

<b>LDC (Proposed) Report</b>		<b>Application number</b>	2022/5583/P
<b>Officer</b>		<b>Expiry date</b>	
Geri Gohin		14/02/2023	
<b>Application Address</b>		<b>Authorised Officer Signature</b>	
14 Greenaway Gardens London NW3 7DH			
<b>Conservation Area</b>		<b>Article 4</b>	
Redington Frogmal		Basements	
<b>Proposal</b>			
Five single storey outbuildings in rear garden.			
<b>Recommendation:</b>		Refuse Lawful Development Certificate	

### 1. Site Description:

- 1.1 The site consists of a detached two-storey dwelling house with additional floorspace in the roof and basement, located on the north-eastern side of Greenaway Gardens.
- 1.2 The site is in Redington Frogmal Conservation Area and makes a positive contribution to the Conservation Area. The proposal relates to five single storey outbuildings in the rear garden.
- 1.3 The proposals are assessed under Class E (development within the curtilage of a dwellinghouse), Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO)

<b>Schedule 2, Part 1 (Development within the curtilage of a dwellinghouse) Class E</b>		
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		
If yes to any of the questions below, the proposal is not permitted development		Yes/no
E.1 (a)	Is permission granted to use the dwellinghouse as a dwellinghouse only by virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (changes of use)?	No
E.1 (b)	As a result of the works, will 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 curtilage (excluding the ground area of the original dwellinghouse)?	No

E.1 (c)	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?	No
E.1 (d)	Would the building have more than a single storey?	No
E.1 (e)	Would the height of the building, enclosure or container 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?	No No No
E.1 (f)	Would the height of the eaves of the building exceed 2.5 metres?	No
E.1 (g)	Would the building, enclosure, pool or container be situated within the curtilage of a listed building?	No
E.1 (h)	Would it include the construction or provision of a verandah, balcony or raised platform?	No
E.1 (i)	Would it relate to a dwelling or a microwave antenna?	No
E.1 (j)	Would the capacity of the container exceed 3,500 litres?	N/A
E.2	In the case where any land is within the curtilage of the dwellinghouse which is within— (a) an area of outstanding natural beauty; (b) the Broads; (c) a National Park; or (d) a World Heritage Site Would the total area of ground covered by buildings, enclosures, pools and containers be situated more than 20 metres from any wall of the dwellinghouse exceed 10 square metres?	N/A

Is the property in a conservation area? Yes. If YES to the question below then the proposal is not permitted development:

The property is located in a conservation area.

E.3	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?	No
E.4	<b>Interpretation of Class E</b>	
	For the purposes of Class E, “purpose incidental to the enjoyment of the dwellinghouse as such” 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	Does not comply (refer to section 4 for full assessment)

## 2. Consultation:

**2.1** There is no statutory requirement to consult on lawful development certificate applications. Nevertheless, residents or local groups can comment or object to this type of application. As this application is for a Lawful Development Certificate the assessment is purely a legal determination as to whether it complies with terms of Schedule 2, Part 1, Class E of the General Permitted Development Order (GPDO) 2015 (as amended). Policy considerations are not material and cannot be taken into account as a matter of law.

27 objections have been received during the course of the application from the following addresses and local groups:

- Nos. 2X, 4, 4A, 4B, 6, 8, 8A, 10 (Flats A and C), 10 Chesterford Gardens
- Flats 2 and 4, 27 Redington Road
- Redington Frogna! Neighbourhood Forum
- Heath & Hampstead Society
- Nos 12, 15 (Flat 3), 15, 15A, 15B, 16 Greenaway Gardens
- 5 Lindfield Gardens

The grounds of objection are summarised below:

- **Consultation & Process**

- Local residents not being informed or consulted
- Neighbours feel misled and mistreated: by splitting this process in two steps (landscaping/demolition with the previous planning application and then construction with this certificate), neighbours' consent was eliminated

