

2019/6417/P – 4A Lindfield Gardens



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Photo 1 – application site (with red line boundary)



Photo 2 – view from rear garden towards house at no.4A



Photo 3 – view from house (no.4A) towards rear garden (inc. existing outbuilding)



Photo 4 – junction of ‘L-shaped’ boundary fence (facing house at no.4a)



Photo 5 – view of boundary fence from within rear garden of no.4



Photo 6 – existing outbuilding in rear (no.4a)



Photo 7 – land within ‘L-shaped’ rear garden (no.4a) also showing boundary fence with no.4



Delegated Report		Analysis sheet		Expiry Date:	18/02/2020
(Members Briefing)		N/A		Consultation Expiry Date:	18/02/2020
Officer			Application Number(s)		
Tony Young			2019/6417/P		
Application Address			Drawing Numbers		
4a Lindfield Gardens London NW3 6PU			Refer to draft decision notice		
PO 3/4	Area Team Signature	C&UD	Authorised Officer Signature		
Proposal(s)					
Erection of single storey outbuilding in rear garden.					
Recommendation(s):		Grant Certificate of Lawfulness			
Application Type(s):		Certificate of Lawfulness (Proposed)			

Conditions or Reasons for Refusal:	Refer to Draft Decision Notice					
Informatives:						
Consultations						
Adjoining Occupiers:	No. notified	0	No. of responses	0	No. of objections	0
Summary of consultation responses from local residents	<p>Given the nature of certificate of lawfulness applications, and in particular that purely matters of legal fact are involved in their determination, the Council does not have a statutory duty to engage in a formal consultation process. However, given the previous level of local interest associated with a similar application approved in 2018 (reference 2018/4206/P), a full consultation period of 21 days was advanced to allow the opportunity for responses to be received.</p> <p><i>No responses received from local residents</i></p>					
Heath & Hampstead Society	<p>Heath & Hampstead Society objected to the proposals, summarised as follows:</p> <ol style="list-style-type: none"> 1. <i>This Application is not Permitted Development.- Schedule 2, Class E. The internal rooms are arbitrarily labelled as `Study` or `Store` but they are not specialised in any way so that they could be used as `residential` spaces acting as extra space for the existing house. The proposed building provides undifferentiated space and not `spaces incidental to the use of a dwelling house` such as a greenhouse or for the keeping of bees etc. The `undifferentiated` spaces proposed in the Application could be used as a separate dwelling increasing the intensification of the area and detracting from the Conservation Area;</i> 2. <i>This Application is not Permitted Development and should be refused as a building detracting from the large well-treed and planted area reducing bio-diversity and the essential green areas needed to ameliorate climate change;</i> 3. <i>There have been a large number of these large buildings in gardens masquerading as non-residential space;</i> <p><i>All local societies are extremely concerned and urge the Planning Department to refuse on all the above grounds.</i></p> <p><u>Officer response:</u></p> <ol style="list-style-type: none"> 1 & 3 - <i>see paragraphs 5.1 to 5.3 below that refer to the use of the outbuilding;</i> 2 - <i>see paragraphs 3.1 to 3.2 below with regard to the determination and assessment of the proposal, and paragraphs 5.4 to 5.6 with regard to biodiversity.</i> 					

Site Description

The application property is a semi-detached dwelling house on the northeast side of Lindfield Gardens close to the junction with Arkwright Road.

The site is 'L-shaped' in plan form with the garden widening at the rear; the rear section of the adjacent garden at no.4 being incorporated into the garden of the host property in this current form for a significant number of years.

The building is not listed and sits within the Redington Frogal Conservation Area.

