

DELEGATED OFFICER REPORT



**WOKINGHAM
BOROUGH COUNCIL**

Application Number:	242791
Site Address:	Riverways, New Bath Road, Twyford, Reading, RG10 9RY
Expiry Date:	10 January 2025
Site Visit Date:	3 December 2024
Proposal: Application for a certificate of existing lawful development for the erection of a detached outbuilding for purposes incidental to the enjoyment of the dwellinghouse.	

PLANNING HISTORY

Application No.	Description	Decision & Date
242758	Application for a certificate of lawfulness for the proposed erection of single storey side and rear extensions, plus installation of 2 no. side and 1 no. rear dormers.	Prior Approval Not Required – 06/12/2024
242757	Application for a certificate of lawfulness for the proposed erection of single storey side and rear extensions, plus installation of 2 no. side and 1 no. rear dormers.	Approved – 06/12/2024
There is no historic planning history relating to the application site.		

INFORMATION PROVIDED

By the applicant:

- Lawful Development Certificate Application Form:
 - Section 9 states that the building is being constructed and will be completed in accordance with the criteria set out within Schedule 2 (Part 1) (Class E) of the GPDO.
- Drawing titled 'Proposed Floor & Site Plans', Section & Elevations' – no. 23/120/01
- Supporting Statement – includes references to the Permitted Development Technical Guidance, Case Law and an Appeal Decision, describes the intended functions of the outbuilding including details of the equipment and photographic evidence of the site.
- Drawings titled 'Location Plans'
- Set of drawings numbered 24-G-027:
 - 'Floor Plans – Proposed' – no. AP001
 - 'Floor Plans – Dimensions' – no. AP002
 - 'Proposed Elevations – South and West' – no. AP003
 - 'Proposed Elevations – North and East' – no. AP004
 - '3D Floor Plan – Proposed' – no. AP005

- '3D External View – A' – no. AP006
- '3D External View – B' – no. AP007
- '3D External View – C' – no. AP008
- '3D External View – D' – no. AP009
- '3D Elevation – South and West' – no. AP010
- '3D Elevation – North and East' – no. AP011
- '3D Floor Plan – View A' – no. AP012
- '3D Floor Plan – View B' no. AP013

By the Council:

- Planning History Records (see summary above) – there are no restrictive conditions relating to the site's Permitted Development rights.
- Enforcement History Records:
 - There are no extant Enforcement Notices relating to the site.
 - Investigation ref RFS/2024/089484 – various correspondence between the applicant and the Enforcement Officer, site visit photos and notes dated 03/09/2024 including measurements of the building.
- The Case Officer carried out a site visit on 03/12/2024 and observed the extent of the building works carried out as shown in the submitted details.
- Site visit photos (03/12/2024)

By third parties:

Two comments (including duplicates) were received on this application:

Twyford Parish Council: raised concerns with the development's location outside the village settlement, could set a precedent, surface treatment, cumulative impact on infrastructure and services and current flooding problems. Requested that TW7, TW9 and TW13 of The Twyford Neighbourhood Plan be taken into consideration.

Local Resident: Raised concerns that the building has been constructed and that this has been allowed to happen on presumed flood risk land, impact on increased flood risk to others and pressures on emergency services.

Officer's Note: While these comments are duly noted, under this type of application the Council is not able to take into account material planning considerations and planning policy in its determination. The application has been submitted to confirm whether the development is lawful, under Permitted Development, and subsequently does not require planning consent from the Council.

SITE DESCRIPTION

The application site comprises an early 20th Century detached chalet style bungalow located off New Bath Road (A4) to the north-west of the settlement of Twyford. The site is located on the eastern bank of the River Loddon and benefits from an existing detached garage and boat house. The main dwelling is sited towards the eastern boundaries of the site which adjoin Riverways Farm.

The application site falls within designated Countryside and Flood Zones 2 & 3. 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 wildlife designations, although it does fall within an identified bat roost habitat suitability area.

LEGISLATION

Town and Country Planning Act 1990 (as amended)

Section 55(1) of the Town and Country Planning Act 1990 (as amended) defines development as “the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”

Section 57 of The Town and Country Planning Act 1990 (as amended) requires that planning permission is required for the carrying out of any development of land.

Section 191 deals with applications for Certificates of Lawfulness of existing development, and the authority’s duty to determine them.

Section 191(1)(a) provides that if any person wishes to ascertain whether any existing use of a building or other land is lawful they may make an application for that purpose to the local planning authority specifying the land and describing the use, operations or other matter. As Section 191(1) (a) is written in the present tense, it is plain that the use must exist at the time of the application.

For the purpose of the 1990 Act s.191(2) 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.*

Case Law

The courts have held in *Gabbittas v Secretary of State for the Environment* [1985] JPL 630 that the relevant test of evidence on such matters is ‘the balance of probability’. The Courts have also held that the applicant’s own evidence does not need to be corroborated by ‘independent’ evidence in order to be accepted. If the Local Planning Authority has no evidence of their own, or from others, to contradict or otherwise make the applicant’s version of events less probable, there is no good reason to refuse that application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

In considering applications for a Certificate the guidance given by the High Court in *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions and Vale of White Horse D.C.* [1999] JPL 461 is of value.

