Expiry Date - 12/04/2024

Development Control – Delegated Officer Report

Application Number: AWDM/0686/23 Recommendation – APPROVE

Site: 50 Falmer Avenue Worthing West Sussex BN12 4TD

Proposal: Application for a Lawful Development Certificate for an Existing Garden outbuilding/cabin for use as home gym and storage along with a detached canopy over hot-tub adjacent

Date of site visit: 26/06/2023 & 09/04/2024

Neighbours consulted: Y

Additional neighbour notifications: N

Proposal, Site and Surroundings

The application property comprises a detached two-storey dwelling situated on the east side of Falmer Avenue and set behind a relatively deep driveway. Properties in the surrounding area benefit from relatively large plot sizes, although the rear garden space of the application property is comparatively smaller than others in the area. The property shares boundaries with properties to the north (No. 7 and No. 9 Ashurst Drive) and to the east (No. 5 Ashurst Drive) whose plots are at oblique angles, along with No. 48 Falmer Avenue which is to the south.

The application relates to an L-shaped outbuilding with a detached canopy over hot-tub adjacent (the original submission sought approval for a verandah-structure to cover the hot-tub area rather than the freestanding canopy), erected in the rear garden of 50 Falmer Road. The outbuilding has been constructed abutting the rear (east) and part of the south side boundary of the property and spans most of the garden's width. The adjacent freestanding canopy over hot-tub is situated to the north-east corner of the plot. There is also associated low-level decking and patio works.

The outbuilding comprises timber vertical cladding elevations, the flat roof is finished in grey GRP, and the doors, which are located to the front (west) and side (north), are finished in anthracite grey. The outbuilding has been sub-divided to provide a store room which is accessible via the southerly front door only, whilst the majority of the floor space of the outbuilding, of which consists of a home gym and shower and W/C facility, is accessible via the central positioned front doors and side door which opens out onto the hot-tub. The section of the outbuilding labelled as a store measures 4.9m deep x 1.7m wide and the section labelled as a home gym including the integral shower and W/C measures 3.38m deep x 7.85m wide, amounting to a total width of 9.55m. The adjacent canopy is supported by 4No. timber posts and measures 1.7m deep x 3.4m wide. A 100mm gap is observed between the outbuilding and canopy, of which both have a height of 2.5m.

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Relevant Planning History:

Erection of detached house and garage granted under WB/0287/64 on 02/06/1964. Revised plans granted on 28/05/1965.

Consultations:

Legal Services:

Legal services responded to an initial consultation stating:

'I have reviewed the application for a CLEUD in respect of the outbuilding at 50 Falmer Avenue and the wording of Schedule 2, Part 1, Class E of the GPDO which covers buildings required for a purpose incidental to the enjoyment of a dwellinghouse.

Having done so, my advice is that this falls within permitted development and so the CLEUD should be granted. Given the outbuilding's use as a gym, I feel that this falls within what is permitted under Class E as the use is for a purpose incidental to the enjoyment of a dwellinghouse.

The shower and toilet within the outbuilding should be considered in the context of what the outbuilding is being used for, and I feel it is reasonable to conclude that someone may want to take a shower after using the gym and before going back into the main house and obviously they may want to use the toilet at any point. The drawings submitted also show that the shower may be used in relation to the hot tub which is outside but covered by the flat roof of the outbuilding and again, this makes sense in terms of its use for a purpose incidental to the enjoyment of the dwellinghouse.

Assuming that the measurements in the drawings are accurate to the actual build, and I have noted from the application form that an enforcement officer has apparently inspected the outbuilding and was satisfied with it, it seems that the outbuilding does not exceed 2.5m (it is exactly 2.5m tall) and so it does not fall outside what is permitted under Class E.1(e)(ii).

