

OFFICER'S REPORT

Case Officer:	David Stewart		
Parish:	West Alvington	Ward:	Westville and Alvington
Application No:	3327/23/CLP		
Applicant:	C/O Agent	Agent:	Mr Mark Evans - Mark Evans Planning Limited Cedar House Membland Newton Ferrers, Plymouth PL8 1HP
Site Address:	Collapit Creek House, West Alvington, TQ7 3BA		
Development:	Certificate of Lawfulness for proposed rear extension, rear rooflights& window alterations to facilitate refurbishment of existing house& construction of outbuildings for incidental use		

Recommendation: Grant Certificate

Reasons

There is sufficient information to confirm the extension to the main house complies with the requirements of Schedule 2 Part 1 Class A and on a balance of probabilities the applicant has shown the proposed outbuildings are incidental to the enjoyment of the dwellinghouse. The proposal therefore benefits from permitted development under Schedule 2 Part 1. Class E to the GPDO

Key issues for consideration:

Are the proposed uses incidental?

Cumulative Impact

Do they comply with requirements of Part 1 class A and class E

Are they within the curtilage?

Site Description:

The site is located in an isolated position overlooking Collapit Creek 1.8km south of West Alvington. The property is a large private dwelling owned by Ropemaker Property Limited, a company based in Sunbury on Thames. It is a nominee company on behalf of BP Pension Fund and is the legal but not beneficial owner of some of the Fund's properties. The parent undertaking is BP Pension Trustees Ltd.

The dwelling stands above the creek with its rear elevation overlooking the water and with its main lawn on the elevated section of ground to the south of the house. Beyond the lawn, the grounds are heavily tree'd.

The Proposal:

Property Planning Status

There is clear evidence that the property benefited from planning permission for 2 flats in the late 1970's and one of the flats was later given permission to extend in 1982. The evidence suggests that the property was converted to 2 flats and flats do not benefit from pd rights. However, Council Tax records indicate that the use as 2 flats ceased in 1994 when the tax band was adjusted to reflect use as a single dwelling. The change to a single dwelling would have required planning permission. However, use as a single dwelling extends beyond 10 years and is therefore exempt from any enforcement should the Council consider or have considered taking any action. Its use is therefore as a single dwelling, and I have considered the certificate of lawfulness against this use.

A consideration of this case requires an assessment of the proposals under 2 separate parts of the Town and Country Planning (General Permitted Development) Order 2015 as amended, Schedule 2, Part 1 Class A and Class E. I have therefore considered separately the proposals as they relate to A separately from the rest of the submissions.

A.

Alterations and Extension to the Main House

The development proposal is considered against the relevant criteria set out in Schedule 2, Part 1 of the above Order as follows:

A.1 (a) Was the dwelling house consented by virtue of Class M, N, P or Q of Schedule 2, Part 3 of GPDO? **No**

A.1 (b) Does the cumulative total of all development, other than original dwelling house, exceed 50% of total area of curtilage (excluding ground area of original dwelling)?
No

A.1 (c) Does the height of the proposed enlargement exceed the highest part of the roof of existing dwelling house? **No**

A.1 (d) Does the height of eaves of the proposed enlargement exceed the height of eaves of existing dwelling house? **No**

A.1 (e) Does the enlargement extend beyond wall which forms either the principal elevation of original dwelling house, or fronts the highway and forms side elevation of original dwelling house **No**

A.1 (f) Single storey extensions. Does the development extend beyond a rear wall of the original dwelling house by more than 4 metres if dwelling house is detached, or 3 metres in any other case & exceed 4 metres in height? **No**

A.1(g) Single storey extensions. Is the dwelling house on article 2(3) land or SSSI? Does the proposed development extend beyond rear wall of the original dwelling house by more than 8 metres if dwelling house is detached, or 6 metres in any other case & exceed 4 metres in height? **N/A**

A.1(h) Two storey extensions+. Does the proposed enlargement extend beyond the rear wall of the original dwelling house by more than 3 metres or is situated within 7 metres of any boundary of the curtilage of the dwelling house, opposite the rear wall of the dwelling house. **N/A**

A.1(i) If the proposed enlargement is within 2 metres of the boundary of the curtilage of the dwelling house, does the height of the eaves exceed 3 metres? **N/A**

A.1(j) If the proposed enlargement extends beyond a wall forming the side elevation of the original dwelling house, does it exceed 4 metres in height or, have more than a single storey or, have a width greater than half of the width of the original dwelling house?

