

Delegated Report (Members Briefing)		Analysis sheet		Expiry Date:	07/04/2014
		N/A / attached		Consultation Expiry Date:	7.3.14
Officer			Application Number(s)		
Charles Thuaire			2014/1059/P		
Application Address			Drawing Numbers		
The Garden House Vale Of Health London NW3 1AN			See decision notice		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Erection of 2 separate single storey rear extensions at ground and first floor levels (Areas A and B respectively) to dwellinghouse (Class C3).					
Recommendation(s):		Grant certificate			
Application Type:		Certificate of Lawfulness (Proposed)			
Conditions or Reasons for Refusal:		Refer to Draft Decision Notice			
Informatives:					

Consultations

Adjoining Occupiers:	No. notified	26	No. of responses	07	No. of objections	07
			No. Electronic	00		
Summary of consultation responses:	<p><i>NOTE- given the previous contentious history of developments on this site (see history section below), and given the previous application for a similar Certificate of Lawfulness for proposed works which the Council consulted upon, it was considered wise to adopt the same procedure and consult local people again of the latest scheme, even though it cannot be assessed as a normal planning application and can only have a legal determination of its lawfulness (see policy section below).</i></p> <p><u>Objections from local residents in Vale of Health</u> (4 Athenaeum Hall; 8, 12 Heath Villas; Faircroft (x2), Leasteps, Upfleet).</p> <p>This follows 2 previously granted 'permitted development' applications and is 14th application for site since 2004; previous permissions and certificates, although not implemented, will already result in the house being much larger than 10% of its original size; concerned at succession of applications and permissions for extensions with aim of getting consent for a large redevelopment that would not be otherwise be permitted if it was subject of one consolidated application, noting sensitive nature of site on MOL and next to heath; larger house will reduce green garden space; concern at construction access through narrow archway and related nuisance and disruption to traffic- requires comprehensive CMP; when all these individual permitted schemes are carried out as a single redevelopment, their impact will be much greater than the sum of the parts; total development is of significant size and has very significant impact on Vale of Health; series of applications clearly intended to circumvent rules on MOL and to bank as many permissions as possible; support Vale of Health objections</p> <p><i>Officer response: Please see assessment section paras 2.1-2.2.</i></p>					
CAAC/Local groups* comments: *Please Specify	<p><u>Heath and Hampstead Society</u> objects- support Vale of Health objections and oppose applicant's campaign of never-ending list of applications; concern at impact of construction work on Vale of Health residents and unworkable CMP previously submitted for the previous applications and request monitoring and enforcement of its provisions.</p> <p><u>Vale of Health Society</u> objects- concerned at succession of applications and permissions for extensions with aim of getting consent for a large redevelopment that would not be otherwise be permitted if it was subject of one consolidated application, noting sensitive nature of site on MOL and next to heath; concern at construction access through narrow archway and related nuisance and disruption to traffic- requires comprehensive CMP and that this CMP is properly enforced; need to draw a line under a decade of planning battles that have been stressful to community, as it is not acceptable to grant series of permissions for a development that would not be granted if it was subject to a single application.</p> <p><i>Officer response: Please see assessment section paras 2.1-2.2</i></p>					

Site Description

- 1.1 Part 1 part 2 storey detached dwellinghouse within Vale of Health, set back behind the terraced houses facing the street and accessed via a narrow archway; it is sited within a large garden bordering the Hampstead Ponds. The building is unusual in that it has its front door on the west elevation facing the rear boundary wall and the main habitable room windows facing the garden and pond on the east elevation; the gabled south side elevation is the facade that faces one entering the site from the archway passage. The west, east and north sides partly have a raised terrace embankment at 1st floor level. Thus the house has a small ground floor (with 2 bedrooms) on the south side (ie. facing the passage), and a 1st floor (with 2 bedrooms, living rooms, kitchen etc.) across the whole house between north and south side elevations.
- 1.2 Located in Hampstead conservation area and not listed. Adjoins the Heath. Located on Metropolitan Open Land (MOL) and Private Open Space (POS).
- 1.3 The house enjoys permitted development rights, although an Article 4 Direction now restricts certain operations within the GPDO, notably Class A relevant to this application.

