

<b>Delegated Report</b> <b>(Members Briefing)</b>		Analysis sheet		Expiry Date:	11/08/2011
		N/A / attached		Consultation Expiry Date:	Original: 28.7.11 Revision: 21.9.11
Officer			Application Number(s)		
Charles Thuairé			2011/3054/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 C) 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

<b>Adjoining Occupiers:</b>	No. notified – original consultation  Revised scheme consultation	<b>51</b>  <b>64</b>	No. of responses - original consultation  Revised scheme consultation responses	<b>12</b>  <b>9</b>	No. of objections - original consultation  Revised scheme consultation objections	<b>12</b>  <b>9</b>
<b>Summary of consultation responses:</b>	<p><i>NOTE- given the previous contentious history of developments on this site (see history section below), it was considered wise to consult and inform local people 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><i>Revised plans received (see para 1.5 below)- all neighbours and groups reconsulted on 7<sup>th</sup> September for 2 weeks.</i></p> <p><u>Objections from local residents in Vale of Health</u> (4, 7, 8, 9, 10, 12 (two separate submissions by separate occupiers of No. 12), Heath Villas; Upfleet; 8 Spencer House; 4 Byron Villas; 76 South Hill Park)-</p> <ul style="list-style-type: none"> <li>- house is visible in unique beautiful site in London and UK, and rebuilding house would harm this view and be out of character with surroundings; (<i>officer note- not a consideration that can be taken account of in assessing this certificate</i>)</li> <li>- disruption by building work, loss of onstreet parking, limited access to site for construction; overlooking of neighbours; impact of excavation on neighbours; (<i>officer note- not a consideration that can be taken account of in assessing this certificate</i>)</li> <li>- design and form of new building out of character with conservation area and landscaped views across pond, footprint, bulk and rear wall should match existing; (<i>officer note- not a consideration that can be taken account of in assessing this certificate</i>)</li> <li>- contrary to guidelines on MOL, consider to be inappropriate development on MOL and POS; extensions proposed are 23% of existing floorspace thus exceed max 10% increase in size permissible in legislation; (<i>officer note- not a consideration that can be taken account of in assessing this certificate- MOL criteria do not apply to permitted development rights</i>)</li> <li>- support arguments by Vale of Health Society that the extensions do not comply with permitted development rules;</li> <li>- it is an attempt to circumvent rules for protection of MOL by a series of small extensions and thus seen as an attempt to bypass spirit of rules which can be used as precedent for other MOL sites; series of individual pd applications should be seen as a totality; there should be no possibility of unintended precedents being set and account must be taken of the relation with recently approved certificate;</li> <li>- application does not comply with GPDO criteria – it is for more than 1 storey and within 7m of boundary, is more than 1 storey and extends beyond rear wall, contravenes restrictions imposed by Article 4 direction; in particular Area D results in a 3rd storey in conjunction with the existing 2 storey house and similarly Area B results in a 2 storey element in conjunction with the existing house; no further development can be sited within 7m of rear wall beyond areas of previously permitted extensions in order to comply with the permitted development (pd) restriction; if previous permitted extensions were set away by 7m to comply with this requirement, then so should the current proposed ones; CLG Technical Guidance dated August 2010 is quoted to support this view, in particular stating that limitation of more than 1 storey applies to any part of the house which is of more than 1 storey;</li> <li>- there is an overlap between areas A and C as they share a common boundary wall and thus this forms a 2 storey element.</li> <li>- appearance of front of house would be changed which is restricted by Article 4 as the house faces a publicly accessible space;</li> <li>- must be considered in conjunction with previously approved basement extensions (see <i>history</i>); concern that it is likely that further planning applications will be submitted to build on the new floor area granted under pd rights thus circumventing rules on development by the back door;</li> <li>- basement excavation is an engineering operation which is not considered to be pd, nor is GPDO intended to cover basement excavations; inadvisable to create basements with inadequate escape routes, ventilation and light;</li> <li>- basement applications should be subject to planning permission due to risk of flooding; precedent will be set for future works on MOL and areas of flooding; basement work is dangerous in area of high water table and unstable subsoil conditions, and could lead to collapse of road and neighbouring houses as experienced in past (eg. in 1975 and 1981) (<i>officer note- not a consideration that can be taken account of in assessing this certificate</i>);</li> <li>- local perception that Council has a perverse and inexplicable bias towards granting applications despite sensitive nature of site; query Camden officers' impartiality and</li> </ul>					

treatment of site in giving pre-application advice, and request that decision should be made by councillors not officers; if application is approved, we will mount a legal challenge to both current and previous decisions and preliminary advice is that such a challenge has a high chance of success.

