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Dear Ben White

Appeal References: APP/X5210/X/23/3334702, APP/X5210/X/23/3334703, APP/X5210/X/23/3334705 & APP/X5210/X/23/3334706

14 Greenaway Gardens, London, NW3 7DH

Appellant Response to LPA Statement of Case and Third Party Comments

I write on behalf of the Appellant, Mr Danylo Knysh, in response to a Statement of Case received by LB Camden and Third Party Comments all received by ourselves between 27 March – 03 April 2024.

Third Party Comments were received from a total of six parties, with the latter on the list below comprising two parts, both of which are outlined:

- Linda Chung, Ward Councillor, Hampstead Town;
- The Heath & Hampstead Society;
- Redington Frognal Neighbourhood Forum;
- [redacted]
- [redacted]; and
- RAAPD at 14 Greenaway Gardens;
    - A Report by Residents;
    - Legal Submission by Alan Payne KC.

The Appellant's final comments are formed of two parts. Firstly, this Letter prepared by Savills, and secondly, a Legal submission by Richard Ground KC, both of which have been prepared on behalf of the appellant, and both of which should be read in conjunction as part of these final comments. This Letter includes three appendices:

Appendix 1 – SHH Architects Response to LPA and Third Party Representations;
Appendix 2 – Appellant's additional statement;
Appendix 3 – Response to Council's Planning Contravention Notice.

This Letter firstly responds to the Statement of Case provided by LB Camden, before then moving onto each of the Third Party Comments outlined above.

LPA Statement of Case

The LPAs Statement of Case ("SoC" from here on in) outlines the matters agreed and in dispute in section 4 of their document, with paragraph 4.1 noting the agreed matters, and 4.2 listing the matters in dispute.

Paragraph 4.1 notes that the proposed outbuildings would be assessed against GPDO 2015 if they are concluded to be permitted development, and would be required to comply with the size and locational limitations in Class E. The LPA did not refuse the applications on the basis that they did not comply with the size and locational limitations to which Class E is subject. However, as the LPA fail to confirm compliance, to provide absolute clarity on this matter, it is clearly evidenced below that the Appellant has already demonstrated compliance with Class E, and therefore, it is an agreed matter.

Three elements of Class E of the GPDO 2015 relate to size; parts b), e), and f).

> *b) the total area of the 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)*
>
> *e) the height of the 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*
>
> *f) the height of the eaves of the building would exceed 2.5 metres*

A respective 'Permitted Development Compliance Document' prepared by SHH was submitted for each of the outbuilding certificate applications that clearly detailed each outbuildings compliance with the GPDO criteria.

In relation to part b of Class E, even when the area of all the proposed outbuildings are combined, the ground area still falls below 50% of the total curtilage of the property (minus the original dwellinghouse. The figure below outlines the clear breakdown that was provided as part of the certificate application for the 'shed buildings', which as mentioned, details the outbuildings as a collective too.

