

| | |
|----------------------------|--|
| Received Date | 14 January 2025 |
| Expires: | 11 March 2025 |
| Application Number: | 250063 |
| Site: | Warren Crest Farm, Wick Hill Lane, Finchampstead, Wokingham, RG40 3PY |
| Application: | Application for a certificate of lawfulness for the proposed erection of an outbuilding. |

1. Relevant Planning History

| Application Number | Proposal | Decision Date | Decision | Relevant Conditions |
|--------------------------|---|---------------|----------|---------------------|
| 241564 (Not implemented) | Householder application for proposed single story side extension and single storey front infill extension, following demolition of the existing conservatory, the part raising of the roof to create first floor habitable accommodation, the conversion of the existing garage to create habitable accommodation and the part conversion of the detached store building to create a workshop and garage plus fenestration changes. | 25/09/2024 | C/A | None |
| 05206 | Detached farmhouse and garaging | 28/10/1976 | C/A | None |

2. Site Description

A two storey detached farmhouse associated with Warren Crest Farm.

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 within an identified Bat Roost Habitat Suitability Area, and partly within a Priority Habitat (Traditional Orchards) as defined by Thames Valley Environmental Records Centre.
- The site lies within designated Countryside.

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:

The proposed erection of a detached outbuilding to the side/rear of the existing dwelling for purposes incidental to the enjoyment of the dwellinghouse.

7. Assessment against legislation:

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

| | | | 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? | | ✓ |
| | | <i>Officer's Note: Condition 5 of planning consent ref 05206 restricts the erection of additions and extensions, and alterations, to the existing dwelling. However, this condition does not relate to the erection of detached incidental outbuildings.</i> | | |
| 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 | |
| Sch.2 Pt.1 E.b | 8 | Is the storage for domestic heating purposes? | N/A | |
| E.1(j) | 9 | Would the capacity of the container exceed 3,500 litres? | | N/A |

| | | | | |
|--|--|--|-----|----|
| | | | Yes | No |
|--|--|--|-----|----|

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? | ✓ | |
| <i>Officer's Note: See full discussion within the "Is the outbuilding required for a purpose incidental to the enjoyment of the dwellinghouse?" section of this report.</i> | | | | |

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)? | | ✓ |
| 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: <ul style="list-style-type: none"> (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? | | ✓ |
| 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 |
| | 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> | | ✓ |

Is the outbuilding required for a purpose incidental to the enjoyment of the dwellinghouse?

It is noted that the proposed outbuilding has a large footprint (circa. 158sqm) in comparison to the existing dwelling (circa. 165sqm, excluding the existing outbuildings). Emin v SSE & Mid Sussex DC [1989] has established in relevant case law that whilst the size of an outbuilding may be an important consideration when determining if a building is to be used incidental to the enjoyment of a dwellinghouse, it is not by itself conclusive.

In considering Class E proposes the critical test to be applied is firstly (i) whether the uses of the proposed outbuilding, in the context of the whole planning unit, is intended to be and would remain incidental or subordinate to the main use of the property as a dwellinghouse, and secondly (ii) whether the proposed outbuilding is reasonably required in order to accommodate those uses. In this context, the physical size of the building is a relevant factor to be taken into account, but is not determinative.

The proposed outbuilding would accommodate a variety of uses which, in principle, could be considered as incidental to the enjoyment of a dwellinghouse. The proposed swimming pool, sauna and gym can all reasonably be regarded as falling within the wide range of day-to-day domestic leisure and recreational activities that occupants of a dwelling might participate in. Although a WC and shower are shown on the submitted plans, these facilities would be ancillary to the leisure uses of the outbuilding and there is no evidence to suggest that any part of the building would be akin to ancillary (or self-contained) habitable accommodation requiring planning permission.

In terms of its overall size, the dimensions of the pool (circa. 10m x 5m) are the principal reason for the scale of the proposal. Once substantially complete the proposed outbuilding would be a large addition to the curtilage of the dwellinghouse. However, it is considered on balance that the internal space allocated to each of the various activities would not be excessive. Moreover, the main purpose of the proposal (the swimming pool) could not be accommodated within the existing floorspace, while the dwelling benefits from a reasonably sized plot.

On balance, it is considered that the proposed outbuilding would be of a size that could be viewed as genuinely and reasonably required to accommodate the intended incidental uses, while its overall size is not sufficient evidence in itself to conclude that the purpose of the outbuilding would not be incidental to the enjoyment of the dwellinghouse.

8. Conclusion

The proposed detached outbuilding, for purposes incidental to the enjoyment of the dwellinghouse, constitutes development requiring planning permission. Permission is 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 APPROVED



Development Management Team Leader

Date: 26/02/25