- **Size & Design**

- Large footprint buildings inappropriate in the garden of a house in a conservation area
- Outbuildings almost look like a mini development in their own right in the middle of these adjoining gardens
- Massive construction
- Principles of the Neighbourhood Plan to enhance and preserve the special character of the Redington Frogna! Conservation Area not adequately applied
- Impact on the character of the suburban and conservation area of Hampstead
- Unique heritage of this historic and iconic village-style part of London
- Proposed buildings will drastically impair the visual amenity of the site

- **Trees/Landscape**

- Loss of garden space, need to preserve green space
- Loss of vital habitat for wildlife and a rich variety of plants
- Affect the natural ecosystem in the area
- 30 mature trees have already been felled, and although new young trees have been planted, it will take years for them to reach maturity and provide comparable wildlife habitats.
- Swimming pool placed in front of the veteran oak tree and its view from the house
- Damage (through foundations) to the existing trees and particularly the oak tree
- Drawings put forward show the veteran oak tree disappears between page 6 and page 7, where the proposed five new outbuildings are added. Is this deliberate or an oversight? If it is the latter, insist on revising their drawings to re-include this tree on every picture
- Would like an ecological appraisal of the whole site as it was before the planning applications

since 2021 and a statement from the landscape designers on how they intend to shield the soil of the acid garden and rhododendrons.

- Excavation would disturb the soil and may damage the underground streams of the area
- Harm to the landscape/impact on environment
- Contractors do not seem to be following the Arb Method Statement for consented applications
- Lack of an Arboricultural Method Statement for 2022/5583/P brings a potential for “unknown risk”, and without such a document, the veteran oak tree T29 requires a TPO, consider issuing an Emergency TPO on the oak tree
- Request that a tree survey and AIA are required to be obtained from a VetCert trained arboriculturalist
- Proposed buildings clearly incompatible with section 6 (landscape character) of the Redington/Frognaal CA Appraisal and of the Redington Frognaal Neighbourhood Plan
- Original application should be upheld with all the associated landscaping and biodiversity

- **Noise**

- Construction of proposed buildings will lengthen the duration of noisy and ugly works on the site
- Constant noise from the proposed pump machinery equipment to be sited in two of the outbuildings
- Pool pumps, “dance zones”, games rooms should be at least sound proofed

- **Legislation**

- Set a dangerous precedent for further such loss of gardens to inappropriate buildings
- Need for an article 4 direction to cover Greenaway Gardens, Templewood Gardens, Oakhill Avenue and Redington Road

- **Amenity**

- The siting of the outbuildings very close to the boundary with homes in Chesterford Gardens
- Affect the view and light of most of the neighbours
- Air pollution with the pool storage near neighbours’ fence
- Impact of adjacent gardens
- Loss of privacy and quiet enjoyment of properties for a substantial stretch of Chesterford Gardens

- **Flooding**

- Increased risk of flooding

- **Section 106 undermined for the consented 2021/6257/P**

- The work to construct the 5-building Permitted Development 2022/5583/P would undermine the s106 for the original house and landscaping consent for 2021/6257/P. Could not be kept to if such large additional buildings, particularly with the swimming pool heating and water use was undertaken. Thus, work for the PD 2022/5583/P could not begun until 2021/6257/P was completed (and all the conditions for the s106 signed off).

- **Not incidental to the enjoyment of the dwellinghouse**

- From the “Revised Whole Life Cycle Carbon Emissions Assessment v2” (2021/6257/P): “Number of occupants 8 occupants, taken from accommodation schedule”

From “Revised Energy and Sustainability Statement v2” (2021/6257/P): “Dining area is set to formal dining 12 people”

This seems to indicate that in this 5 double-bedroomed house, the family of 4 people will live here, could accommodate a further visiting two couple guests and/or entertain a further 8-10 people, and have several security and other employees working at the site although not living here.

Given these figures, it is a moot point whether a pool, plus a jacuzzi, plus 3 recliner beds and 2 chairs, plus a sauna, plus a treatment room with one couch, plus a dance floor, plus a gymnasium plus gym equipment storage, plus a games hall, plus an art studio, plus an art gallery, plus a terrace are incidental to merely the enjoyment of this household.