Revised scheme-

Objections from 7,8,9,10,10-11,12 (two separate submissions by separate occupiers of No. 12), Heath Villas; Lea Steps; 8 Spencer House-

- Similar points as above and previous objections reiterated.
- it is very difficult for owners of adjoining endangered houses who have heavy commitments and are concerned at threats to heath and natural amenities by this scheme which is cunningly revised and presented again under different guise.
- Area A would be visible from publically accessible space and thus contravenes Article 4.
- Areas C and A are very close and one is above other, thus contravenes guidance that states that limitations for extensions of more than 1 storey apply to all cases where enlarged part of house includes any part which is of more than one storey. Extensions are on same rear wall but at different heights and therefore are 2 storeys; extensions relate to 2 existing extensions and should be viewed as being added to them. Despite contrived design to separate 2 elements, both will actually share a common wall and will both be formed on the same wall. Application is for more than 1 storey, extends beyond rear wall of original house and within 7m of boundary and thus is not pd. Proposal is actually for a 2 storey extension disguised as 2 separate one storey ones. 2 extensions are formed on 2 storeys of same wall and therefore constitute a 2 storey extension. Extensions are joined to previously permitted 2 storey extensions of house. Contravenes guidance which explains "the enlarged part of the dwellinghouse includes any part that is of more than one storey" which should apply to any part of the house, not just parts directly below or above (*presumably the implication of this comment is that no extensions can be built to houses of 2 or more storeys*).
- Previous basement application had to be revised to ensure a 7m distance from rear wall, thus this rule should also apply to this proposal at ground and 1<sup>st</sup> floors. Previously permitted extensions were more than half width of original house; rules are based on rear and side walls as points of reference and thus both should be used here, not just rear walls, even with basements.
- Putting gaps in strategic places means extensions would be lawful which is not what GPDO intended.
- Circumvention by back door of rules governing developments on MOL and sets dangerous precedent for development on MOL.
- Previous permission for basement extensions should not have been given, being more than half width of house; pd rules not intended to cover basement excavations which constitute engineering operations.
- Should not allow a succession of individual pd applications which ought to be considered as a totality, not one by one; if this was considered as one application including the previous basement extensions, it would not be allowed. Must be assessed in conjunction with previous basement application.
- Onus of proof of compliance with GPDO rests with applicant- but he has not provided any evidence to argue why the extensions constitute permitted development
- Original scheme was revised following previous comments made by residents and VoH Society. Urge decision to be made by Councillors not by officers.
- Will destabilise all houses in terrace due to unstable grounds on Fleet river.

*Officer response: Please see assessment section, esp. paras 2.1-2.2 and 2.7-2.10.*

**CAAC/Local groups\*****comments:**

\*Please Specify

Heath and Hampstead Society objects- site is on MOL so issue of proportionality still arises; totality of extensions amounts to 25% of existing which is disproportionate; does not comply with GPDO as some parts are within 7m of boundary and extended house would become a 3 storey building; site is subject to Article 4 Directions and the house faces a publicly accessible space which is controlled by this Direction. Concern that applicant, having been frustrated in his original intentions for the site, is now relying on technicalities to achieve enlargement of house 'by the back door'.

Revised scheme- HHS continue to object on grounds that reduced scale of additions results in 12.4% increase which still exceed the 10% criteria established as the maximum permissible on MOL sites.

Vale of Health Society objects- concern that current application will be succeeded by further applications which seek to use measurements of house as enlarged as a basis for a possible replacement house which would be deemed acceptable within criteria of PPG2 on MOL; need to take extra special care on this sensitive site as it may set a precedent for other sites on MOL. Object as the proposal does not comply with GPDO, notably- para A.1f as the extensions are more than 1 storey high and within 7 metres of curtilage from rear wall; para A.2c as extensions would result in a 3 storey high building extending beyond existing rear wall; inter-relationship between this application and previous one is unclear and they are suspicious that both applications are deliberately split into 2 phases on basis that all or some of these extensions may have been rejected if submitted as one application- important that Council is satisfied that there has been no such circumvention.

Revised scheme- continue to object on same grounds as other residents, as summarised above- notably the following is crucial: 2 extensions breach GPDO rules; no attempt is made by applicant to prove lawfulness; should be seen as part of a sequence starting with previous CLEUD application and probably continuing with future applications; puts MOL at risk.

Superintendent of Heath objects- does not comply with GPDO para A.2.c, being more than 1 storey and extending beyond rear wall in a conservation area.