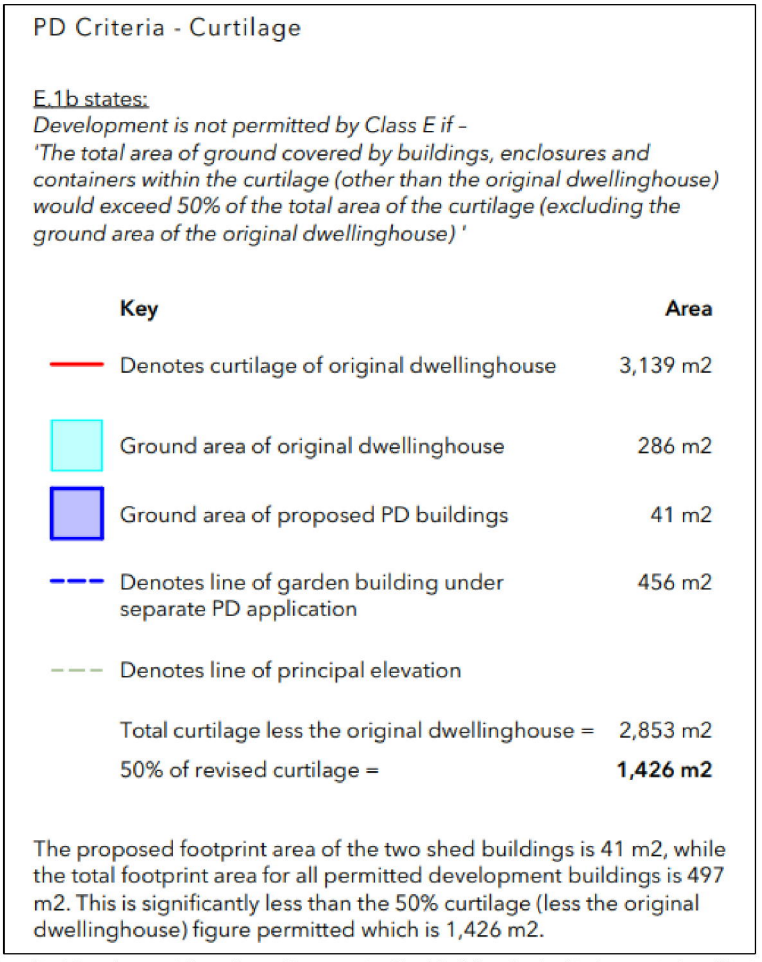


Figure 1: 'Permitted Development Compliance Document – Shed Buildings' submitted as part of certificate application 2023/3081/P

Parts e) and f) of Class E relates to height limitations for any proposed outbuildings, with the Compliance Document submitted for each of the original applications again, making it evidently clear in both text and drawings, that the height limitations are not exceeded, and therefore, the outbuildings are each compliant with Class E of the GPDO 2015. An example of the detail provided as part of the Pool Hall application is shown below (2023/3072/P).

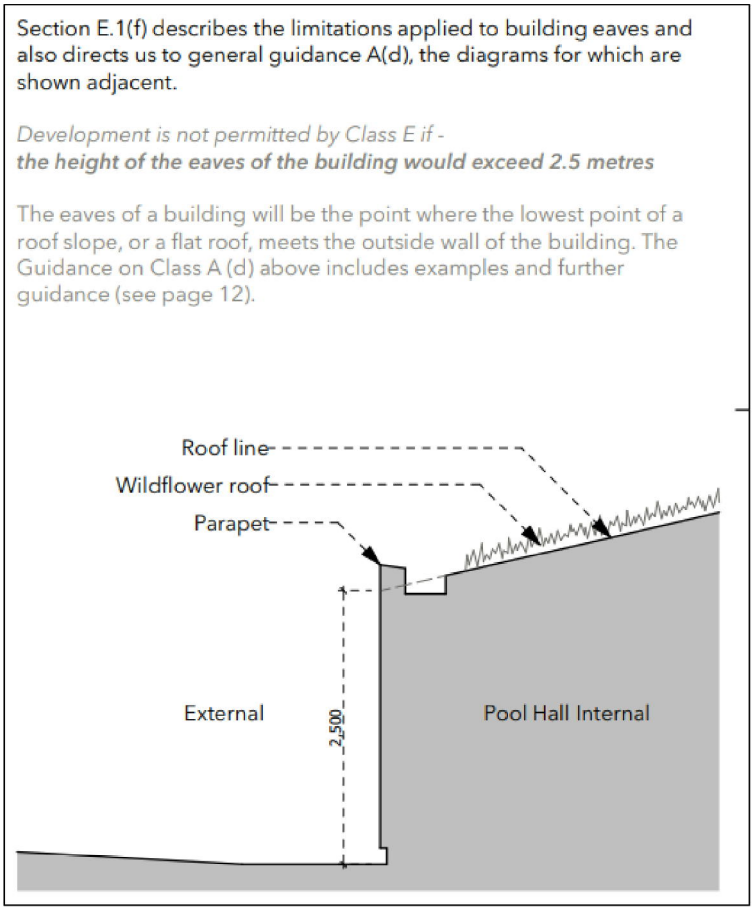


Figure 2: 'Permitted Development Compliance Document – Pool Hall' submitted as part of application 2023/3072/P

Paragraph 4.2 of the SoC outlines the three matters the LPA deem in dispute. These are:

a) *"Whether the proposed works would result in a breach of planning conditions 3 and 5 attached to planning permission 2021/0984/P and in particular, whether the addition of five outbuildings is consistent with the approved landscape plan under that consent;*
b) *Whether the proposed outbuildings should properly be considered in combination or as discrete proposals;*
c) *In any event, whether those outbuildings are reasonably required for a purpose which is no more than incidental to the enjoyment of the dwelling house".*

A response to each of these matters is discussed in turn below in the same order the LPA discussed them in for consistency.