The house already has a consented music room, gaming area, craft room, model room and virtual reality area and cinema in the house (in addition to a wine cellar, an office and a break room and a security office – separate from the 2 family studies – plus further storage, extra kitchens, etc).

- **Not complying with Class E**

- The building covering over the swimming pool is to be 4 metres high, raised on a bank 1.6 metres high. The full height is therefore 5.65 metres: hardly one storey. It is hard to square this with the intentions of PD guidelines.
- The drawings indicate that the ground floor level of the upper level of the garden (hence the roof heights) is a moveable feast when it comes to viewing the buildings from the neighbours’ gardens for fulfilling the spirit of PD legislation.
- Does the legislation intend that “ground floor” levels in gardens can be varied, raised or lowered in order that deeper swimming pools or taller buildings (as seen from neighbouring gardens) can be accommodated and still be deemed Permitted Development?

**3. Relevant planning history:**

**At the application site:**

**2021/0984/P** - Demolition of summerhouse in rear garden and landscaping works – **granted planning permission 20/08/2021**

This permission was granted subject to conditions requiring details to be approved prior to the work commencing. The following Approval of Details application has been submitted and approved in relation to this application:

**2021/5709/P** - Details of condition 6 (written scheme of investigation) pursuant to planning permission 2021/0984/P dated 20/08/21 for the demolition of summerhouse in rear garden and landscaping works. **Details approved 24/01/2022**

**2021/5768/P** - Details of condition 3 (hard and soft landscaping) pursuant to planning permission 2021/0984/P dated 20/08/21 for the demolition of summerhouse in rear garden and landscaping works. **Details approved 29/03/2022**

Condition 3 is relevant to the current proposal and states:

No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of policies A2, A3, D1 and D2 of the London Borough of Camden Local Plan 2017 and policies BGI and BGI 2 of the Redington and Frognaal Neighbourhood Plan 2020.

**2021/6257/P** - Partial demolition of existing dwelling with retention of the front facade and parts of the side and rear facades and the erection of a basement extension, infill rear extension, various minor changes to the fenestration and other associated works – **granted planning permission subject to a Section 106 Legal Agreement on 30/11/2022**

#### **Other relevant history:**

- a) APP/Z3635/X/21/3275492 – 28 Ash Road, Shepperton, TW17 0DN – **Appeal dismissed 07/11/2022**
- b) APP/R0660/X/22/3294400 – 9 Lees Lane, Newton, Mottram St Andrew, Cheshire, SK10 4LJ – **Appeal dismissed 04/10/2022**
- c) APP/H4315/X/20/3264529 – Vista Cottage, Millfield Lane, Haydock, WN4 0YF – **Appeal dismissed 26/05/2021**
- d) APP/B1930/X/21/3288857 12 Marshalls Heath Lane, Wheathampstead, St. Albans, AL4 8H – **Appeal dismissed 11/08/2022**

See Appendices a) to d) for copies of the decisions

#### **4. Assessment:**

**4.1** The proposal is for five single storey outbuildings in the rear garden. It is considered that such works can be assessed against Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The Council has considered the evidence provided on the proposed use of the building and the legal opinion which has been provided.

**4.2** The proposed changes include the five outbuildings in a very large T shaped rear garden:

- A Games Hall and Gallery (maximum length: 19m, height: 4m up to the ridge, maximum width: 13.5m)
- A Swimming Pool Hall (maximum length: 15.7m, height: 2.8m up to the ridge (when measured from the highest part of the surface of the ground next to the building\*), width: 14.8m) comprising a c.10m

pool, Jacuzzi, sauna, area for sunbeds, changing room with shower and treatment room.