Three questions need to be answered. Firstly, “When did the material change of use specified in the application occur?” To be lawful, this would need to be before 1 July 1948, by 31 December 1963, or at a date at least 10 years prior to the current application, or 4 years for operational development or use of a building as a single

dwelling.

Secondly, if the material change took place prior to those dates, has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise.

Finally, if the decision maker is not satisfied that the description of the use as specified in the application properly describes the nature of the use, the decision maker must modify/substitute each description so as to properly describe the nature of the material change of use which occurred.

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 “buildings etc incidental to the enjoyment of a dwellinghouse”.

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

APPRAISAL

The application is for a Certificate of Lawful Existing Development to regularise the erection of a detached outbuilding incidental to the enjoyment of the dwellinghouse known as “Riverways”. Works on the erection of the outbuilding have started but the building is, as of the date of this report, not substantially complete or in use. As such, the appraisal of this application requires consideration of the lawfulness of the building once fully constructed and in use.

In determining a Certificate of Lawful Existing Development a Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. In the case of this Certificate, it must be demonstrated that the operational development could be carried out under the provisions of the GPDO.

The National Planning Policy Guidance (NPPG) sets out that the onus of proof is on the applicant, not the Local Planning Authority in submitting a Certificate of Lawfulness. However, the NPPG also states that “if Local Planning Authorities have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided that the applicant’s evidence is clear and unambiguous to justify the grant of a certificate”.

Planning merits are not relevant at any stage in the process however evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so.

Relevant details of the proposal:

The erection of a detached outbuilding incidental to the use of a dwellinghouse. The outbuilding is sited to the south-east of the main dwelling with a total height of 4m from the existing ground level and a dual-pitched roof form.

Assessment against legislation:

Class E – buildings 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?		✓
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? 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.	✓	

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: (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?		N/A
		(iii) Three metres in any other case?		N/A
		Officer's Note: The Technical Guidance states that the height of the building should be measured from the highest ground level immediately adjacent to the building. In this case, the buildings sits on a sloping gradient from east to west. Accordingly, measurements are taken from the eastern points of the building.		
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 & the Broads): 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? * Does not affect Article 3 permission but separate TPO approval may be needed		✓

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

The main dwellinghouse has a footprint of approximately 123.5sqm, the total footprint of the outbuilding is approximately 140sqm. There is therefore concern that the proposed outbuilding, once substantially complete and in use, could be viewed as too large to be considered incidental to the enjoyment of the dwellinghouse.

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 purposes 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.

(i) Whether the uses of the proposed outbuilding is intended to be and would remain incidental or subordinate to the main use of the property as a dwellinghouse

The “Permitted development rights for householders: technical guidance” document published by the Ministry of Housing, Communities & Local Government clarifies that Class E permits, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Any detached outbuilding could be deemed to be permitted development, as long as it can properly be described as having a purpose incidental to the enjoyment of a dwellinghouse. An incidental purpose would not, however, cover normal residential uses including the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.

The proposed outbuilding would accommodate a variety of uses which, in principle, could be considered as incidental to the enjoyment of a dwellinghouse. The submitted drawings and visuals demonstrate that the building would accommodate a golf studio, putting studio, steam room, home office, storage for canoes and other equipment as well as a plant room.

The proposed uses of the outbuilding 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. Residential storage and a home office are also common incidental uses contained within detached outbuildings. Although a WC and shower are shown on the submitted evidence, 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.

Overall, it is considered that the submitted evidence sufficiently demonstrates that the uses of the proposed outbuilding is intended to be and would remain incidental or subordinate to the main use of the property as a dwellinghouse.

(ii) whether the proposed outbuilding is reasonably required in order to accommodate those uses

In the judgement of *Emin v SSE & Mid Sussex DC [1989]*, Sir Graham Eyre QC refers to the need for a sense of reasonableness in all the circumstances of a case. Whether a building is required for a purpose associated with the enjoyment of a dwellinghouse “*cannot rely on the unrestrained whim of he who dwells there*”. It is therefore consistent with *Emin* that consideration of whether a proposed building is genuinely required for an incidental purpose(s) depends, in part, on the circumstances of a particular dwellinghouse and its occupiers. However, any intended function/purpose should rise from a reasonable need of any current or future occupiers, rather than a desire or whim.

While it has been demonstrated that the proposed uses would be incidental to the enjoyment of the dwellinghouse, it must also be demonstrated whether the proposed outbuilding is reasonably required in order to accommodate these uses. The submitted Supporting Statement details the intended functions of the development and how the outbuilding is designed to accommodate these. The submitted information includes the following statements:

- The occupants of the dwelling both play golf and therefore possess various golf equipment and accessories which require storage.
- The occupants also own a 5m river boat, two kayaks and a canoe, as well as various associated equipment and accessories which require storage.

