wider community and the level of care has not been specified within the document. Such level of care is not detailed as to how many carers would visit the site/building, and how often these services would be provided, which would possibly represent further independence in the proposed building.

Additionally, there are uses within the outbuilding which are not necessarily for the sole use of the outlined disability. Such as a gym and storeroom (with a metal roller shutter door). Whilst these uses independently could be considered to be incidental to the host dwelling, the size and scale of the building generally goes way beyond what would be considered ancillary to a host domestic property. Likewise, the building is split into 7 different rooms, which would easily allow for future conversion into an independent dwellinghouse/ancillary living accommodation. There is clearly a marked disparity between the size of the building, its floor space and footprint size, and the extend of the proposed facilities, in comparison to the size of the existing dwellinghouse.

The planning statement is detailed to give a general background to the scheme but is considered to be lacking in terms of explaining how a building of this size, both in terms of room number and general footprint size, in such an independent position on site would be incidental to the enjoyment of the dwellinghouse. The Planning Practice Guidance makes it clear that the applicant is responsible for submitting sufficient information to support an application.

The legal officer has provided several pieces of useful case law which are relevant to such LDC applications. A starting point would be Emin v SSE 1989 which identifies that 'incidental' "connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse itself." The phrase incidental to the enjoyment of the dwellinghouse should not be interpreted on the unrestrained whim of the householder but, rather, connotes some sense of reasonableness in the circumstances of each particular case. With consideration to Emin, the size and scale of the building can be a relevant consideration but by itself, is not conclusive to the incidental test. The nature and scale of the proposed use/s must be considered in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse. As outlined above, the footprint and floor size of the building is clearly large, greater than the host dwelling itself, and the level of care required in the building is unspecified. Emin v SSE (1989).

Wallington v Secretary of State for Wales (1991) considered a householder's hobby of rescuing and accommodating a large number of stray dogs and erection of a large set of kennels in the garden to accommodate the number of dogs, which was unlikely to be regarded as reasonably incidental. This provided evidence that the incidental test must also consider the relevant purpose is incidental to the particular dwellinghouse in question.

Whilst it is appreciated that the proposed outbuilding is for specific care for a disabled member of the family, and not for a 'hobby' or 'enjoyment' of the dwellinghouse, the scale of the building and the use is still a necessary material consideration. In order for a building to be considered permitted development, all of it must be required for incidental purposes. A building which is only part required for incidental purposes is not incidental to the enjoyment of the dwellinghouse. In brief, the submitted information

simply doesn't clarify to what intensity the building would be used for and how often specialist care would be present for a family member who requires a minimum of one-to-one care at all times, and often two-to-one care. Additionally, an updated planning statement was submitted which outlined (section 2.14) that the member of the family requires 'round-the-clock care which is currently provided by the applicant and a team of specialist carers. Another quote within the same section reads, 'they can never be left alone' which is vague statement but indicates that the level of care for the member of the family and using the building would be to a substantial level and very regularly.

Section 4.1.2 of the same updated planning statement reads: '*The separation between the host dwelling and the building is considered to be irrelevant and is not uncommon.*' The Council would dispute this viewpoint and its clear that the agent is looking purely at the part of the regulations referring to the location of the outbuilding, rather than considering the incidental test. In such context, the location of a building within the site would be relevant to determining whether the building would be incidental. It's clear that a building is required to have a close relationship with the host dwelling for its use and operation. If a building is at an excessive distance from the host dwelling, it would indicate that there is a level of independence and severance from the dwelling.

For the above reasons, it is concluded that the outbuilding, in its entirety, is not reasonably required for incidental purposes to the host dwelling by virtue of it being larger in size, scale and for purposes which would result in specialist care being present regularly at the domestic property to a level which is unspecified. The LPA contends that the intended outbuilding and the facilities within it would be of such a scale that does not fall within the parameters of Class E of Part 1 of Schedule 2 of the GPDO and would not be lawful development.

On a final note, the agent has indicated that the applicant would be willing to reduce the scheme to a building approximately 160sqm in footprint. Ultimately, the LDC is for the submitted scheme and this is what the LPA has considered.

The Lawful Development Certificate is therefore recommended for refusal.

Recommendation: **Refuse**