Relevant History

2018/4206/P - Erection of single storey outbuilding in rear garden. Certificate of lawfulness (proposed) granted 04/12/2018

2007/4788/P - Application for certificate of lawfulness for proposed rendering to the brick facades to front, side and rear; and to add lateral cedar to part of the front façade. Planning permission refused 20/11/2007

2007/0616/P - Creation of roof terrace at front 2nd floor roof level with associated erection of perimeter glass balustrades. Planning permission refused 04/05/2007. Appeal allowed 03/03/2008

2005/4219/P - Amendment to planning permission dated 12th April 1999 (ref PW9802616/R2) for the erection of a single-storey side extension, a 2-storey rear extension and a single-storey extension at roof level, relating to alterations to the proposed roof extension. Planning permission granted 06/01/2006

2004/2596/P - Part removal of condition 03 of planning permission granted on 12/4/1999 [ref: PW9802616R2] for the erection of single storey extension to the side, two storey rear extension and roof extension, in order to use the flat roof at front second floor level as roof terrace and associated installation of balustrade and sliding glass doors. Planning permission granted 30/11/2005

2004/2599/P - Removal of additional condition 4 of planning permission (ref: PW9802616R2) to restrict the construction of an approved roof extension unless this was erected simultaneously with an identical roof extension approved for the adjoining building at No. 4 Lindfield Gardens. Planning permission granted 20/08/2004

2004/1534/P - The erection of a single storey extension at roof level to provide additional accommodation for the existing residential dwelling house. Certificate of lawfulness (proposed) granted 05/07/2004

PW9802616R2 - The erection of a single storey extension to the side, a two storey extension to the rear and a single storey extension at roof level to provide additional accommodation for the existing residential dwelling house. Planning permission granted 12/04/1999

PW9802489R1 - Erection of a two storey rear extension and a single storey side extension and infill to the front porch. Planning permission granted 17/09/1998

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) (England) Order 2015 (“GPDO”).

This lawful development certificate application is to determine whether the proposed development 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 legal determination.

Assessment

1. Introduction

1.1 A Lawful Development Certificate has been submitted to the Council for the proposed erection of a detached outbuilding in the rear garden of the application site. The proposed outbuilding or garden room would replace an existing smaller outbuilding. It would be a single storey enclosure with part flat / part dual roofs and glazed sliding doors, and would provide additional storage and utility space ancillary to the main house, including study space for the residents of no.4a Lindfield Gardens. As such, a toilet, study areas and various storage spaces would be included.

1.2 The overall site area at the property is approximately 700m² and the footprint area of the proposed outbuilding would be approximately 125m². The enclosure would be positioned on sloping ground with its height rising no higher than 4m above the highest ground level adjacent to the proposed outbuilding. The proposed irregular shaped structure would have a depth of between approximately 7.5m-11.5m and a width of approximately 13m.

1.3 A previous application (2018/4206/P) was granted a lawful development certificate on 04/12/2018 for a proposed outbuilding in a similar location.

2. Revisions

2.1 The original proposals indicated that the outbuilding would be positioned within 2m of the boundary of the curtilage of the dwelling house. This would restrict the maximum height of the outbuilding to 2.5m under E.1(e), Schedule 2, Part 1, Class E of the Order. Following concerns raised by the Council given that parts of the roof would rise to 4m in height, the applicant amended the proposal so that the outbuilding would no longer be located within 2m of the boundary of the curtilage of the dwelling house. In support of this revision, and for the avoidance of doubt, amended drawings were submitted with specific figured dimensions in regard to the distances from all boundaries.

3. Assessment

3.1 The determination of the application can only be made after an assessment based on the following:

- whether the proposal constitutes “development” under Part III, Section 55 of the Town and Country Planning Act 1990 which sets out the meaning of “development”;
- whether the land in question comprises part of the ‘curtilage’ of no. 4a Lindfield Gardens; and
- whether the proposal is lawful and constitutes permitted development as defined by the criteria set out under ‘Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015.’

3.2 It is emphasised that this is a legal determination; no account can be taken of policy or advice within the Council’s Local Development Framework or the planning merits of the scheme in terms

of issues such as its' impact on neighbour amenity, the character of the conservation area, trees or biodiversity within the locality, sustainable urban design (SUDs), transport, etc.

Definition of "Development"

3.3 Under Part III, Section 55 of the Town and Country Planning Act 1990, 'Meaning of "development" and "new development"', includes the carrying out of building operations (e.g. structural alterations, construction, etc.), and as such, the proposed external alterations involving the erection of a detached outbuilding in the rear garden are considered to constitute development.