Conflict with planning conditions (reason for refusal 2)

The refusal of each of the four original certificate applications included an identical refusal reason noting that:

> *"The proposed development would result in a breach of conditions 3 and 5 of planning permission 2021/0984/P dated 20/08/2011 (detail subsequently approved on 29/03/2022 under planning reference: 2021/5768/P) which has been implemented on site, contrary to Article 3(4) and as such, is not permitted under Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)."*

The requirements of conditions 3 and 4 are fully shown in the figure below.

3	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.
5	All hard and soft landscaping works shall be carried out in accordance with the approved landscape details by not later than the end of the planting season following completion of the development or any phase of the development, whichever is the sooner. Any trees or areas of planting (including trees existing at the outset of the development other than those indicated to be removed) which, within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced as soon as is reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the local planning authority gives written consent to any variation.

Figure 3: Conditions 3 and 5 of consent 2021/0984/P

In paragraph 4.6 the LPA state that the construction of outbuildings would self-evidently conflict with the landscape plan. Built form on what is intended to be hard landscaped area would be inconsistent with the landscape plan, as it is expressly for open and unbuilt areas. Later, in paragraph 4.8 the Council again state that *the landscape plan assumes the openness and unbuilt nature of the landscaping, both soft and hard. Whilst the condition does not expressly prevent any buildings being placed on the areas of hard standing that is because it does not need to; it is obvious from the approved landscape plans. The landscape plan does not include any built form*.

We disagree with these statements. The planning permission and attached conditions do not prohibit something being built on top of the hard landscaping at a later date either as a permitted development under the GPDO or by a further planning permission. The approved landscaping plans do not prevent further outbuildings being built on top of it and the condition does not apply such restriction. To do this, a condition would need to have removed permitted development rights or stated that the area needed to be kept permanently open. There is no such condition removing permitted development rights and in our view such a condition would not have met the necessary tests as it would have been unreasonable to do so. The guidance on the use of conditions in the national policy guidance advises at para. 17 that conditions restricting the future use of permitted development rights may not pass the tests of reasonableness and necessity. A blanket removal of freedoms to carry out small-scale domestic alterations are unlikely to meet the tests.

The LPA allege in paragraph 4.7 that what has been implemented on site goes beyond the landscaping details approved under condition 3, at paragraph 4.11 state that there is an element of uncertainty from the appellant about compliance with condition 5 and in paragraph 4.12 that they are investigating a breach of planning control on the basis that the works undertaken are not part of the landscaping plans but rather are foundations for the outbuildings.

The concrete slab that has been laid to date form the foundations for the laying of the stone paving shown on the landscaping plan. It cannot go beyond the landscaping details approved because the stone paving has yet to be laid. The requirements of both conditions in respect of both the soft and hard landscaping can be fully complied with and there is no uncertainty or reason as to why this cannot take place.

There is no justifiable reason for enforcement action to be taken. Paragraph 3.7.1 of the Arboricultural Method Statement (AMS) submitted (ref: 2021/5768/P) as part of the discharge of condition 3 of permission 2021/0984/P clearly notes that *the stone terracing within the theoretical RPAs of T29, T31 and T32 is to be installed upon a floating concrete slab*. As such, it is clear that the slab laid provides the foundations for the stone paving to be laid above.

