

## APPEAL UPDATE

### A. LODGED

4/00562/16/LBC Mr & Mrs Pritchard  
SINGLE STOREY REAR EXTENSION, REPLACEMENT WINDOWS AND  
INTERNAL ALTERATIONS  
  
OCTOBER COTTAGE, ROMAN ROAD, NETTLEDEN, HEMEL HEMPSTEAD,  
HP1 3DQ  
[View online application](#)

4/00759/16/MFA B&M Care  
PROPOSED REAR EXTENSION TO PROVIDE AN ADDITIONAL 21  
BEDROOMS AND A NEW GP DOCTOR'S SURGERY  
32 HIGH STREET, KINGS LANGLEY, WD4 8AA  
[View online application](#)

4/01355/16/FHA Mr Young  
FORMATION OF VEHICULAR ACCESS ONTO WATFORD ROAD  
75 WATFORD ROAD, KINGS LANGLEY, WD4 8DY  
[View online application](#)

4/01902/16/LDP MR D COWHAM  
INTERNAL ALTERATIONS TO INFILL THREE EXISTING OPENINGS WITH  
GLAZING AND TIMBER PANELS  
THE OLD BOATHOUSE, CASTLE WHARF, BRIDGE STREET,  
BERKHAMSTED, HP4 2EB  
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### B. WITHDRAWN

4/02222/16/ENA MR RUSS  
CHANGE OF USE FROM ANCILLARY PARKING TO CAR SALES / CAR  
WASH.  
LAND OPPOSITE 127 HEMPSTEAD ROAD, WD4 8AL  
[View online application](#)

The appeal has been withdrawn as the land has been sold.

### C. FORTHCOMING INQUIRIES

4/00488/16/ENA MR A MATHERS  
APPEAL AGAINST ENFORCEMENT NOTICE, CONVERSION OF ONE  
DWELLINGHOUSE TO SEVEN FLATS  
1 AIREDALE, HEMEL HEMPSTEAD, HP2 5TP  
[View online application](#)

4/02222/16/ENA

MR RUSS  
CHANGE OF USE FROM ANCILLARY PARKING TO CAR SALES / CAR  
WASH.  
LAND OPPOSITE 127 HEMPSTEAD ROAD, WD4 8AL  
[View online application](#)

The appeal has been withdrawn as the land has been sold.

#### **D. FORTHCOMING HEARINGS**

None

#### **E. DISMISSED**

4/01364/16/LDP

Pritchard  
CONSTRUCTION OF 2 DETACHED OUTBUILDINGS WITHIN THE  
CURTILAGE OF THE PROPERTY.  
6 HIGHCROFT ROAD, FELDEN, HEMEL HEMPSTEAD, HP3 0BU  
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Decision

1. The appeal is dismissed.

Main Issue

2. A Lawful Development Certificate (LDC) is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed outbuildings are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

3. The main issue is whether the Council's decision to refuse to grant a LDC was well founded

Reasons

4. Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the Order) grants planning permission for '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'. Those 'permitted development rights' are subject to a number of conditions and restrictions, listed at paragraphs E.1 to E.3.

5. The Council do not dispute that the proposed outbuildings would comply with the conditions and limitations listed at paragraphs E.1 to E.3 but dispute whether the proposed building would be 'incidental to the enjoyment of the dwellinghouse'. If a building or enclosure is not required for a purpose that would be incidental to the enjoyment of a dwellinghouse then it would fall outside the scope of the permitted development rights granted under Class E and planning permission would be required. The Council contend that the size, scale and extent of the facilities is excessive and would go beyond what would be 'required' for 'a purpose incidental to the enjoyment of the dwellinghouse'. In particular, they refer to the scale of the proposed cinema, which would have a cloak room and space for 10 people; the size of the gym; and the scale of the indoor bowling green which would accommodate two full size rinks.

6. I am satisfied that the proposal would comply with the restrictions set out within paragraphs E.1 to E.3 of the Order, having regard to size, footprint and location. However, the terms of paragraphs E.1 to E.3 are such that it is possible to design substantial outbuildings or means of enclosure to fit within the limitations, particularly where dwellings have generous gardens as is the case in this instance. It does not follow that a building or enclosure will be incidental to the enjoyment of a dwellinghouse purely because it meets the terms of paragraphs E.1 to E.3. Relatively small buildings may often fall outside the scope of Class E if they are not required for a purpose incidental to the enjoyment of the dwellinghouse and, vice versa, comparatively large buildings may constitute permitted development depending on the circumstances of any given case.