Curtilage considerations

3.4 The matter then turns to whether the land in question comprises part of the 'curtilage' of no. 4a Lindfield Gardens for which permitted development rights under 'Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015', would apply. This question arises because the 'L-shaped' curtilage as it appears on the existing site location plan (edged in red) and relied upon within the application submission differs from the original plot as shown on current and historic Council records.

3.5 It is firstly noted that the amalgamation of residential garden land itself does not comprise 'development' for the purposes of Section 55 of the Town and Country Planning Act 1990 for which planning permission would be required. Whilst no statutory definition is available for the term 'curtilage', the definition most usually referred to is that given in (*Sinclair-Lockhart's Trustees v Central Land Board, 1950*): "*The ground which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same although it has not been marked off or enclosed in any way. It is enough that it serves the purpose of the house or building in some necessary or useful way.*"

3.6 Additionally, (*Sumption v Greenwich LBC, 2007*) established that land can very easily be incorporated into the 'curtilage' and any assessment should be based on the situation at the present time. As such, whether the land in question comprises the domestic curtilage of no. 4a Lindfield Gardens is a matter of fact and degree, based on the situation existing at the present time and recognising that its' physical extent is not fixed in time but is capable of altering.

3.7 During a site visit, the case officer noted an existing outbuilding, a grass lawn and cultivated garden space, an unkempt area with weeds and vegetation, and children's play area (with trampoline still in situ at the time of the visit), all located within the rear garden. The existing nature and layout of this 'L-shaped' garden (which includes the land in question) appeared to be well-established and consistent with a domestic garden intimately associated with the use of, and serving the purpose of, the main dwellinghouse in a reasonably useful manner. The whole of the 'L-shaped' plot appeared as a single garden space with no physical separation or intervening non-garden land between the rear land in question and the host property. Furthermore, the supporting evidence provided by the applicant is considered on balance of probability to be sufficiently precise and unambiguous in support of this conclusion.

3.8 The key tests for determining whether the land comes in the curtilage of the building (as established in the *Sutcliffe v Calderdale (1982)* and reiterated in *Burford v SoS for Communities and Local Government & Anor (2017)*) are: 1) the physical 'layout' of the land and building; (2) the ownership of the land and building, past and present; and (3) the use or function of the land and building, past and present.

3.9 This is a matter of fact and degree in each case. In terms of layout, the small piece of land to the

rear of 4 is connected directly to the land to the rear of 4A, and within the same enclosure. It has the physical appearance of a single garden space accessible from the main building at 4A. The small piece of land to the rear of 4 is under the same ownership as the land to the rear of 4A. Finally the small piece of land to the rear of 4 is connected directly to the land to the rear of 4A and used as part of the whole garden, ancillary to the main dwelling at 4A.

3.10 Therefore, in this particular case, it is considered that the whole of the area identified in the application, and edged in red on the submitted site location plan, is within the curtilage of 4A.

Class E – Single storey outbuilding

3.11 Accordingly, the matter now turns to consideration of whether permitted development rights would apply as defined by criteria set out under ‘Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015.’

3.12 Class E gives provision for an outbuilding to be constructed within the curtilage of a dwelling house, with restrictions. The section below sets out this criteria in full with officer comments added in bold to denote how the proposal accords with each point:

Class E		
The provision within the curtilage of the dwellinghouse of—		
(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; 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
The use of the existing dwelling house as a dwelling house is not as a result of permission granted for a change of use as set out under Classes M, N, P, PA or Q of Part 3 of this Schedule.		
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
The overall site area at the property is approximately 700m2 and the footprint area of the proposed outbuilding would be approximately 125m2. The proposed enclosure would therefore not exceed 50% of the total area of the curtilage.		
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
The outbuilding is located within the rear garden.		
E.1 (d)	Would the building have more than a single storey?	No
The outbuilding has a single storey.		
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	No