It is acknowledged that on 22 January 2024, a letter and Planning Contravention Notice (PCN) from Camden's enforcement team was received (ref: EN23/0974) noting they were aware of unlawful works being implemented on site. In response to this, a Statement from both the Arboriculturist and Structural Engineer were provided. The statements are provided with these final comments on the appeal as Appendix 3. The former noted that *the use of a suspended slap is the most practical option to achieve long term stability of hard surfacing*; and *that both the landscaping design and design of the slab have both been approved in planning*; referring to the AMS quoted above. The latter confirmed that all of the works conducted on site were all directly related to the consented landscaping plan, providing further detail on the reason for the *floating (suspended) slabs in RPZ to avoid damage to the tree roots and where necessary provide ventilation voids to allow the roots to 'breathe'*. All of the works to date thus far are directly linked to the approved landscaping plan.

Whether the proposed outbuildings should property be considered in combination or as discrete proposals

Paragraph 4.14 of the LPAs SoC sets out why the LPA consider that the submitted applications are 'misleading', and 'designed to purely circumvent the limitations of the GPDO and does not reflect the function and planning impact of the suite of buildings'. The LPA state this is a matter of dispute in paragraph 4.2 and argue in 4.14 that the applications are interdependent and can only rationally be considered cumulatively.

We disagree with this statement for a number of reasons.

The submission of individual applications for each outbuilding was an entirely logical and reasonable response by the appellant following the refusal of the singular application for all five outbuildings (ref. 22/5583/P). This allows each application to be considered individually and conclusions reached on each one as to whether it falls within the permitted development rights and is incidental to the enjoyment of the dwellinghouse. There is nothing misleading in this approach and each application should be determined individually.

It is evident from the previous application that they are all for the enjoyment of the dwellinghouse by the appellant and this is evident too in the individual submissions. The individual submissions acknowledge some interdependence between buildings, namely the swimming pool and the store with the pool filtration equipment.

The LPA do not seem to have approached the individual applications objectively or approached each one individually, which is how they can and should be determined. The planning merits or impact of the proposed outbuildings, individually or cumulatively, are not a consideration under the permitted development rights.

The submission of individual applications, [redacted], does not circumvent the limitations of the GPDO. As advised in the technical guidance, the permitted development rights allow for a large range of other buildings surrounding a house and the limitations and conditions that apply mean that buildings have to be assessed cumulatively, notably E.1(b) which covers the total area of ground covered by buildings within the curtilage of the original house. The technical guidance makes it clear that the 50% limit covers all buildings, so will include any existing or proposed new extensions and any other separate detached buildings. In the application submissions, the 'Permitted Development Compliance Document' that was prepared by SHH in support of each individual application clearly includes the total of all proposed outbuildings in its calculation as to whether the application meet the GPDO Class E criteria. Indeed, when considering all of the outbuildings in the earlier application, the Council state in their delegated report that *"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."*

The proposals do not go beyond the limitations and conditions of Class E and there is no need for the Inspector to decide whether each one individually or cumulatively '*go beyond the constraints which Parliament intended when it included Class E*' (in the GPDO), as the LPA state in paragraph 5.3.

In paragraphs 4.14 iv and 4.15, the LPA make statements that the outbuildings will be utilised as living areas in relation to the main dwelling (more akin to the primary accommodation) and which appears to be the appellant's intention and the buildings are a whim of the owner beyond what is reasonable. They mention the gallery in particular as being for the display to external visitors and more akin to a commercial use. In response, we would draw the Inspector's attention to the drawings, the sworn affidavit provided by the appellant as part of the application and the additional statement provided with this letter as well as the responses provided by the architects and the landscape designer at Appendices 1 and 2,. They all demonstrate that the nature and scale of the outbuildings are not to be primary accommodation for the dwelling but are incidental to the use of the dwelling house. There is no suggestion that the buildings will be used for commercial activity.

Purpose not incidental to the enjoyment of the dwellinghouse (reason for refusal 1)

In their statement of case, the LPA have introduced some further appeal decisions and comments on them are provided below. They have also sought to argue that the appeal decisions provided by the appellant are not comparable. However, the appeal decisions provided by the appellant are considered to be more relevant to the proposals in these appeals. They are factually very similar and all the details as to why they are comparable and relevant have been provided in the appellant's statement of case.

Swimming pool (2023/3072/P)

The LPA state that no explanation has been given as to why the swimming pool is incidental. This is dealt with in the appellant's statement of case and the sworn affidavit provided. It is worth also noting that there previously was an outdoor swimming pool and a separate pool house within the rear garden and it is understandable and logical as to why a new owner would want to re-provide such facilities. Photographs of these are provided with the response from the architect at Appendix 1.

