

## PLANNING APPLICATION REPORT

**Case Officer:** Liz Payne

**Parish:** Thurlestone **Ward:** Thurlestone

**Application No:** 3366/22/CLP

**Agent:**

Mr Mark Evans - Mark Evans Planning  
Limited  
Cedar House  
Membland  
Newton Ferrers, Plymouth  
PL8 1HP

**Applicant:**

Tim Slade  
Langmans Quay  
West Buckland  
Kingsbridge  
TQ7 3AG

**Site Address:** Onnalea, Bantham, TQ7 3AR

**Development:** Certificate of lawfulness for proposed construction of two outbuildings for incidental use (building 1 - home office/music studio & building 2 - boat storage, home gymnasium and art room)

**Recommendation:** Lawful development certified

**Key issues for consideration:** The key issue to consider in the assessment of the current application is whether or not the proposed outbuildings comply with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015, as amended, and are therefore permitted development.

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**Site Description:**

Onnalea is a large detached dwelling on the north-eastern edge of Bantham within a large plot that slopes steeply westward towards the estuary of the River Avon. It is bounded by mature trees and hedges.

The site is within the South Devon AONB, Heritage Coast, and Undeveloped Coast.

**The Proposal:**

The application seeks the issue of a lawful development certificate to certify that a proposed development can be carried out without planning permission (ie. it benefits from deemed permission by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)).

The proposal includes two outbuildings within the curtilage of Onnalea. Both buildings would be single storey, with a combined floor area of 180sqm. Building 1 would contain a multi-purpose space facilitating a home office and music studio. Building 2 would include a boat store, a gym and an art studio.

**Consultations:**

No consultations required for this type of application, however letters of representations have been received and have raised the following points:

- It could be argued that the south elevation is the principle elevation as this is visible from public vantage points. If so, the outbuildings are proposed to the front of the property and would not be permitted development.

- The outbuildings would have a larger footprint than the dwelling house and would not be subservient.
- The house is not lived in so how can the additional footage/ incidental uses be assessed or justified.
- The house is visible from the South Devon Coastal Path.
- Surely details of construction materials and number/ size of windows is required.
- Thurlestone NP has a Dark Skies Policy which this proposal would ignore.
- The proposal is out of keeping with the area, the AONB and the neighbourhood plan.

### **Relevant Planning History**

2867/21/FUL - 16/11/2021 - Withdrawn

Proposed rebuilding and extension of demolished dwelling

0293/22/FUL - 29/03/2022 - Refusal

Demolition and rebuilding of existing dwelling (Resubmission of 2867/21/FUL)

### **ANALYSIS**

The application is for the erection of two outbuildings.

The case officer is required to determine whether the proposed works constitute permitted development under Schedule 2, Part 1 (development within the curtilage of a dwellinghouse) of the Town and Country Planning (General Permitted Development) Order 2015.

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

Officers must consider the first part of Class E, which sets out the permitted development criteria for the following type of development:

‘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.’

The Courts have held that the word ‘required’ in Class E should be interpreted to mean ‘reasonably required’. It has previously been noted by Planning Inspectors that ‘when evaluating whether the outbuilding is reasonably required for the enjoyment of the dwellinghouse as such, matters such as personal preference are not conclusive factors. An unusually large building will not necessarily be reasonably required just because a householder says it is, and it is for the appellant to show that the building of the proposed size is reasonably required, having regard to all the circumstances.’ (Appeal ref: APP/B0230/X/21/3278349 (February 2022)).

The cumulative floorspace of the buildings would be 180sqm, which is larger than the ground floor of the dwelling. Although the outbuildings would be single storey, their collective overall size and layout would appear as substantial additions to the site and given the topography of the site they would occupy a large portion of the levelled, useable area of rear garden. In this respect, the buildings would be large in relation to the dwelling. However, Officers acknowledge that the physical size of the building in comparison to the dwellinghouse is an important consideration but is not by itself conclusive, having regard to case law (*Emin v SSE* [1989] JPL 909; *Wallington v SSW* [1991] JPL 942; *Thurrock BC v SSE & Holding* [2002] EWCA Civ 226). It is also necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse and answer the question as to whether the proposed

building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity in order to constitute permitted development under Class E.

When submitting such applications, the Government advises that sufficient evidence is submitted with clarity which outlines the reasons and purpose for the structure to support the application, so the LPA is able to assess and understand the proposal.

The proposed plans show that the outbuildings would contain a music studio, home office, gym, art studio and boat store. The activities proposed fall into categories that, individually, are incidental to the enjoyment of the dwellinghouse. While it is not necessary for an applicant to demonstrate a requirement for an outbuilding, it must be shown to be required for a purpose incidental to the enjoyment of the dwellinghouse. The planning statement and submitted floor plans provides sufficient reasons for the rooms and layout proposed of the outbuildings. In addition further information in regards to specific items which the applicants own have been provided and justifications for the separation of each room use.

As such, the submitted evidence for the current application does show, on the balance of probabilities, that the proposed buildings are reasonably required for purposes incidental to the enjoyment of the host dwelling.

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

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

Letters of representations have raised concerns that the outbuildings would be situated forward of the principal elevation of the existing dwelling. Guidance within the Technical Guidance for Permitted development rights for householders (2019) provides that *“in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house.”*

The property is not located on a highway but is served by a long driveway shared with a neighbour. The front door to the property, as would be used by visitors to the property, is located on the east elevation and although Officers acknowledge that the property is highly visible from the west this does not determine that the west elevation should be considered the principal elevation. As such the Council does not refute the applicant's interpretation of 'principal elevation'.

In addition, letters have raised concerns with the limited amount of information shown on the proposed drawings. The drawings show that the height limitations of Class E and the ground coverage limitations would not be exceeded and the Council agrees that the scale of the buildings conform with those set out in Class E. Therefore, in regards to the proposed buildings' appearance, no further information is required.

#### Conclusion

The submitted evidence for the current application does show, on the balance of probabilities, that the proposed buildings are reasonably required for purposes incidental to the enjoyment of the host dwelling. As such the proposal does comply with Class E Schedule 2, Part 1 (development within the curtilage of a dwellinghouse) of the Town and Country Planning (General Permitted Development) Order 2015.

#### **Planning Policy**

This application is a legal determination and planning policy and planning merits cannot be taken into account.

#### **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 officers report. As Determining Officer I hereby clear this report and the decision can now be issued.**

**Name and signature: Liz Payne**

**Date: 03 April 2023**