Relevant History

1951- Planning permission granted for the erection of a 2-storey dwellinghouse on the site that was formerly known as 'The Old Cottage Garden'.

23.1.06- planning permission and conservation area consent granted for Demolition of the existing part 1, part 2-storey dwellinghouse with associated terraces and brick shed, and erection of a part 2, part 3-storey dwellinghouse with associated landscaping (2005/1297/P / 2005/1299/C).

3.4.07- above decision quashed by High Court (*R. (on application of Heath and Hampstead Society) v. Messrs Alex and Thalys Vlachos and Camden LBC*)

19.3.08- appeal against above dismissed by Court of Appeal

28.10.09- pp/cac refused for Erection of two storey dwellinghouse following the demolition of two storey existing dwelling house, plus associated landscaping. (2008/5684/P / 2008/5685/C). Appeal lodged against above refusal, since withdrawn.

17.11.10- Certificate of Lawfulness for Existing Development granted- Excavation to provide additional accommodation for dwellinghouse by extension of ground floor under footprint of house and creation of new basement storey (2010/3118/P)

25.11.11- Certificate of Lawfulness for Proposed Development granted- Erection of 2 separate single storey rear extensions at ground and first floor levels (Areas A and C respectively) to dwellinghouse (2011/3054/P).

2.1.13- pp refused for Various alterations and extensions to existing dwelling house (Class C3), including erection of a front roof dormer with 2 windows and a rear roof dormer extension; replacement and installation of new windows to all elevations, relocation of chimney to flank wall, re-cladding with slate on all elevations and roof; creation of front lightwell; removal of part of eastern embankment and raised terrace to provide ground floor verandah with terrace above at first floor level; installation of timber cladding to outhouse (2011/6005/P).

30.10.13- appeal against above allowed.

Relevant policies

It is important to stress that this application can only be assessed against the relevant planning legislation which is the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development)(Amendment)(No2)(England) Order 2008 ("GPDO"). This is to determine whether it is permitted development and hence can go ahead without the specific grant of planning permission from the local planning authority. An assessment of its planning merits as to its acceptability under current policies is therefore not relevant or possible here, as it is purely a determination of whether the proposed works constitute permitted development or not.

Assessment

1. PROPOSAL

1.1 The application is to ascertain whether the proposed scheme for extending the house would constitute permitted development ('pd') within the General Permitted Development ('GPDO') and therefore be "lawful development".

1.2 The application is essentially a revision of the previous Certificate of Lawfulness for 2 proposed rear extensions granted on 25.11.11 (ref 2011/3054/P- see underlined entry in history above). The applicants have since realised that this previous scheme entailed smaller extensions that could be allowed as a maximum under the GPDO, specifically with reference to the criteria in condition A.1(g). This new application is therefore proposing 2 larger extensions in terms of their height and depth. It is important to emphasise that this application could supersede the earlier approved Certificate of Lawfulness scheme for 2 rear extensions (2011/3054/P), and that approval of this application will mean that it will not be possible to implement the previous one. Alternatively the applicant could still choose to implement the earlier scheme rather than the proposed scheme.

1.3 The scheme therefore now entails 2 extensions which are both 4m depth rather than 2.4m as previously permitted and also the ground floor extension (area A) has 3m height rather than the previously permitted 2.5m.

Area A is at ground floor on its western end and is 4m deep, 5.6m wide, 3m high with 22.4sqm floorspace (as opposed to the previous dimensions of 2.4m deep, 2.5m high and 13.5sqm area);

Area B is at 1st floor on its eastern end and is 4m deep, 8.2m wide, 2.6m high with 32.9 sqm floorspace (as opposed to the previous dimensions of 2.4m deep, 2.5m high and 19sqm area).

Both extensions now result in being 0.5-0.7m away from the rear garden boundary wall (as opposed to the previous 2.2-2.3m distances).

Otherwise, the extensions have the same width as the previously permitted ones, are in identical locations and do not

overlap each other or other existing parts of the house.

