

Section '4' - Applications recommended for REFUSAL or DISAPPROVAL OF DETAILS

Application No : 18/00747/PLUD

Ward:
Hayes And Coney Hall

Address : 101 Birch Tree Avenue West Wickham
BR4 9EQ

Objections: Yes

OS Grid Ref: E: 539626 N: 164490

Applicant : Mr N. Sakutov

Description of Development:

Proposed outbuilding. (Lawful Development Certificate - Proposed)

Key designations:

Biggin Hill Safeguarding Area
Green Belt
London City Airport Safeguarding
Open Space Deficiency
Smoke Control SCA 51

Proposal

This application seeks a Lawful Development Certificate for the construction of a detached outbuilding at the rear of the property.

The proposed building would be 12m long and 3.9m wide and would have a flat roof which would be 2.5m high. The external footprint of the structure measures 46.8sqm. The internal floorspace provided within the structure would be approx. 43.22m.

With regards to the use of the building, the plans are annotated to state that the building would be used as a playroom. The applicant's agent has confirmed in writing:

"The use is play room for the applicant's family occasional (incidental) use." No other information relating to the intended use of the space has been provided.

Location and Key Constraints

The application site lies on the northern side of Birch Tree Avenue and comprises a modest semi-detached dwelling with, in common with the prevailing pattern of development in the locality, a substantially deep rear garden.

Some of the properties have single storey garage buildings positioned close to the rear of the host dwellings. A number of properties nearby have been extended over one/two storeys.

Comments from Local Residents and Groups

Nearby owners/occupiers were notified of the application and representations were received, which can be summarised as follows:

Objections

- The title deeds for the property show that house is actually owned by a company rather than the applicant.
- Information has been provided from Companies House as well as in respect of the mortgage on the property which is considered by the correspondent to raise questions regarding the stated name of the applicant, and regarding the restriction of the use of the dwelling. o The use of the property for business related purposes would be in breach of the mortgage terms
- The construction of the outbuilding has already commenced.
- The outbuilding will be an eye-sore and can be seen from the surrounding areas and from windows/gardens of neighbouring properties
- Impact on privacy due to the size and height of the building
- The use of the outbuilding is not clear and different reasons have been provided by the applicant which are conflicting and inconsistent
- Work already undertaken has damaged the public footway on Birch Tree Avenue

Neighbouring residents were re-consulted following the receipt of amended plans showing a reduction in the size of the proposed structure and objections re-iterated in respect of:

- Breach of mortgage terms
- Applicant is not the legal owner as the property is owned by a company
- Outbuilding will be an eyesore
- Outbuilding is for business purposes
- Loss of privacy owing to the size and height of the building
- Inconsistent and unclear information provided by the applicant
- Property has been let as individual rooms and the garden section off so as to prevent tenants having use of the garden space available, and therefore the stated intended purpose of the outbuilding cannot be for the intention stated in the application
- Would set a precedent
- Clearly intended for a commercial use
- Applicant has constantly changed the intended usage of the building, from outbuilding, to home office and store room, to playroom and office use and now to a playroom
- Applicant does not live at the address
- Use of the site as existing
- Existing sheds not shown on the drawings

Policy Context

The application requires the Council to consider whether the proposal falls within the parameters of permitted development under Classes E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and specifically whether any limitations/conditions of the Order are infringed.

Planning History

The relevant planning history relating to the application site is summarised as follows:

18/00779/FULL6 Planning permission refused for two storey rear extension

Considerations

In assessing the lawfulness of the proposal there are two key considerations:

1) Whether the proposed physical dimensions and siting of the building would comply with the criteria of Class E and,

2) Whether the proposed building would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

With regards to the physical dimensions of the building it is considered that which the building is very large, it would fall within the dimensions/tolerances of Class E.

The applicant's agent was asked to provide a statement regarding the proposed use of the building. By response, the size of the building has been decreased to being just less than 50sqm and the agent has stated:

"The use is play room for the applicant's family occasional (incidental) use."

The submitted drawing is annotated as a play room but other than this annotation there is no additional explanation or indication of how the internal space might be used and why it is needed.

Case law establishes that the relative size of the proposed building to the dwelling-house can be an important consideration, while not conclusive on its own, in assessing whether the proposal would provide incidental accommodation. The interpretation of the 'required' within Class E is actually interpreted as 'reasonably required' and the nature of activities to be carried on in the building and the scale of those activities should be considered in order to be confident that they would be subordinate to the enjoyment of the dwelling house.

The building would have a footprint similar to that of the existing host dwelling's own ground floor. Although the size of the building is not, on its own, a reason to refuse an application, in this instance very limited information has been provided to justify why such a large building is needed as a playroom. There is no indication of how the building will be used as a playroom (taking into account the fencing installed at the rear of the property to separate the garden at the rear of the building from the remaining majority of the amenity space). No information is provided as to whether there would be power/water/services provided to the structure and nothing has been submitted to demonstrate that there has been an assessment of the space needed for the playroom use the building is said to serve.

The provision of so large an outbuilding for use as a playroom may be preferred by the applicant, but it is necessary to consider whether the proposed accommodation would be reasonably required by members of the family occupying the host dwelling. It is for the applicant to demonstrate that a building of the proposed size is reasonably required and that it is designed with incidental uses in mind. In this instance, it is not considered that this has been addressed to such an extent as to substantiate that the structure is reasonably required.

CIL

The Mayor of London's CIL is a material consideration. CIL is not payable on this application.

Conclusion

The applicant was asked to provide information relating to the proposal. Initially, when the larger structure was proposed to be provided, the applicant was stated as confirming that the outbuilding would be for a playroom/home office/storage for garden and general tools (email from agent). Subsequently, the outbuilding was reduced in size to less than 50sqm

and the applicant has stated (via the agent) that the use is "'playroom' for the applicant's family occasional (incidental) use."

Insufficient information has been submitted to demonstrate that an outbuilding of the size proposed would be reasonably required to provide a playroom ancillary to the host dwelling. On balance it is considered that the proposal would not be incidental or subordinate to the main use of the dwelling and that it has not been adequately demonstrated that the size of outbuilding and floorspace proposed would be reasonably required. As such it is not considered that the proposal would represent lawful development falling within class E of the General Permitted Development Order.

It is noted that representations have been received which refer to aspects outside of the scope of the determination of this application, including relating to the ownership of the property, potential breaches of planning control, impact of the proposal on amenity. Representations have referred to the use of the property as an HMO. It is not understood that this is currently the case, and it is noted that planning permission is not required for the conversion of a single dwelling into an HMO accommodating up to 6 unrelated persons.

Background papers referred to during production of this report comprise all correspondence on the files set out in the Planning History section above, excluding exempt information.

as amended by documents received on 08.11.2018

RECOMMENDATION: CERTIFICATE BE REFUSED

The proposed detached outbuilding, as submitted, would not constitute permitted development under Class E of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.