

Received Date	28 January 2025
Expires:	25 March 2025
Application Number:	250144
Site:	Silver Birches, Heath Ride, Finchampstead, Wokingham, RG40 3QJ
Application:	Application for a certificate of lawfulness for the proposed erection of a detached pool house including lower ground floor level, outdoor swimming pool and associated structures to rear.

1. Relevant Planning History

Application No	Proposal	Decision Date	Decision	Relevant Conditions
26866	Garage and single storey rear extension	10/02/1987	C/A	None
20582	Single storey rear extension	30/01/1984	C/A	None
05236	Alterations to roof and elevations	20/09/1976	C/A	None
02546	Demolition of existing dwelling and erection of 2no. dwellings	03/04/1975	REF	N/A

2. Site Description

Detached bungalow

3. Land/ Property Designations

- There are no listed buildings at the site and the property is not within 'Article 2(3) land' (Town and Country Planning (General Permitted Development) Order 2015).
- The site is not subject to any relevant wildlife or habitat designations.
- The site is situated within the Countryside of Finchampstead.

4. Legislation

Town and Country Planning Act 1990 (as amended)

- s.55 Provides that '*development*' includes the carrying out of building operations on land, and '*building operations*' includes structural alterations or additions to buildings.
- s.57 Planning permission is needed for all development of land.
- s.187a Enforcement for breach of conditions
- s.192 Applications for Certificates of Lawfulness of proposed use or development.
- s.191 Defines operations as 'lawful' if:
- (a) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Town and Country Planning (General Permitted Development) Order 2015 (GPDO)

- Article 3 In conjunction with Schedule 2 (Part 1) (Class E) grants planning permission for the erection of certain outbuildings, pools and fuel storage containers within the curtilage of a dwellinghouse.

Article 4 Provides that the planning authority may give direction to restrict the effect of Article 3.

5. The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

6. Relevant details of the proposal:

Proposed erection of a detached pool house including lower ground floor level, outdoor swimming pool and associated structures to rear.

7. Assessment against legislation:

			Yes	No
s.55	1	Does it constitute development?	✓	
s.191	2	Would it be contrary to an enforcement notice?		✓
s.187a Art.3	3	Would it be contrary to any condition imposed by any planning permission granted or deemed to be granted?		✓
Art.3 (5)	4	Are the building operations involved in the construction of the dwellinghouse lawful?	✓	
Art.4	5	Is there an 'Article 4 Direction' in effect for the site?		✓
Art.4	6	Is it within the curtilage of the dwellinghouse?		✓

Fuel storage

Sch.2 Pt. 1 E.b	7	Does the development consist of a container used for the storage of oil or liquid petroleum gas?	N/A	N/A
Sch.2 Pt. 1 E.b	8	Is the storage for domestic heating purposes?	N/A	N/A
E.1(j)	9	Would the capacity of the container exceed 3,500 litres?	N/A	N/A

Outbuildings and pools

Sch.2 Pt. 1 E.a	10	Does the development comprise a building or enclosure, swimming or other pool, or the maintenance, improvement or other alteration of such a building or enclosure?	✓	
Sch.2 Pt. 1 E.a	11	Is the building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such?		✓

Fuel storage and outbuildings

E.1(a)	12	Has permission to use the dwellinghouse as a dwellinghouse been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use)?		✓
E.1(b)	13	Would 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 original curtilage (excluding the original dwelling)?		✓

			Yes	No
E.1(c)	14	Would any part of the building, enclosure, pool or container be situated on land forward of a wall forming the principal elevation of the original dwellinghouse?		✓
E.1(d)	15	If it is a building would it have more than one storey?	✓	
E.1(e)	16	Would the height of the building, enclosure or container exceed: (i) Four 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 two metres of the boundary of the curtilage of the dwellinghouse? (iii) Three metres in any other case?	N/A N/A ✓	N/A N/A ✓
E.1(f)	17	Would the height of the eaves of the building exceed 2.5 metres?	✓	
E.1(g)	18	Would the building, enclosure, pool or container be situated within the curtilage of a listed building ?		✓
E.1(h)	19	Would the development include the construction or provision of a veranda, balcony or raised platform?		✓
E.1(i)	20	Would it relate to a dwelling?		✓
E.1(j)	21	Would it relate to a microwave antenna?		✓
E.3	22	Article 2(3) land (World Heritage Sites, National Parks, AONBs & Conservation Areas): Would any part of the building, enclosure, pool or container 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	N/A
	23	Would it affect or be within the Root Protection Area of a TPO'd tree? <i>* Does not affect Article 3 permission but separate TPO approval may be needed</i>	*	