2. METHOD OF ASSESSMENT

2.1 The determination of the application can only be made by assessing whether the scheme is lawful as defined by the volumetric, dimensional and locational criteria set out in the Town and Country Planning (General Permitted Development)(Amendment)(No2)(England) Order 2008 ('GPDO'). Advice on interpreting the GPDO has also been taken from the DCLG Technical Guidance on 'Permitted Development for Householders' published in August 2010.

2.2 It should be emphasised that this is a determination to be made simply by applying the criteria set out in the GPDO and any relevant aspects of the Article 4 Direction. No account can be taken of policy or advice within the Camden development plan (LDF and CPG) or the planning merits of the scheme in terms of issues such as its impact on hydrogeology, neighbour amenity, transport conditions, Metropolitan Open Land (MOL), conservation area character, etc. It should also be noted that the restrictions on development on MOL have no bearing on this determination- NPPF guidance does not take away any development rights conferred by other legislation and the GPDO has no further restrictions on what can be built as permitted development on the basis that the site is on MOL. Furthermore a Certificate cannot be made subject of a S106 legal agreement covering issues such as a Construction Management Plan.

2.3 In relation to the determination issue mentioned in para 2.1, it is considered that the scheme is lawful and permitted development as assessed against Schedule 2 Part 1 Class A of the GPDO.

2.4 The method of assessment here follows the same layout used in the officer's report for the previous Certificate of Lawfulness 2011/3054/P. Indeed the analysis and conclusions below for each criteria are identical to the previous officer report for this, except that for criteria A.1(g) where the assessment has been revised to take account of the differences in height and depth. It should also be noted that the previous officer report and recommendations on the previous Certificate application was checked and agreed by leading Counsel.

2.5 The structure of the GPDO is that it grants a broad permission for certain types of development and then sets out limits or constraints on that general permission which cannot be exceeded.

2.6 Schedule 2 Part 1 (titled Development within the curtilage of a dwellinghouse) and Class A of the GPDO reads:

Permitted Development

A. The enlargement, improvement or other alteration of a dwellinghouse

Development not permitted

A.1 Development is not permitted by Class A if- [There then follows a detailed list of exceptions]

2.7 So for the purposes of this application, if the operations that are proposed are "the enlargement, improvement or other alteration of a dwellinghouse" and they do not exceed or contravene any of the conditions of limitations set out in the order, then the operations will be permitted development.

2.8 The relevant wording of the "Permitted Development" here is enlargement or improvement of the house. Garden House is a dwelling house and thus only Class A is relevant here.

2.9 Class A includes a list of general criteria in part A.1, defining where development would not be permitted and against which this scheme has been assessed. In addition it includes in part A.2 a list of further restrictions for proposals in conservation areas, and in part A.3 a list of conditions on all development within Class A. These criteria are each examined in turn below.

Assessment of scheme against GPDO criteria- part A.1

2.10 It is considered that the proposal for 2 extensions complies with the following sections (a) to (i) within part A.1 (quoted in italics) as explained in the ensuing responses.

(a) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

response- the total area of both extensions is 55.3sqm which is only 5.4% of the whole garden area of the site.

(b) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;

response- the extensions do not exceed the height of the house.

(c) *the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;*

response- the extensions do not exceed the maximum height of the eaves on the house (as defined in the DCLG 'Permitted development for householders' Technical guidance note dated August 2010 on interpreting the GPDO).

(d) *the enlarged part of the dwellinghouse would extend beyond a wall which—*

(i) fronts a highway, and

(ii) forms either the principal elevation or a side elevation of the original dwellinghouse;

response- the east side is considered to be the principal elevation which does not front a highway whereas the proposed extensions are to the west 'rear' elevation which faces rear gardens of other houses and not a highway; thus the rear extensions comply with this criteria.

(e) *the enlarged part of the dwellinghouse would have a single storey and—*

(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or

(ii) exceed 4 metres in height;

response- both extensions are single storey in themselves and they cannot be considered as forming a 2 storey extension as they are not above or below each other nor forming part of an overall 2 storey extension. They also do not form 2 storey elements with the existing house or previously approved 2 basement extensions which are physically distinct and separate. The proposed extensions are both freestanding from each other and from other elements of the house, ie. they do not have any other floors above or below them and they are solely rear extensions to the external rear wall of the original house.