No

A.1 (ja) Would any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j)? **No**

A.1(k) Does the proposed development include verandah, balcony or raised platform, microwave antenna, chimney, flue or soil and vent pipe, or any alteration to the roof of the dwelling house? **No**

A.1 (l) Was the dwellinghouse built under Part 20 of this Schedule? **No**

Dwelling houses on article 2(3) land only (AONB, Conservation Area, World Heritage Site)

A.2 (a) Does the proposal include the cladding of any part of the exterior of the dwelling with stone, artificial stone, pebble dash, render, timber, plastic or tiles? **No**

A.2(b) Does the enlargement extend beyond a side wall of the original dwelling house? **No**

A.2(c) Does the proposed enlargement have more than a single storey and extend beyond the rear wall of the original dwelling house? **No**

A.2(d) Would any enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceed the limits set out in sub-paragraphs (b) and (c)? **No**

Conditions

A.3 (a) N/A to conservatories. Are the external materials proposed of a similar appearance to those used on the exterior of the existing dwelling house? **Yes**

A.3(b) Is any upper floor window, situated within a wall or roof slope forming a side elevation of the dwelling house, obscure glazed and non opening (unless part of the window which can be opened is more than 1.7m above the floor level of the room)?

Yes

A.3(c) Where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, is the roof pitch of the enlarged part must, so far as practicable, the same as the roof pitch of the original dwellinghouse? **N/A**

A.3(d) Would any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (b) and (c)? **No**

The second element affecting the main house involves the installation of rooflights in the rear roof slope.

C.1 (a) Was the dwelling house consented by virtue of Class M, N, P, PA, or Q of Schedule 2, Part 3 of GPDO? **No**

C.1 (b) Would the alteration protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof? **No**

C.1 (c) Would the works result in the highest part of the alteration being higher than the highest part of the original roof? **No**

C.1 (d) Would the development consist of

(i) The installation, alteration, or replacement of a chimney, flue, or soil and vent pipe, or

(ii) The installation, alteration or replacement of solar PV or solar thermal equipment?
No

C.1 (e) Was the dwellinghouse built under Part 20 of this Schedule?

No

Conditions

C.2 Are any windows located on a roof slope forming a side elevation of the dwellinghouse-

(a) Obscure glazed and

(b) Non-opening, unless parts of the window which can be opened are more than 1.7m above the floor of the room in which the window is inserted? **N/A**

A review of the planning history for the property indicates that permitted development rights are intact.

On the basis of the above I conclude that the alterations proposed to the main house are works that benefit from permitted development rights under class A and class C

The second part of the development involves the erection of buildings in the grounds of the house described as being for incidental use. The first consideration is whether the buildings are genuinely for incidental use and secondly whether they are within the curtilage.

On the first matter Class E permits, amongst other matters, the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. An essential feature of an incidental use is that it should have a functional relationship with the primary use (i.e. the dwellinghouse at the appeal site in this case), and the relationship should be one that is normally found. Whilst paragraph E.4. of Class E provides an interpretation of an incidental purpose, this is limited. The MHCLG Technical Guidance on permitted development rights for householders provides further assistance, suggesting that a large range of buildings might be permitted by the Order, provided they can properly be described as having a purpose incidental to the enjoyment of the dwellinghouse. It also states that 'a purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen'.

In addition to the above there is the case of *Emin v SSE & Mid Sussex DC* [1989] JPL 909. This is relevant in that even if the nature of the activities carried out in a proposed building were considered to be incidental or conducive to the conditions of living in the dwellinghouse, the scale of those activities is important. The case suggests that, if the nature and scale of such activities go beyond a purpose merely incidental to the enjoyment of the dwellinghouse as such, they may constitute something greater than a requirement related solely to that purpose. It advises that 'the fact that such a building has to be required for a purpose associated with the enjoyment of a dwellinghouse cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case'. This provides the basis for a consideration of the proposals.