Residential Curtilage

The proposed outbuilding would be situated approximately 130 metres from the host dwelling. Whilst separation distance is not in itself the sole indication for residential curtilage, it is clear in this site-specific circumstance that the proposed location for the outbuilding would be in an area of carefully managed woodland, as opposed to residential garden. In any case, it is an established fact that even if the land was currently in a residential use associated with Silver Birches, this does not necessarily mean that it lies within the curtilage of the dwellinghouse. It is to be noted that the concept of 'curtilage' is different to 'land use', and 'residential curtilage' is not a use of land as set out in the Use Classes Order. A residential/garden use of land does not necessarily equate to it falling within the curtilage of a dwellinghouse.

It is acknowledged that this area of the site is open and has been maintained as such for a considerable period of time, however, it is also evidently clear that this was historically woodland. This is supported by historic mapping, which gives a clear indication as to when the tree coverage began to reduce. No planning permission has been granted for any change of use of this land.

The applicant has provided a copy of Tree Preservation Order 874/1997, which demonstrates that the application site does not form part of the large TPO Woodland

that is bounded by Nine Mile Ride, Hollybush Ride and Heath Ride. This appears to have been submitted to support the argument that the outbuilding and associated works would be within the curtilage of the dwellinghouse. However, this TPO was imposed in 1997, at a time where the clearance of the site was already established. In any case, the site not being covered by the Order does not change its status as outside the curtilage of the dwellinghouse.

Would the development be incidental to the enjoyment of the dwellinghouse?

Class E relates to the provision of a building which is reasonably used and reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The nature of the activities carried out in the proposed building must be incidental or conducive to the very condition of living in the dwellinghouse. The physical size of the building could be a relevant consideration because it can indicate the nature and scale of the activities. Incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse itself.

Whilst some of the uses of the overall development are unusual, these all could be considered incidental to the enjoyment of the dwelling. Nonetheless, the footprint of the pool house is significant at 164m², which would exceed the footprint of the extended bungalow (138m²).

While the size of the building is not determinative as a standalone point, in this instance, it is considered that the scale of activity that would occur within the building cannot be considered subordinate to the dwelling itself. This is applicable to both the large amount of storage space in the basement and the significant amount of space allocated for the other uses. Furthermore, it is not considered that the outbuilding, which has a larger footprint than the host dwelling, can be considered incidental and is therefore not subordinate to the dwelling.

In any case, as the outbuilding would be located outside the curtilage of the dwellinghouse, it cannot be considered incidental to it.

In summary, the development is not considered to be incidental to the enjoyment of the dwellinghouse and subsequently fails on this point.

Is the building single storey?

Through Class E.1(c), works are not permitted development if the building would have more than one storey. The proposed basement would provide for accommodation at lower level, accessed from the ground floor by a flight of stairs. The building would therefore be two storey and infringe this particular limitation of Class E.

As the pool house is clearly two storey, it also fails to meet the limitation imposed on Class E developments with regard to buildings heights, as made clear in the assessment against legislation.

Other matters

Class E does not allow for engineering operations, it is not clear whether the excavation of a large basement would constitute an engineering operation separately to the

building operations, due to the volume of material having to be removed from the land to facilitate the development.

8. Conclusion

The proposed erection of a detached pool house including lower ground floor level, outdoor swimming pool and associated structures to rear constitutes development requiring planning permission. Permission is not available under Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, the proposal being in accordance with Schedule 2 (Part 1) (Class E) of the Order.

DRAFT REFUSED

A handwritten signature in grey ink, consisting of the letters 'JMM' in a cursive, stylized font.

Development Management Team Leader

Date: 21 March 2025