

Section '3' - Applications recommended for PERMISSION, APPROVAL or CONSENT

Application No : 14/01570/PLUD

Ward:
Bickley

Address : 11 Mavelstone Close Bromley BR1 2PJ

OS Grid Ref: E: 542207 N: 169997

Applicant : Mr Joseph Osunde

Objections : YES

Description of Development:

Single storey rear extension and detached single storey building containing hydrotherapy pool, therapy and treatment rooms for use in connection with the main dwelling house (CERTIFICATE OF LAWFULNESS FOR A PROPOSED USE/DEVELOPMENT)

Key designations:

Biggin Hill Safeguarding Birds
Biggin Hill Safeguarding Area
Biggin Hill Safeguarding Area
London City Airport Safeguarding
London City Airport Safeguarding
London City Airport Safeguarding Birds
Open Space Deficiency

Update

Members may recall this application being considered by committee on 31st July 2014. The application was deferred without prejudice as to whether or not the proposal was lawful in order to seek a reduction in the size of the rear extension and relocation of the extension away from the side boundary with No.12 Mavelstone Close. In his capacity as the ward Councillor, Cllr Smith offered to mediate with the applicant and the neighbour. Cllr Smith has met with the applicant on 2 occasions and this has resulted in the following changes:

1. The width of the detached single storey building has been reduced in size by 0.3m increasing the gap between the said building and the eastern boundary with No.12 from 0.9m to 1.2m.

In all other respects the building remains unchanged. The applicants agent has set out the following reasoning which influenced the extent to which the building could be reduced in size.

"We were asked to review the scheme to see if there were any changes that could be made and we looked at the following:

- The requirements for fitting the hydrotherapy pool, the space around for safe supported access for applicants child and the associated facilities to accommodate his needs
- The potential for reducing the height of the building

On review, we have been able to reduce the width of the building by 0.3m, reducing the plant room to its minimum width of 1.2m...We also supported the view that it would be better all-around if the plant room door could be relocated internally and we will be seeking to achieve this when we begin detailed design discussions with the pool supplier.

We have not been able to reduce the height of the building because the need for ramped access that is as sheltered as possible prevents it. It would have been an option if the design brief could have accommodated steps and greater separation from the house but this is not viable in terms of the applicants child's care.

We met with Cllr Smith and presented the revised drawing, and at the meeting it was agreed that we would now go ahead and re-submit for release of the Certificate of Lawful Use."

The report has been repeated below suitably updated.

Proposal

A Certificate of Lawfulness is sought for the erection of 2 structures comprising:

1. A single storey rear porch extension measuring 1.35m (d) x 2.2m (w) x 2.35m (h)
2. A detached single storey building measuring 14.45m (d) x 6.5m (w) x 2.2m-3m (h) comprising hydrotherapy pool [measuring 2.25 (w) x 4.2m (d)], therapy room, treatment room, shower, plant room and storage cupboards.

The detached building would be separated from the porch extension and main house by just 25mm. It would be set back 1.2m from the eastern flank boundary with No.12.

An existing detached garage located in the rear garden adjacent to the eastern boundary would be demolished to make way for the proposal. Both proposed structures would have flat roofs.

Location

The application property is a detached chalet bungalow located at the far eastern end of the cul-de-sac, to the north of the turning head, and lies between two detached bungalows at Nos. 10 and 12 Mavelstone Close.

The surrounding area is characterised by a mixture of detached bungalows and two storey dwellings and is wholly residential in character.

Comments from Local Residents

Following "mediation", further objections have been received in respect of revised plans from Nos. 10, 12 and 12a as set out below:

No.10 Mavelstone Close

- Agreement was made by the applicant and neighbours at No. 10, 12 and 12a with the assistance of Cllr Smith as mediator to negotiate a reduction in the scheme. The applicant has attempted no such negotiation and has instead simply proceeded to submit the latest revised plan
- Located in a quiet residential road the proposed building more akin to an enormous specialised medical facility
- The latest revised change is so minor as to be virtually meaningless and was submitted without negotiation
- The building would not be incidental to the enjoyment of the house due to its excessive size and the nature of the building which is a specialised medical facility
- Building has been stated as for the treatment of their disabled son but we have to query the necessity for such an extraordinarily large and comprehensive facility for the use of one child,
- Applicants have rigidly resisted any meaningful compromise on the size and design of the building
- The height of the building does not comply with the Class E permitted development rules
- The building is not sufficiently separated from the main house to be considered a Class E building and is a clear, cynical and blatant misuse of the permitted development guidelines
- There remains scope for further compromise on the size and design of the building and there are important discussions needed to clarify important issues such as noise operation and use
- It would remain productive to have a further deferment to allow for a further opportunity to properly and constructively engage in negotiation