The LPA do not argue that the use of a swimming pool itself is not *incidental* to the use of the main dwellinghouse, but state that the scale of the pool, and more importantly the space surrounding the pool, define whether the outbuilding overall, is classed as *incidental.* Their primary concern focuses on the surrounding space, measuring 48 sqm, in a building that is 194 sqm in size overall.

27% of the overall floor area of the building is not considered to be excessive, especially given that the Appellant has [redacted] children. The space above the pool (20 sqm) that connects the pool to the treatment room, changing room, and entrance stair is simply required for the family to be able to access all of the facilities, and therefore is not deemed excessive. The space below the pool (28 sqm, 14% of the overall area) is the relaxation space that houses three sunbeds and two chairs with a small coffee table. This is not deemed excessive as the family is comprised of [redacted] individuals, [redacted] of whom are currently children, and require greater space for safety reasons. It is not unreasonable for the Appellant to wish to have some surrounding space for relaxation, away from the narrow space above the pool, where any seating would directly impede access to the other facilities and present a safety risk, especially with young children in the family.

LPA Appeal Decisions

The LPA refer to the Village Farm decision. In this decision the Inspector considered that the overall size of the proposal due mainly to the pool surrounding area and the plant room as being excessive. The Inspector did note that some poolside space is required for the enjoyment of a pool and that young children need to remain within earshot of the pool activities. The Inspector also consider that it is not unreasonable to provide shower and changing facilities within a pool building. In the Village Farm case, the outbuilding has a footprint of 129sqm with poolside area of 49sqm, which is 38% of the area. The plant room was 18.6sqm. This is a far greater proportion than poolside area in this appeal, as explained above. The plant area in the proposed pool house is just 5.6sqm.

The 'Land at Little Grove' decision relates a number of extensions and enlargements to a property as well as some incidental outbuildings. Much of the deliberation related to historic conditions and whether land upon which development would be located was within the curtilage of a dwellinghouse, which is not relevant to this appeal. Indeed, the Inspector in that appeal concluded that the outbuildings would not be on located on land within the curtilage of the dwellinghouse and so were not permitted by Class E.

Where the Inspector does consider whether the buildings, including the pool house, gym and games room, would have been incidental to the enjoyment of the dwellinghouse, we make the following comments. The Inspector noted that with regard to the types of development listed in Class E, swimming pools are clearly included as development permitted, provided they are required for a purpose incidental to the enjoyment of the dwellinghouse. The Inspector found no reason to find otherwise with regard to a steam room, sauna, gym and games room. There is no dispute that the building would be used other than for the enjoyment of the dwellinghouse or that any part of the building would be used other than by the occupiers of the dwelling on the appeal site. This is the same situation in this appeal.

However, in the Little Grove decision, the Inspector found that the outbuilding included an internal hallway linking rooms at either end of the building that serves no useful purpose and adds to the size of the outbuilding that could not be considered to be reasonable or necessary. Furthermore, the building would provide three separate rooms for shower/WC and changing room. Whilst not uncommon nor unreasonable for occupiers to want to shower or have use of a WC without leaving the building, the number of rooms proposed was considered to be excessive for a domestic outbuilding and unreasonable. In this appeal, plans explaining the

use of all the area of the pool outbuilding have been provided and there is no space that serves no useful purpose. Furthermore, there is only one room providing changing, shower and WC facilities.

Pool filtration and irrigation stores (2023/3081/P)

The LPA consider the pool filtration outbuilding as linked to the pool hall outbuilding, as without the pool hall, there is no use for the pool filtration.

This is not disputed. Rather, the technical reasoning behind the separation of the two buildings is outlined below. Furthermore, it should be noted that pool filtration only comprises a small part of this store outbuilding, some 5.5sqm, with the rest being required for garden water feature storage.

The pool filtration is required to be located above the pool level, and due to the natural level changes of the garden, this cannot be achieved through locating the filtration within the pool hall itself. Therefore, the natural level changes have been used to their advantage. The equipment is to be housed in an outbuilding, with walls that consist of an existing brick wall with new structural blockwork internal lining, reinforced concrete walls for stone cladding & structural block with timber rainscreen cladding. Each build up will have excellent sound insulation properties.