	(iii) 3 metres in any other case?	
The enclosure would <u>not</u> be positioned within 2m of the boundary of the dwelling house at any point (as shown by specific figured dimensions annotated on drawings). The height of the dual-pitched roofs would <u>not</u> exceed 4m as measured from the highest ground level (on sloping ground) adjacent to the proposed outbuilding.		
E.1 (f)	Would the height of the eaves of the building exceed 2.5 metres?	No
The eaves height of the enclosure would rise no higher than 2.5m above the highest ground level (on sloping ground) adjacent to the proposed outbuilding.		
E.1 (g)	Would the building, enclosure, pool or container be situated within the curtilage of a listed building?	No
The host property is not listed.		
E.1 (h)	Would it include the construction or provision of a verandah, balcony or raised platform?	No
The construction or provision of a verandah, balcony or raised platform are not included as part of the application proposal. Any decking included as part of the proposal would not exceed 0.3m in height, and as such, would be permitted development under Class E.		
E.1 (i)	Does it relate to a dwelling or a microwave antenna?	No
The proposals do not relate to a dwelling or a microwave antenna.		
E.1 (j)	Would the capacity of the container exceed 3,500 litres?	n/a
A container is not included as part of the application proposal.		
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
No part of the land sits within the curtilage of either an area of outstanding natural beauty, the Broads, a National Park, or a World Heritage Site.		
Is the property in a conservation area? If YES to the question below then the proposal is not permitted development:		
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
The site is located within the Redington Froggal Conservation Area. The outbuilding is located within the rear garden, and as such, would not be situated on land between a wall forming a side elevation of the dwelling house and the boundary of the curtilage of the dwelling house.		

3.13 The proposal is considered to satisfy all criteria as set out under 'Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015,' and as such, would be permitted development and therefore lawful.

4. Consultation responses

4.1 Given the nature of Certificate of Lawfulness applications, the planning merits of the use are not

relevant in determining an application; purely matters of legal fact are involved. All consultation responses received have therefore been assessed on this basis (see the 'Consultations' section above). Having fully assessed any responses, it is considered that no evidence has been provided to contradict or undermine the applicant's proposal or assertions.

4.2 Nevertheless, 2 particular concerns were raised in a response received which are addressed in Section 4 ('Other matters') below.

5. Other matters

Use of outbuilding

5.1 Concerns were raised by The Heath and Hampstead Society that the proposed outbuilding might be used as an additional dwelling house or other use contrary to Class E which clearly stipulates that any building should only be for a purpose incidental to the enjoyment of the dwelling house.

5.2 The applicant has stated in the submitted Planning Statement that the outbuilding is for the domestic needs and personal enjoyment of the occupants of the dwellinghouse; a purpose incidental to the enjoyment of the dwellinghouse. This is supported by the submitted drawings and reaffirmed in a letter dated 02/11/2018 (from Square Feet Architects) which states that no self-contained or primary living accommodation for cooking, sleeping or eating will be provided (for instance, there are no shower/bathroom, bedroom or kitchen facilities included in the proposal).

5.3 Notwithstanding this, an informative will be added to any certificate granted to remind the applicant that the proposed outbuilding shall only be used for purposes incidental to the residential use of the existing dwelling house and shall not be used as either a separate independent Class C3 dwelling house or for Class B1 business. This is in response to the local concern raised and to ensure that the outbuilding does not adversely affect the amenity of adjoining residential premises and is not used for unauthorised purposes.

Impact upon biodiversity

5.4 Concerns were also raised by The Heath and Hampstead Society with regard to the impact of the proposal on biodiversity within the garden of the property.

5.5 As emphasised above (paragraphs 3.1 to 3.2), the determination of the application is a legal determination, and as such, no account can be taken in terms of the planning merits of the scheme, such as the impact on biodiversity.

5.6 Notwithstanding this, it is noted that there are some trees situated within the rear garden and in neighbouring properties. These are protected by the provisions under section 211 of the Town and Country Planning Act 1990 by virtue of being situated within the Redington Froggnal Conservation Area. These provisions require the applicant to notify the local planning authority 6 weeks before carrying out works to any affected trees (unless an exception applies). As such, an informative will be added to any approval reminding the applicant of this obligation.

Recommendation Approve certificate of lawfulness.

DISCLAIMER

The decision to refer an application to Planning Committee lies with the Director of Regeneration and Planning. Following the Members Briefing panel on Monday 20th April 2020, nominated members will advise

***whether they consider this application should be reported to the
Planning Committee. For further information, please go to
www.camden.gov.uk and search for 'Members Briefing'***

Square Feet Architects
95 Bell Street
London
NW1 6TLApplication Ref: **2019/6417/P**
Please ask for: **Tony Young**
Telephone: 020 7974 **2687**

15 April 2020

DRAFT

Dear Sir/Madam

DECISION

Town and Country Planning Act 1990

Certificate of Lawfulness (Proposed) Granted

The Council hereby certifies that the development described in the First Schedule below, on the land specified in the Second Schedule below, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 as amended.