- Due to the site's location, fishing has become a new hobby and the occupants have started to accumulate various fishing equipment.
- One occupant enjoys daily Pilates and regularly uses free weights and cardio machines to maintain fitness along with canoeing when conditions allow.
- One occupant has been a PGA golf professional for 40 years, now that they are semi-retired they wish to get back to playing at a decent level and the proposed facilities would support this.
- The site is not on mains gas and relies on a borehole for water, the plant room would allow for the installation of a heat pump, solar collectors etc. as well as space for repairs and additional storage.
- The steam room would be used after undertaking various recreational hobbies/activities to support their health & wellbeing, as well as to hang wet gear.
- The home office includes space for additional gym equipment to support their health and wellbeing.
- The intended layout of the proposed outbuilding is clearly detailed in the submitted plan titled 'Floor Plans – Proposed' (no. AP001). An excerpt of this plan is included below:



The submitted information is very detailed, with the Supporting Statement listing the intended equipment and its requirements including the specifications of the golfing equipment, with the submitted visuals (see excerpt above) clearly demonstrating the intended layout and the space required for each equipment.

There is also evidence of the occupants' involvement with the recreational hobbies/activities that the outbuilding would serve, while it is reasonable to expect that occupants of a riverside dwelling would wish to utilise their access to the River Loddon. The Supporting Statement also includes evidence of the equipment in their possession. It can therefore be concluded that the intended functions of the outbuilding rises from a reasonable need of the current occupiers of the dwellinghouse, rather than from a desire or whim.

[illegible]

In terms of its overall size, the building once substantially complete would be a large addition to the curtilage of the dwellinghouse. However, a detailed justification has been provided in respect of the size of each of the spaces the outbuilding would provide and their allotted use/s. On balance, it is considered that the internal space allocated to each of the various activities would not be excessive.

It has been identified that the external footprint of the outbuilding would be greater than the main dwelling, while the site's planning history indicates that the internal floorspace would be marginally less in comparison (approx. 118.5 sqm compared to 121.5 sqm). As such, the building would cover a significant portion of the lawned eastern area of the garden and would be comparable to the size and scale of the host dwelling.

However, the dwelling comprises two floors of habitable accommodation and the site has a benefit of a generous garden area and overall plot size. Although the 3 bedroom dwellinghouse comprises a store, utility area and other spaces where some of the proposed uses could be facilitated, on the site visit it was not apparent that the dwelling is not fully utilised while some of the activities (in particular associated with golfing) could not be easily accommodated within the existing floorspace. It was also observed that the existing detached garage was of a relatively small size, while the boat house appeared to be dilapidated.

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the proposed incidental uses are increasingly often found in outbuildings set aside for consolidated leisure purposes. It is therefore concluded that the activities for which the outbuilding would be required could not reasonably be accommodated within the dwelling or existing outbuildings.

Overall, while the size of the proposed outbuilding would be considerably large, within the context of the site and taking into account the detailed information submitted, there is no evidence to suggest that the outbuilding would not be reasonably required to accommodate these incidental uses. 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 in this instance.

Conclusion:

The site benefits from Permitted Development rights to erect a detached outbuilding for purposes incidental to the enjoyment of the dwellinghouse, subject to the conditions and limitations of Class E. In this case, while the proposed outbuilding once it is substantially complete and in use would be a considerably large addition to the curtilage of the dwellinghouse, on balance, sufficient detail has been submitted to demonstrate that (i) 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 dwelling, and (ii) the proposed outbuilding is reasonably required in order to accommodate those uses.

The applicant's evidence is consistent and clear, and there is no other information which contradicts or undermines the applicant's submission.

Taking into account the submitted evidence, the Council's own information and relevant Case Law and appeal decisions on this matter, it can be concluded on the balance of probability that the development would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Accordingly, permission is available under Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, the development being in accordance with Schedule 2 (Part 1) (Class E) of the Order.

Subsequently, the matter is lawful and the Council would not have been in a position to take enforcement action under s171B of the TCPA on the date of the application.

This decision would not prevent the Council from taking enforcement action if the development is not carried out in accordance with the submitted information, is constructed for a different purpose or if the building is subject to a future material change of use. The applicant is reminded of this by the recommended informative.

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.

RECOMMENDATION

The erection of a detached outbuilding for purposes incidental to the enjoyment of a dwellinghouse constitutes development requiring planning permission. Based on the evidence provided and the Local Planning Authority's own information, it has been sufficiently demonstrated that permission is available under Article 3 of the Town and Country Planning (General Permitted Development) Order 2015, with the development being in accordance with Schedule 2 (Part 1) (Class E) of the Order. On this basis it is recommended that the application for a Lawful Development Certificate be **approved**.

Date:	13 January 2025
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Earliest date for decision:	9 December 2024
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Recommendation agreed by: (Authorised Officer)	
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Date:	13/01/25
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