Revised scheme- no comments received

*Officer response: Please see assessment section, esp. paras 2.1-2.2 and 2.7-2.10*

**Site Description**

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 1<sup>st</sup> floor level. Thus the house has a small ground floor (with 2 bedrooms) on the south side (ie. facing the passage), and a 1<sup>st</sup> floor (with 2 bedrooms, living rooms, kitchen etc.) across the whole house between north and south side elevations. Located in Hampstead conservation area and not listed. Adjoins the Heath. Located on Metropolitan Open Land (MOL) and Private Open Space (POS).

The house enjoys permitted development rights, although an Article 4 Direction recently imposed in September 2011 now restricts certain operations within the GPDO relevant to this application, notably Class A. An application for a Certificate of Lawfulness for an Existing Development of 2 basement extensions that had been started on site was granted earlier last year (see history).

## 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)

## Relevant policies

The scheme 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 pd or not.

## Assessment

### 1. PROPOSAL

1.1 The application is to ascertain whether the proposed scheme for extending the house would constitute permitted development within the GPDO and therefore be "lawful development".

1.2 It is noted that the house remains as a part single storey part 2 storey dwelling and that works were started last year in terms of underpinning foundations in order to commence a scheme involving creation of an extended ground floor and a new basement floor under the footprint of the house. These extensions were deemed lawful in the Certificate granted in response to the previous Certificate application ref 2010/3118/P (see above history).

1.3 The application originally comprised 4 separate extensions all at the rear of the house but at different locations and levels in order to comply with the provisions of the GPDO. They are denoted on plans as Areas A, B, C, D. Area A is 14sqm in area, at rear of the existing ground floor element; B is 18.5sqm at rear of the lawfully existing ground floor extension approved by the previous Certificate; C is 19sqm at the rear of the existing 1<sup>st</sup> floor; D is 15.5sqm at the rear of the lawfully existing basement floor extension approved by the previous Certificate. All extensions are approx 2.5m deep, including the thickness of the walls, and are single storey high and approx 2.5m high except the basement extension Area D which is 4m high. There are no extensions proposed at the front of the house facing the pond nor on the 2 gable end side walls.

1.4 The nature of the house in its location and split level form and its context with the surrounding properties and highway is quite unusual if not unique and requires a considered interpretation of definitions within the GPDO. Furthermore the relationship between the various proposed extensions, existing approved extensions and existing house is acknowledged to be quite complex.

#### 1.5 Revisions-

- Areas B and D have been omitted on the grounds that they formed 2 storey extensions in conjunction with existing 1<sup>st</sup> and ground floor elements of the house and would have been within 7m of the site's rear boundary wall; they would therefore not have come within pd rights.

- Areas A and C have been reduced in area and clearly separated so that there is no sharing of common wall at ground and 1<sup>st</sup> floor levels to ensure that there are no 2 storey elements in this location.

In summary therefore, the proposal is now for Area A, a 13.5sqm rear ground floor extension and Area C, a separate 19sqm rear 1<sup>st</sup> floor extension, both set away by min 2.2m from the rear garden boundary wall.

### 2. 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/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 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, Metropolitan Open Land (MOL), conservation area character, transport conditions, etc. It should also be noted that the restrictions on development on MOL as stated in LDF policy and in PPG2 (on Green Belts) have no bearing on this determination- the latter 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.

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

2.4 At this point, it is useful to define how officers are treating the house in terms of some basic definitions referred to in the GPDO criteria. Although the Council has reached its own judgment, it is understood that the Vale of Health Society concur with these definitions. The house unlike any others in the Vale of Health does not have a traditional front elevation facing the road and rear elevation facing a private rear garden. Instead it has a south side gable facing the accessway which leads into the site, a diminutive part 1 part 2 storey west elevation containing the front door which faces the rear wall of the site and rear gardens of houses (Heath Villas) facing the street, a more prominent east elevation with large habitable room windows facing the rear garden and Hampstead Ponds. Officers have thus taken the view, for the purposes of Class A.1 d, that the house does not have a front elevation facing the highway but instead has its principal elevation facing the pond, its rear elevation facing the west and the rear gardens of other properties, and its 2 side elevations on the 2 end gables facing north and south.

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.

Schedule 2 Part 1 of 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]*

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.

Any other approach, such as suggesting that basements which are enlargements or improvements or other alterations to a dwelling house were not intended to be covered by the GPDO and so should not be considered permitted development rights, would not be consistent with the clear wording of this part of the GPDO. The Council is required to seek to give the words in the GPDO their ordinary meaning.

2.6 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.