No.12 Mavelstone Close

- No attempts have been made by the applicant to mediate through Cllr Smith or with neighbours directly concerning amendments and reduction in the size of the building
- The size of the building has been very modestly reduced but these changes are not material and appear almost identical in size to that which Members previously considered. The changes are therefore

insufficient to address Members' concerns in terms of size and reasonableness having regard for Class E permitted development rights

- A reasoned justification should be given for the size of the building that is required detailing why the individual rooms are necessary and how the overall size and nature of the uses would be incidental to the enjoyment of the home
- All of the objections raised in the previous letter on behalf of occupants of No.12 remain relevant

No.12a Mavelstone Close

- The revised drawing does not reflect a sufficient reduction in the scale, the size and nature of the development continues to be more akin to a commercial therapy centre than a simple ancillary hydrotherapy family-use building
- There is no scope for parking for the inevitable additional vehicles which would bring clients or make deliveries, this would result in the turning circle at the end of the car park being used as an unofficial car park
- The proposal should again be fully and comprehensively examined to exclude its potential use for business or any form of residential care facility in order to comply with Policies H8 and BE1

Planning History

An appeal against the non-determination of application ref. 95/00467 for a side extension to this property along with a new roof with front and rear dormers was dismissed in November 1995 due to the proximity of the extension to the boundary and the positioning of a chimney.

A subsequent application (ref. 95/02829) for a single storey side extension, bay windows to the front, side and rear, and the increased height of the roof to provide first floor accommodation along with front and rear dormers was permitted in February 1996, and has been implemented. Apart from the introduction of a bay window projecting approx. 0.7m beyond the rear wall of the dwelling. There do not appear to be any other extensions to the rear.

Front boundary walls with railings and gates were permitted in 2010 under ref. 09/03223.

Under planning ref. 13/02565, planning permission was refused for a very similar proposal comprising a single storey rear extension for use as therapy centre. The grounds for refusal were as follows:

"The proposal would, due to its scale, height, bulk and proximity to the boundary, be harmful to the amenities currently enjoyed by the residents of 12 Mavelstone Close, by reason of an unacceptable visual impact and of loss of prospect, contrary to Policies BE1 and H8 of the Unitary Development Plan."

Planning Considerations

The main considerations are whether the proposals would fall within "permitted development" under Classes A and E of part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2008.

In particular consideration should be given to the following matters:

1. Whether the detached single storey structure can be properly described as being provided for purposes which are incidental to the enjoyment of the dwellinghouse.
2. Whether the 25mm gap between the porch extension and the detached single storey structure is sufficient separation for it to be classified as a Class E building.
3. Whether the height of the detached structure exceeds the tolerances for a Class E building.
4. Whether the single storey rear porch extension is considered to fall within Class A of the permitted development rights.

Conclusions

1. Is the detached structure incidental to the enjoyment of the dwelling house?

The applicant's child has severe cerebral palsy and therefore a number of complex medical needs. This is supported by factual medical evidence submitted in support of the previous planning application for the hydrotherapy pool. There were two visits made to the site which covered inspections of (ground floor) internal parts of the dwelling and external parts of the site. It was found that a proportion of the ground floor comprising a bedroom and bathroom had been permanently adapted to meet the child's needs. In addition the applicants agent has clarified the following in writing:

"The proposed single storey rear extension and the proposed outbuilding would be used by the applicant and his family for their own purposes in connection with their on-going family life with no commercial or other uses."

Notwithstanding the above, there is nothing within the General Permitted Development Order (GPDO) to prohibit the erection of an outbuilding for recreational use for the occupants of the dwellinghouse should it not be needed in connection with the special medical needs of the child. On this issue it is considered that the proposal is consistent with a use that is incidental to the enjoyment of the dwellinghouse.