- A Gymnasium (maximum length:11.7m, height: 3.8m up to the ridge, maximum width: 6.8m)
- A Shed to house pool filtration equipment and garden store (maximum length: 6.2m, height: 2.5m, maximum width: 5.4m)
- A Shed to house irrigation equipment (length: 4m, height: 2.5m, width: 2m)

*\* In accordance with the Permitted development rights for householders Technical Guidance where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.) In respect of the pool hall the height part of the surface adjacent to the building is adjacent to the north elevation, therefore the height has been measured from this surface level.*

#### **4.3** The Games Hall and Gallery (approx. 187.8 sqm) would consist of:

- A games lounge measuring 12m (maximum length) by 8.3m (maximum width) to provide sufficient space for a full-sized snooker table and table tennis table which will be used by the family and friends
- An art studio measuring 6.4m (length) and 4.3m (maximum length) for the applicant to create art
- A separate gallery space (4m by 4m) to showcase the applicant's art and other pieces of art in his collection
- A terrace measuring 8.5m (length) by 6.3m (width)
- Two separate toilets, one external for the gardener and one internally for the use of people using the facilities
- A garden storage place

#### **4.4** The swimming pool hall (approx. 175.1sqm) would contain:

- A 11.6m length by 5m (maximum width) covered pool which would be in a similar position to the existing outdoor pool
- A sauna (2.9m maximum length by 2m maximum width)
- A jacuzzi (3.5m maximum length by 2.7m maximum width)
- A health treatment room (3.6m length by 3.2 width)
- A changing room (including shower) provided for guests (3.9m length by 3.2 width)
- There would also be an area (maximum length: 11.6m, maximum width: 3.7m) sufficient for sunbeds, tables and chairs. The applicant states this is designed to accommodate the applicant to supervise their children swimming and potential parents of their children's friends of other family members.

#### **4.5** The Gymnasium would be approx. 76.9sqm and comprising:

- A dance zone (maximum length: 5.7m, maximum width: 6.8m)
- A gym zone (maximum length: 6m, maximum width: 6.8m).

The applicant confirms the space would be used as a yoga and dance studio area with free weights and cardio machines.

- 4.6** The Shed to house pool filtration equipment (approx. 32sqm) would replace the old pool plant shed.
- 4.7** The Shed to house irrigation equipment (approx. 8sqm) would replace a previous garden shed and would include plant.
- 4.8** The outbuildings would be located within the curtilage of the dwellinghouse and would comply with all the size and locational limitations to which Class E is subject.
- 4.9** Paragraph E.4 of Class E of the “Permitted development rights for householders – Technical Guidance” (2019) states that “*purpose incidental to the enjoyment of the dwellinghouse as such 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.*” However, Class E also recognises “*buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the house*”. The Government’s Technical Guidance makes it clear that Class E does not “*cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as bedroom, bathroom, or kitchen.*”
- 4.10** The dictionary definition of incidental is: “*Of a minor, casual, or subordinate nature*”.
- 4.11** It is demonstrated in *Emin v SSE 1989* (see appendix e), the term “incidental to the enjoyment of the dwellinghouse” should not rest solely on the “*unrestrained whim*” (Sir Graham Eyre QC) of a householder and there should be some connotation of reasonableness in the circumstances of each case. Therefore, whilst size is not, in itself a determining factor, the evidence must nonetheless demonstrate that what is proposed, in terms of floorspace, is genuinely and reasonably required. Moreover, a sense of objective reasonableness is required in all the circumstances of the particular case.
- 4.12** The proposed new outbuildings would occupy a footprint of 479.8 square metres. Whilst it is noted that the physical size of an outbuilding in comparison to the dwellinghouse (286 square metres) is not itself conclusive, it is however an important component. The host dwelling contains a substantial basement which comprises a plant, cinema, utility and other recreation rooms. When compared with the footprint of the host building, the proposed outbuildings would have more than one and a half its footprint. Given the large footprint, despite the indicated uses referred to by the applicant it could be reasonably argued that the scheme would not be used for a purpose incidental to the main dwelling house.
- 4.13** The following decisions are particularly relevant with regard to this proposal:
- a) APP/Z3635/X/21/3275492 – 28 Ash Road, Shepperton, TW17 0DN – Decision date: 7<sup>th</sup> November 2022 - The proposal was for the erection of a garden room. Like in this case, the “*matter in contention is whether the outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse as such.*” (Paragraph 5). The Inspector went on to say that “*the outbuilding would conform to the dimensional restrictions of Class E and would be single storey in contrast to the host dwelling*” (paragraph 11), however “*the excessive space proposed leads me to find that the outbuilding proposed is not reasonably required to accommodate this use.*” (Paragraph 13).
  - b) APP/R0660/X/22/3294400 – 9 Lees Lane, Newton, Mottram St Andrew, Cheshire, SK10 4LJ – Decision date: 4<sup>th</sup> October 2022 - The proposal was for the erection of ancillary accommodation within the curtilage existing dwelling to include cinema, gym, garage space, workshop and