First Schedule: Erection of single storey outbuilding in rear garden.

Drawing Nos: (1721_L_)001E, 005A, 010E, 020A, 021A, 022A, 023A, 030A, 031A, 042A, 101A, 112F, 113E, 121F, 122E, 123D, 124D, 142C, 143A; Planning statement dated December 2019; Cover Letter from Firstplan (ref. 15258/CJ/gm) dated 21/05/2018; Statutory Declaration (with appendices 1-7) from Lesley Strawbridge dated 24/08/2018; Letter and email from Square Feet Architects dated 02/11/2018 and 03/04/2020 respectively.

Second Schedule:

4a Lindfield Gardens
London
NW3 6PU

Reason for the Decision:

- 1 The proposed outbuilding is permitted development under Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Executive Director Supporting Communities



Informative(s):

- 1 The applicant is reminded that Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) allows for a building required for a purpose incidental to the enjoyment of the dwellinghouse, and as such, the outbuilding that is the subject of this application cannot be used as a separate dwelling or for any other use, for example business use. It must remain incidental to the enjoyment of no. 4a Lindfield Gardens.
- 2 The applicant is reminded of the need to notify the Council by means of an application for any proposed tree works in connection with this approval and to receive written approval prior to starting the works. Further information, advice and necessary forms can be obtained by writing to: London Borough of Camden Tree Section (Private Trees), 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE; or emailing planning@camden.gov.uk.
- 3 Your proposals may be subject to control under the Building Regulations and/or the London Buildings Acts that cover aspects including fire and emergency escape, access and facilities for people with disabilities and sound insulation between dwellings. You are advised to consult the Council's Building Control Service, Camden Town Hall, Judd St, Kings Cross, London NW1 2QS (tel: 020-7974 6941).
- 4 This approval does not authorise the use of the public highway. Any requirement to use the public highway, such as for hoardings, temporary road closures and suspension of parking bays, will be subject to approval of relevant licence from the Council's Streetworks Authorisations & Compliance Team London Borough of Camden 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No 020 7974 4444). Licences and authorisations need to be sought in advance of proposed works. Where development is subject to a Construction Management Plan (through a requirement in a S106 agreement), no licence or authorisation will be granted until the Construction Management Plan is approved by the Council.
- 5 All works should be conducted in accordance with the Camden Minimum Requirements - a copy is available on the Council's website at <https://beta.camden.gov.uk/documents/20142/1269042/Camden+Minimum+Requirements+%281%29.pdf/bb2cd0a2-88b1-aa6d-61f9-525ca0f71319> or contact the Council's Noise and Licensing Enforcement Team, 5 Pancras Square c/o Town Hall, Judd Street London WC1H 9JE (Tel. No. 020 7974 4444)

Noise from demolition and construction works is subject to control under the Control of Pollution Act 1974. You must carry out any building works that can be heard at the boundary of the site only between 08.00 and 18.00 hours Monday to Friday and 08.00 to 13.00 on Saturday and not at all on Sundays and Public Holidays. You must secure the approval of the Council's Noise and Licensing Enforcement Team prior to undertaking such activities outside these hours.

In dealing with the application, the Council has sought to work with the applicant in a positive and proactive way in accordance with paragraph 38 of the National Planning Policy Framework 2019.

You can find advice about your rights of appeal at:

<http://www.planningportal.gov.uk/planning/appeals/guidance/guidancecontent>

Yours faithfully

Director of Regeneration and Planning

Notes

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use/operations/matter specified in the First Schedule taking place on the land described in the Second Schedule was/would have been lawful on the specified date and thus, was not/would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.
3. This Certificate applies only to the extent of the use/operations/matter described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter which is materially different from that described or which relates to other land may render the owner or occupier liable to enforcement action.
4. The effect of the Certificate is also qualified by the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.