Whenever an application for a CLEUD is submitted, it must be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. I feel that this application meets that test. I would advise you to make it clear on the CLEUD exactly what use you say is lawful. Although the drawings make it very clear that the outbuilding is being used as a gym, the application form makes no mention of the word "gym" and refers to the existing use as "Garden outbuilding/cabin". If you want to certify the outbuilding as lawful on the basis of its use as a garden outbuilding that is fine and it's not necessary to limit its use to a gym. Calling it a garden outbuilding would make it sufficiently clear in my opinion that we are not certifying the lawful use of the outbuilding as a dwelling which is not permitted under Class E.1(i) and so we could take enforcement action should evidence ever arise

that it is being used as such, which is a possible concern given the installation of the shower and toilet.'

Following this response, further advice was obtained from the legal officer in respect to the verandah-structure which was recorded at time of the initial site visit. Their response read:

'I agree that this is a verandah. Page 29 of the Government technical guidance on PD rights for householders defines a verandah as "a gallery, platform, or balcony, usually roofed and often partly enclosed, extending along the outside of a building at ground level."

This seems to fit squarely within that definition. As such, it is caught under E.1(h) of the GPDO and they will need planning permission.'

Officer comment:

This advice was communicated with the applicant who responded expressing their desire to comply with the legislation by detaching the 'verandah' over hot-tub from the outbuilding. By modifying the structure in this way, the Council is satisfied that it can now be described by definition as a freestanding 'canopy'. Since these works have been completed (as verified on an inspection undertaken on 09/04/2024), the criterion set out in E.1(h) of the GPDO has been complied with as the structure is no longer considered to be a 'verandah' by definition.

Representations: None.

Planning Assessment

Principle

The proposal will be viewed against the relevant criteria of permitted development, as laid out within The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and in light of the comments made by the legal services officer.

Consideration

Schedule 2, Part 1 - Development within the curtilage of a dwellinghouse

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…

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);

Analysis: Not applicable.

(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);

Analysis: The ground covered by the development does not exceed 50% of the total area of the curtilage.

(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;

Analysis: The development is located to the rear of the property.

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

Analysis: The development is single story.

(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;

Analysis: The development is within 2m of a boundary of the curtilage but does not exceed 2.5m.

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

Analysis: Not applicable.

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

Analysis: Not applicable.

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

Analysis: The verandah has been removed by the applicant, thus, the development is no longer caught by this criterion.

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

Analysis: Not applicable.

(j) the capacity of the container would exceed 3,500 litres.;

Analysis: Not applicable.

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

Analysis: Not applicable.

Conclusion

The applicant seeks to establish that the development is lawful in planning terms and that no further enforcement action may be taken. The planning merits of the case are not material considerations. In order for a Certificate of Lawfulness to be issued the Local Planning Authority must be satisfied that the development has complied with the above legislation.

The property has previously been visited by an enforcement officer at a time during its construction following a complaint raised by a member of the public. The enforcement officer found that the outbuilding does not breach permitted development legislation as set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 1, Class E (under application AWEN/0239/22 on 07/12/2022). From undertaking a visit to the site since the developments completion it appears the scale of the works have been completed in accordance with the findings of the enforcement officer and submitted plans for this application (as revised to omit the verendah). However, there was no record of water supply serving the outbuilding mentioned in the enforcement officer's investigation. Notwithstanding, legal services have been consulted on the matter and have indicated that the inclusion of the shower and W/C facility in the outbuilding would in this context be incidental to the use of the garden building as a home gym and as such, the CLEUD should be granted.

The description of the development limits the use as an outbuilding/cabin for use as home gym and storage and as such certifies the lawful use of the outbuilding as incidental to the enjoyment of a dwellinghouse.

Conclusion

The application has been considered under Class E *for a 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 and is found to comply with permitted development.

Recommendation

Issue a Certificate of Lawfulness for Existing Use, the submission is lawful in planning terms and a planning application will not be required.

Reasons for Recommendation

The outbuilding with detached canopy adjacent constitutes 'development' as defined by Section 55 of the Town and Country Planning Act 1990, but meet the criteria for permitted development set out in Class E of Part 1 Schedule 2 of Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Is recommendation contrary to letter(s) of representation? N

Case Officer:	Jason Albon	Date: 11.04.2024
Authorised by:	Jo Morin	Date: 11.04.2024