The objector's agent has raised the question of the size of the building stating that the building is too large [in relation to the main house] to be truly required for purposes incidental to the enjoyment of the dwellinghouse. The GPDO requires that the size of the Class E structure be considered in relation to the

percentage of ground covered and states that it should not exceed 50% of the total area of the curtilage(excluding the ground area of the original dwelling house).The subject proposal together with the previous extension to the property covers less than 50% of the curtilage threshold.

2. Proximity of the detached structure to the dwellinghouse

Prior to 2008, any curtilage building of more than 10 cubic metres constructed within 5 metres of an existing dwelling would have been treated as an enlargement to the dwellinghouse and so considered under Class A of the GPDO. That limitation was explicitly removed from the GPDO amendments which came into force in October 2008. The subsequent technical guidance (January 2013, April 2014) is not specific on this point but does not require Class E incidental buildings to be beyond a certain distance from the dwellinghouse. The submitted drawings indicate a building that whilst exceptionally close to the dwellinghouse is clearly and unambiguously detached.

Consideration has been given to 2 recent appeal decisions which deal with similar Class E incidental buildings. One related to a building within 25mm of the dwellinghouse. The Inspector states at para 9-10 of APP/Q5300/X/10/2125856 as follows:

" it is argued that the proposal would be contrary to the intentions of the amended GPDO. However, that is belied by the explicit removal in October 2008 of the limitation relating to the curtilage buildings of more than 10 cubic metres. Had it been intended that some curtilage buildings should not be permitted because of their proximity to the dwelling, then it would be reasonable to expect that to be explicitly stated in the GPDO amendments...Under these circumstances, I consider that despite its proximity to the dwellinghouse the building would be a separate structure within the curtilage and not an enlargement of the dwelling."

The appeal decisions support the view that a Class E building need only be separated from the dwelling. (Appeal refs. APP/Q5300/X/10/2125856 & APP/J3530/X/12/2179210) The full text of the appeal decision is available on file.

3. Does the height of the detached structure exceed 2.5m

The height of the structure is shown on the plans to extend between 2.5m and 3m. The guidance states that a Class E building should not exceed: "(ii) 2.5 metres in height in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse." Furthermore it states that the height of the building should be measured from the ground level immediately adjacent to the building. On this basis it appears the building would be at odds with this guidance, however the General Issues preface to the GPDO guidance refers to general terms from the General Permitted Development) Order 1995 that remain relevant (for the purposes of interpretation

of the GPDO) as defined at that time with regards to the definition of height the following is stated:

" 'Height' - reference to height (for example, the heights of the eaves on a house extension) is the height measured from ground level. Ground level is the surface of the ground immediately adjacent to the building in question. Where ground level is not uniform (e.g. ground is sloping), then the ground level is the highest part of the surface of the ground next to the building."

An initial site visit clarified the fact that there were a number of levels on the site including a paved area and a raised patio both of which are adjacent to the house. There is an area of lawn beyond these areas from which the ground also slopes away.

The highest natural ground level is shown on the plans and was confirmed on site as the area adjacent to existing garage. The height of the subject building has been calculated as rising from this point. On this interpretation the height of the building does not exceed 2.5m above the highest "natural" ground level adjacent to the building.

Recent appeal decisions on this issue in 2009 and 2013 concur with this view and on this basis the structure [which appears to comply with the other thresholds for building of this type] would be within tolerances specified within Class E.

4. Is the porch extension considered to comply with Class A of the GPDO

The planning history appears to show that the dwelling has not been extended to the rear beyond the bay window extension under planning ref. 95/02829. It is considered therefore that the small rear porch extension which measures 1.35m (d) x 2.2m (w) x 2.35m (h) would comply with Class A of the GPDO. Notwithstanding, the above it is noted that the extension complies with thresholds set out under Class D of the GPDO which relates to permitted development rights for the erection of a porch.

In conclusion, the Certificate of Lawfulness should be granted as it complies with Classes A and E of the 2008 amendments to the GPDO.