Both extensions are to a detached dwellinghouse and project by exactly 4m from the rear wall and are less than 4m high. On the basis that both extensions are considered to be each single storey elements, it is therefore concluded that they comply with this criteria.

(f) *the enlarged part of the dwellinghouse would have more than one storey and—*

(i) extend beyond the rear wall of the original dwellinghouse by more than 3metres, or

(ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse opposite the rear wall of the dwellinghouse;

response- both extensions at ground floor and 1st floor would be both freestanding and continue to be single storey enlargements, as discussed in relation to criteria (e) above. Thus it is concluded that they are considered as single storey elements and therefore comply with this criteria.

(g) *the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres;*

response- this criteria requires both parameters to be fulfilled in order for a scheme to not be permitted development. In this case, in contrast to the previously approved scheme, both extensions are now within 2m from the rear boundary wall. However the maximum height of both extensions does not exceed 3m above their respective ground levels. Thus it is concluded that the extensions comply with this criteria.

(h) *the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would—*

(i) exceed 4 metres in height,

(ii) have more than one storey, or

(ii) have a width greater than half the width of the original dwellinghouse;

response- the extensions are all on the rear and do not extend beyond a wall forming any side elevation (which is deemed to be the gable ends on north and south sides).

(i) *it would consist of or include—*

(i) the construction or provision of a veranda, balcony or raised platform,

(ii) the installation, alteration or replacement of a microwave antenna,

(iii) the installation, alteration or replacement of a chimney, flue or soil and ventpipe, or

(iv) an alteration to any part of the roof of the dwellinghouse;

response- the extensions do not involve any of those specified features.

Assessment of scheme against GPDO criteria- part A.2

2.11 It is considered that the proposal for this house in a conservation area also complies with the following restrictions (a) to (c) within part A.2 (quoted in italics) in relation to properties in conservation areas, as explained in the ensuing responses.

(a) it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;

response- neither extension entails cladding.

(b) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse;

response- the scheme does not entail an extension to a side elevation wall, as explained above.

(c) the enlarged part of the dwellinghouse would have more than one storey and extend beyond the rear wall of the original dwellinghouse

response- the extensions are single storey high, both in themselves and seen as an overall package.

Assessment of scheme against GPDO criteria- part A.3

2.12 It is considered that the revised proposal also complies with the following conditions (a) to (c) for all permitted development within part A.3 (quoted in italics), as explained in the ensuing responses

(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

response- the intention is to use matching materials on both extensions, but an informative will be added to the decision to ensure that this happens.

(b) any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse shall be—

(i) obscure-glazed, and

(ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed;

response- this is not applicable to this case, as no side windows are proposed.

(c) where the enlarged part of the dwellinghouse has more than one storey, the roofpitch of the enlarged part shall, so far as practicable, be the same as the roof pitch of the original dwellinghouse;

response - this is not applicable to this case, as there are only single storey extensions and both are flat-roofed.

3. OTHER ISSUES

3.1 It should be noted that the Article 4 Direction does not affect this application's assessment as the Direction only prevents development entailing the 'enlargement, improvement or other alteration to the principal elevation or side elevation of a dwelling house which fronts a public highway, private street or publicly accessible space'. As already explained in the report for the previous Certificate application, it is argued that the "principal" elevation here is the eastern one facing the pond and heath which is publicly accessible, and thus the rear extensions do not involve any alteration or enlargement to any elevation fronting a highway or public space.

3.2 It is considered prudent in the light of this restricted site and neighbour concerns to attach standard informatives on the decision, advising the applicants of issues relating to building regulations, construction access and construction noise

4. CONCLUSION

4.1 It is considered that the scheme for extensions is lawful by virtue of meeting the criteria set out in provisions of the GPDO regarding permitted development for enlargements of dwelling houses within conservation areas. Therefore a Certificate of Lawfulness can be issued for the 2 rear extensions marked A and B on the submitted plans.

DISCLAIMER

Decision route to be decided by nominated members on *Monday 31st March 2014*.
For further information please go to www.camden.gov.uk and search for 'members briefing'