garden storage plus external swimming pool. In this case, in paragraph 25, the Inspector states that “*the proposed cinema room for watching films and television might be used as an extension to the primary accommodation, as an additional lounge, rather than an incidental use.*” Again, the Inspector considers “*that the appeal proposal would be an excessively large building, capable of use by several persons at a time. Notably large even when compared to the main house it purports to serve, it might suggest that the real purpose of the proposed building would not be an incidental use.*”

- c) APP/H4315/X/20/3264529 – Vista Cottage, Millfield Lane, Haydock, WN4 0YF – Decision date: 26<sup>th</sup> May 2021 - The proposal on this appeal was for a new single storey structure to be erected for proposed storage/home gym. The Inspector states in paragraph 11 that “*given the extent of the facility that would be provided, and because the layout appears to have been designed to be used by a number of people at any one time, I am not satisfied that its true purpose would be as an incidental use.*”
- d) APP/B1930/X/21/3288857 12 Marshalls Heath Lane, Wheathampstead, St. Albans, AL4 8H – Decision date: 11<sup>th</sup> August 2022. The Inspector stated that ‘*the critical test to be applied is firstly whether the uses of the proposed outbuilding, in the context of the whole planning unit, are intended to be and would remain ancillary and subordinate to the main use of the property as a dwellinghouse, and secondly; whether the proposed outbuilding is “reasonably required” in order to accommodate those uses*’.

**4.14** In this case, the buildings and the proposed uses have been designed to be used by a number of people at any one time. Uses that could be combined in one space have been separated into different buildings and/or spaces. The sizes of the Games Hall & Gallery and Pool Hall are excessively large and hence not reasonably required. This is demonstrated by the scale of the sheds needed for pool filtration equipment and irrigation equipment. The provision of a Gymnasium, sports hall, gallery and studio, which are uses which could have easily been combined are considered to be overprovision of space. The structures are notably large and by reason of the proposed uses suggests that the real purposes of the buildings are as an extension to the primary accommodation. Furthermore, it is considered that the excessive space proposed for the majority of the buildings *is not reasonably required to accommodate the uses proposed.*

**4.15** Whilst the applicant has submitted a legal opinion it simply states that the proposed purposes, based on a list of their functions ‘*are clearly incidental*’. It does not tackle the issues outlined above. Accordingly, this is not sufficient to demonstrate how the proposal would be incidental.

**4.16** *The supporting legal statement submitted with the application also states that there are no relevant planning conditions which have any bearing on the proposals. However, the proposal would result in development which is different to the landscaping plan secured by condition 3 of planning permission: Demolition of summerhouse in rear garden and landscaping works, granted on 20/08/2021.*

**4.17** Condition 3 states:

*No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. Such details shall include details of any proposed earthworks including grading, mounding and other changes in ground levels. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.*