Pool House: The size of building (at 96m² No) is required to serve the basic function and is reasonably necessarily for the incidental enjoyment of the dwelling and the building is, therefore, not permitted development under the terms of Class E of Part 1 of Schedule 2 of

the Town and Country Planning (General Permitted Development) Order 2015 as amended.

Gym/Music Room: At 54m² (gross external) the space is functionally necessary and is therefore permitted development under the terms of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended.

Office: At 32m² (gross external) the space is larger than functionally necessary for a single office. Given the scale of the dwelling the building is nevertheless in proportion to the likely functional need and is permitted development under the terms of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended.

Boat Store: (56m² gross external) The proposed building is a double boat store. Whilst the LPA considers that a boat store building might be considered reasonably necessary, its location, distant from the existing driveway is not well placed to serve as a boat store and this casts doubt on the real purpose of this building.

E.1 (a) Was the dwelling house consented by virtue of Class M, N, P or Q of Schedule 2, Part 3 of GPDO? **No**

E.1 (b) Does the cumulative total ground area covered by buildings, enclosures and containers within the curtilage, other than original dwelling house, exceed 50% of total area of curtilage (excluding ground area of original dwelling)? **No**

E.1 (c) Would any part of the building, enclosure, pool, or container be situated on land forward of a wall forming the principal elevation of the original dwellinghouse?
No

E.1 (d) Would the building have more than a single-storey? **No**

E.1 (e) Does the height of the building, enclosure, pool, or container exceed 4metres (in the case of a dual-pitched roof), 2.5 metres (in the case of a building, enclosure, pool, or container within 2 metres of the boundary of the curtilage of the dwellinghouse), or 3 metres (in any other case)? **No**

E.1 (f) Would the height of the eaves of the building exceed 2.5 metres? **No**

E.1 (g) Would the building, enclosure, pool, or container be situated within the curtilage of a listed building? **No**

E.1 (h) Would the proposal include the provision of a verandah, balcony, or raised platform? **No**

E.1 (i) Does the proposal relate to a dwelling or microwave antenna? **No**

E.1 (j) Would the capacity of the container exceed 3,500 litres? **No**

E.1 (k) Was the dwellinghouse built under Part 20 of this Schedule (construction of new dwellinghouses)? **No**

Dwelling houses on article 2(3) land only (AONB, Conservation Area, World Heritage Site)

E.2 Would the total ground area covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse exceed 10 square metres? **No**

E.3 Would the development be situated on land between a wall forming the side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse?
No

Conclusions

This lawful development certificate proposal proposes a number of separate buildings each of a relatively large size. The total extent of buildings and their disposition suggests

that the application is seeking to provide something unusual and may be providing a fall-back position for some other future development. Their grouping and their position close to such a prominent elevation overlooking the creek raises questions as to the real purpose of the application. No occupier would wish to promote a group of buildings which would have the potential affect the main views from the house. There is therefore a question as to whether the buildings are reasonably required or whether there is another purpose to the application.

However now that the size of the buildings has been reduced in scale from the earlier application, I consider that the proposals are incidental and relate to the reasonable needs of the occupiers of the house.

It is for this reason that a certificate of proposed lawfulness is granted.

This application has been considered in accordance with Section 38 of the Planning & Compulsory Purchase Act 2004

Planning Policy

The application is based on an assessment of fact rather than policy considerations

Considerations under Human Rights Act 1998 and Equalities Act 2010

The provisions of the Human Rights Act 1998 and Equalities Act 2010 have been taken into account in reaching the recommendation contained in this report.

The above report has been checked and the plan numbers are correct in APP and the officer's report. As Determining Officer I hereby clear this report and the decision can now be issued.

Name and signature: *David Stewart*

Date: 1 December 2023