Background papers referred to during production of this report comprise all correspondence on the files refs. 14/01570, 13/02565 and 95/02829 set out in the Planning History section above, excluding exempt information.

as amended by documents received on 17.06.2014 17.10.2014

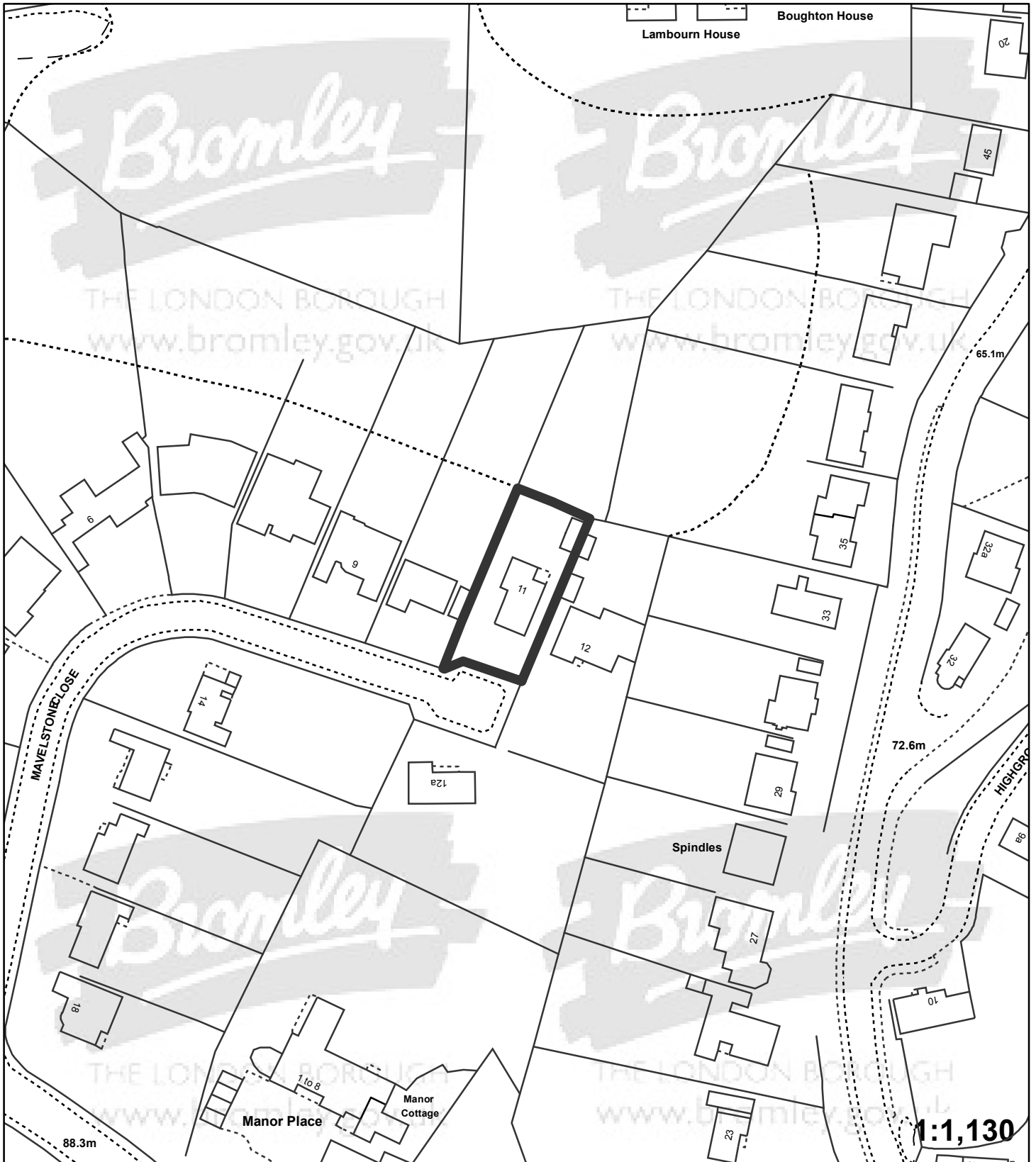
RECOMMENDATION: CERTIFICATE BE GRANTED

1 The proposed single storey rear extension and detached single storey building would fall within "permitted development" by virtue of Classes A & E Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

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"This plan is provided to identify the location of the site and should not be used to identify the extent of the application site"

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