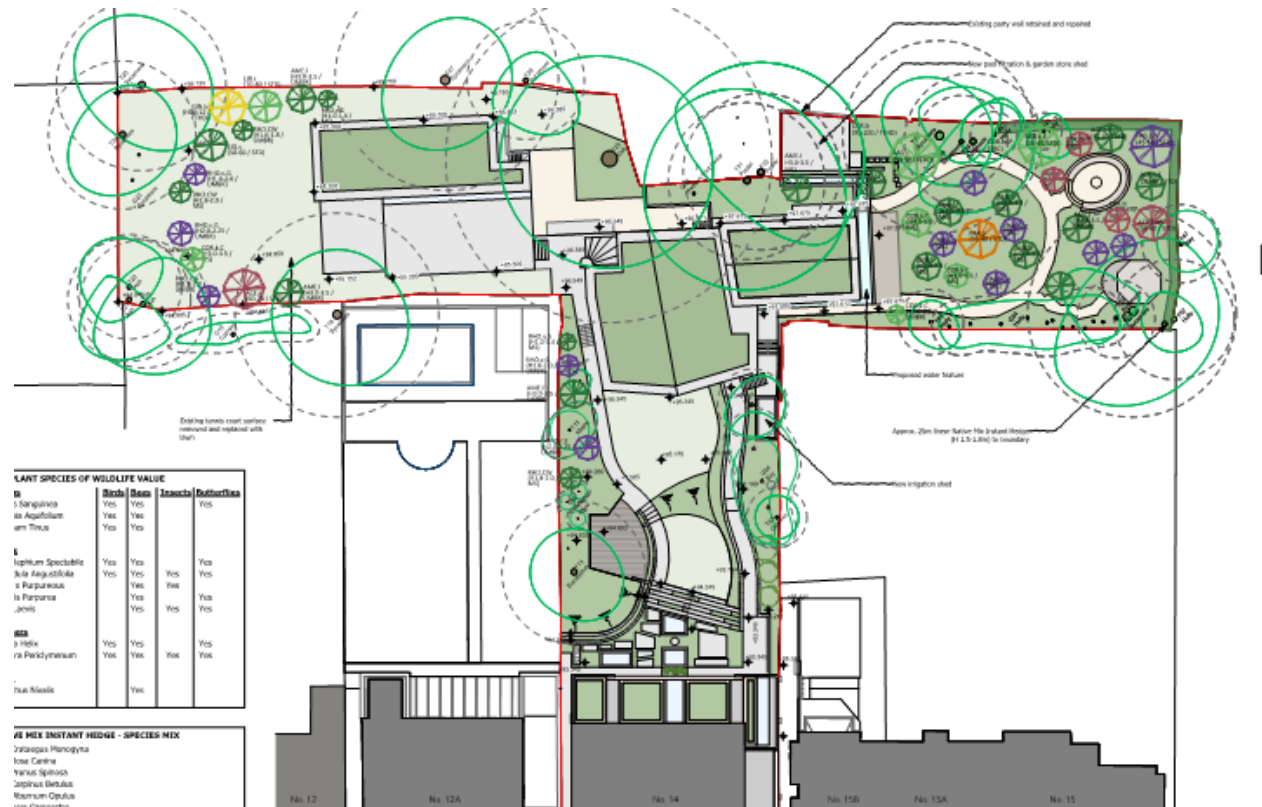
*Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of policies A2, A3, D1 and D2 of the London Borough of Camden Local Plan 2017 and policies*

**4.18** A landscaping plan in respect of this condition was, submitted to, and subsequently approved by the Council on 29/03/2022 under planning reference: 2021/5768/P. It is considered that the outbuildings proposed as part of the current application would conflict with the approved plans and it would involve building on area which are designated to landscaped area. The proposals would be contrary to the conditions attached to permission 2021/0984/P, and therefore cannot be considered as permitted development. The approved landscaping plan and the proposed site plan are shown below as a comparison.

Figure 1: Approved landscaping plan – approved under application 2021/5768/P



Figure 2: Proposed Site Plan



4.16 The proposal is not considered to satisfy all relevant criteria as set out under Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended); and as such, would not be permitted development and lawful. The proposed outbuildings are of a substantial size which has not been fully justified as being reasonably required for its intended purposes. As such it would not be reasonably required for purposes incidental to the enjoyment of the dwellinghouse and therefore would not be permitted development. Furthermore, the outbuildings conflict with approved landscaping plan for an implemented permission.

**5. Recommendation:** Refuse Certificate of Lawful Development