2.7 Within part A.1, the revised proposal for 2 extensions complies with the following sections:

- (a)(b)(c) - it does not involve any increase in footprint or height nor an extension fronting the highway;
- (d) - as discussed above, the west side is the principal elevation which does not front a highway whereas the proposed extensions are to the 'rear' elevation facing other houses and not a highway;
- (e) - officers reviewed the original scheme in the light of objections raised and concurred that the extensions A and C as originally designed could be deemed as 2 storey extensions as they shared a common wall which would stretch over 2 floors and therefore would have to be assessed under criteria (f). As now revised, neither of them overlap with each other to form 2 storey extensions as they are separately located on the rear in staggered positions both on elevation and plan. Overall both extensions are single storey in themselves and they cannot be considered as forming a 2 storey extension (as argued by neighbours) as they are not above or below each other nor forming part of an overall 2 storey extension, taking account of the DCLG Guidance on criteria (e) and (f). It would also be perverse to interpret both extensions as forming a 2 storey extension solely because their 2 corners touch at one point due to their vertically staggered position (ie.

the bottom right hand corner of Area C and top left hand corner of Area A as shown on plan GH10/300B). 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. It is therefore considered that they comply with this criteria as the extensions are each single storey, are less than 3m deep and do not exceed 4m height;

- (f) - officers reviewed the original scheme in the light of objections raised and concluded that the originally proposed extensions B and D would not comply with this criteria. If one takes account of the combination of the proposed extensions located on top or under existing/lawful elements of the house in the interpretation of the wording of this section, then these 2 extensions would be more than 1 storey high in the sense that Area D at basement would be below an existing part of the ground floor while Area B at ground floor would be below an existing part of the 1<sup>st</sup> floor. However Area A at ground floor and Area C at 1<sup>st</sup> floor would be both freestanding and continue to be single storey enlargements. As Areas D and B were deemed to be resulting in enlargements more than 1 storey high, they would fail to comply with the provisions of this section- although they do not extend more than 3m, they are on a rear wall and within a 7m distance of the opposite boundary wall. This issue is clarified in the CLG published in August 2010 'Technical Guidance on Permitted Development for householders'. In relation to Class A.1 (f) which states that 'the enlarged part of the dwellinghouse would have more than one storey...', it advises that: *The term 'more than one storey' applies to the part of the house being enlarged through permitted development. This could either be a two storey extension to a house, or might comprise the addition of a storey onto an existing part of the house - for example, the addition of a second storey onto an existing single storey part of the house.*

It is possible that some neighbours may be interpreting the GPDO and associated Guidance so that the limitation "enlarged part of the dwellinghouse includes any part that is of more than one storey" applies to the whole house, and thus even the 2 single storey extensions would contravene this criteria. If that were the case, it would prevent any extension to a multi-storey house on the basis that the house itself was more than 1 storey high, which was not the intention of the GPDO. It would be perverse to include the whole existing house in this calculation and indeed the examples given in the Guidance only relate to extensions which are or become 2 storeys high, either in themselves or on top of previously lawful or existing extensions.

As explained above, the Areas A & C are now considered a single storey elements and therefore comply with this criteria (f);

- (g) - no extensions are within 2m of any boundary;

- (h) - the extensions are all on the rear as discussed above and do not extend beyond a wall forming a side elevation.

In response to neighbour comments regarding the previously approved basement/ground floor extensions, it is considered that these complied with this criteria- the ground floor one was actually underground and attached to the side of an existing floor which had no external elevation, due to the split levels involved, thus it did not actually extend beyond a side elevation.

- (i) - it does not involve any of those specified features.

2.8 It complies with the further restrictions in part A.2 in relation to properties in conservation areas, as follows:

- (a) it does not entail cladding
- (b) it does not entail an extension to a side elevation wall, as explained above.
- (c) the revised extensions are single storey high, both in themselves and seen as an overall package.

2.9 The conditions in section A.3 are not relevant in this case.

2.10 It should be noted that the recently imposed Article 4 Direction does not affect this assessment as it 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 publically accessible space- as discussed above it is argued that the "principal" elevation here is the eastern one facing the pond and heath which is publically accessible, and thus the rear extensions do not involve any alteration or enlargement to any elevation fronting a highway or public space. In response to a neighbour's comments, the fact that some extensions may possibly be publically visible is not relevant.

### 3. CONCLUSION

3.1 It is considered that the revised scheme for extensions is lawful by virtue of the criteria set out in provisions of the GPDO regarding permitted development for enlargements of dwelling houses within conservation areas being met, and hence a Certificate of Lawfulness can be issued for the 2 rear extensions marked A and C as shown on plans GH10/201B, 202, 300B, 301B.

## **DISCLAIMER**

**Decision route to be decided by nominated members on Monday 7<sup>th</sup> November 2011.**

**For further information see**

**<http://www.camden.gov.uk/ccm/navigation/environment/planning-and-built-environment/planning-applications/development-control-members-briefing/>**