The proposed equipment does not generate noise levels that would be of concern or for periods of time that would be problematic. It has been designed and specified by a leading pool specialist.

The LPA make no argument that the pool filtration outbuildings are not *incidental*, with the use clearly being for the storage of plant.

Gymnasium (2023/3074/P)

The LPA refer to a decision at 9 Coverdale Road. In this decision, the Inspector noted that there is no disagreement that the proposed uses of the building as a gymnasium, playroom, sauna, toilet and shower are all uses that may be considered incidental to a residential use, and that use should be subordinate to the use of the house as a dwellinghouse. However, the Inspector was not provided with a plausible explanation as to why a large gymnasium and/or playroom was required. There was no explanation of the amount and type of gymnasium and/or playroom that would be installed, nor was there an explanation of the number of people likely to use the space. It was unclear why the large house cannot be used.

This appeal is different. A sworn affidavit has been provided which sets out how the appellant and his family intend to use the gym, and is explained in the appellant's statement of case. The use is subordinate to the use of the house as a dwellinghouse. It represents a small amount of the floorspace of the house. It is not considered unusual for a gym to be located within the curtilage of a dwelling.

Games Room and Gallery (2023/3078/P)

The proposed use of the spaces has been clearly outlined by the Appellant, and it is not unreasonable for the Appellant to seek to display their art in a separate room to its creation, especially when neither room is excessively large in size. Both are small rooms that are accessed off the principal room, which houses the table tennis and snooker tables, both of which, are large features that require sufficient surrounding space to allow both enjoyment of the activity, and safety to the family whilst engaging in the activity.

The proposed seating adjacent to the tables is not excessive, four seats are proposed for a family of [redacted] individuals, which is entirely reasonable, and does not indicate that the space will be used primarily by external guests rather than the family, as the LPA seem to suggest. Again, the Statutory Declaration provided by the Appellant affirms this.

Finally, in response to comments on this outbuilding and all the others, we would draw the Inspector's attention to the legal submission provided by Richard Ground KC in which the application of the Wallington v Secretary of State Court of Appeal case and its key considerations is applied to each outbuilding.

Third Party Representations

A total of five third party representations were made in response to this appeal, all of which objected to the scheme. One of these five was comprised of two parts, including a legal submission on behalf of the interested parties. This has been directly responded to by a legal submission prepared by Richard Ground KC, which should be read in conjunction to this letter.

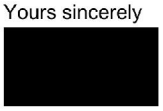
- Linda Chung, Ward Councillor, Hampstead Town;
- The Heath & Hampstead Society;
- Redington Frognal Neighbourhood Forum;
- [redacted]
- and
- RAAPD at 14 Greenaway Gardens;
    - A Report by Residents;
    - Legal Submission by Alan Payne KC.

The points raised within the representations all stem from a similar stance, with all parties deeming that the proposals are a clear breach of the GPDO, and that insufficient supporting documents have been provided.

As has been set out in the appeal submission, the outbuildings comply with limitations and conditions of Class E of the GPDO whether they are considered independently, or as a collective. The outbuildings sit comfortably below 50% of the curtilage less the dwellinghouse, and all of the outbuildings sit below the height restrictions. The Heath and Hamstead Society note that the proposed outbuildings exceed the size of the main dwellinghouse; however, this is not a test of Class E, which tests against the curtilage of the building.

In response to calls for further supporting information to be provided, in relation to considerations such as arboriculture, archaeology, and flood risk. This appeal does not relate to a planning application, it is a Certificate application in relation to the GPDO. Therefore, no supplementary documents like those listed in the representations are required as part of the submission, with the criteria outlined by Class E being met in this application. Where necessary, the GPDO outlines situations where permitted development rights do not apply, with LPAs also able to remove the rights through an Article 4 direction. However, none of the special circumstances outlined with the GPDO, such as a AONB are met here. Similarly, there is no Article 4 direction in relation to GPDO rights at the property, or its surrounding area.

Yours sincerely



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