7. It is necessary to consider proposals in the particular context within which they would be situated; an outbuilding that may be considered incidental to the enjoyment of a substantial dwelling with many occupants and large grounds may not be incidental if situated in the garden of a small cottage with a single

occupant. Size alone is not necessarily a determining factor and a wide range of outbuildings, for different purposes may be permitted under Class E, depending on the specific circumstances. Those principles have been established through the Courts, including the cases of *Emin*<sup>1</sup> and *Wallington*<sup>2</sup>. The Courts have also established that the term 'required' should be interpreted as meaning 'reasonably required'.

8. Turning to the present case, two outbuildings are proposed, one of which would contain an indoor bowling green with two full sized rinks. The submitted plans show that the building would be 16.82m wide and 40.35m long, with an overall footprint in excess of 650m<sup>2</sup>. The bowling green within the building would have an area of 640m<sup>2</sup>. The adjacent building would house a gym, home cinema, film library and cloak room, with a width of 15.19m, a length of 22m and a footprint of 311.5m<sup>2</sup> according to the plans. By any measure, the scale of the buildings would be substantial and the structures would take up a large portion of what is a considerable rear garden.

9. At present, the associated dwelling is a modest property but I note that extensions could be undertaken under the permitted development regime, as shown in relation to a previous appeal<sup>3</sup>. The dwelling is currently vacant but the information before me indicates that the appellant and his wife intend to move into the house once refurbishment is complete. They would apparently be the only permanent occupants and the sheer scale of the facilities would appear to be way in excess of what could be considered reasonably required as an incidental use for a dwelling that would be occupied by two people.

10. The indoor bowling green would equate to the provision a full sized bowling rink per occupant. Similarly, the size of the indoor cinema which could accommodate at least ten people, with large areas of circulation space surrounding the viewing seats, could not reasonably be said to be for a purpose incidental to the enjoyment of a dwellinghouse that is occupied by two people. It seems to me that the gym is not unduly large, given the need to house and provide safe circulation space between pieces of equipment but that does not outweigh my concerns relating to the scale of the development as a whole.

11. I note that the appellant and his wife have a large family who would be likely to visit the property on a frequent basis. Friends may also visit. Therefore, the suggestion appears to be that larger facilities are required, than would otherwise be the case, on the basis that people who do not normally reside at the property would visit for the purpose of using those facilities. It seems to me that the rationale in that respect is based upon the need to accommodate those who reside elsewhere, and not necessarily the requirements of the occupants of the dwellinghouse itself. That adds to my concern that the scale of the proposed development goes beyond what is reasonably required for the enjoyment of the particular dwellinghouse in question.

12. Moreover, I have noted the description of development that was proposed in relation to the previous appeal. The Inspector in that case noted that four outbuildings were proposed, one of which was described as a 'two lane bowling alley' with a size of 342.8m<sup>2</sup>. The appellant at that time had suggested that the alley would be used for skittles as opposed to bowls. The bowling green proposed in the current application is almost twice the size of the bowling alley previously put forward. Whilst I am mindful of the difference between bowls and skittles, little information has been put forward to indicate why a much larger building is 'required' as part of the current proposal when no such facility was seemingly required when the previous application was made in the summer of 2015.

13. Government guidance in relation to development within Class E is provided in the publication *Permitted Development Rights for Householders - Technical Guidance* (Department of Communities and Local Government, 2016) (the Technical Guidance). With regard to Class E, the Technical Guidance states: '.....the rules also allow, subject to the conditions and limitations..... a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen (my emphasis in italics)'.

14. In other words, if the use of a space was fundamental to the ordinary day to day functioning of the dwelling it would not be incidental but part of the primary accommodation. Within his statutory declaration, Mr Pritchard suggests that the large viewing screen in the cinema room would be used in the evenings 'almost every day' for the purpose of watching films and television, as an alternative to watching a smaller television in the lounge. To my mind, that suggests that the cinema room would, in effect, be used as an extension to the primary accommodation, very much like an additional lounge, as opposed to an incidental use. As such, it would fall outside the scope of permitted development rights granted through Class E.

15. I have noted that toilet and shower facilities have been removed from the proposed buildings further to the decision of the previous Inspector who commented that such facilities would not be incidental. However, the Inspector noted that the presence of the facilities was 'a point of relative detail when considering a scheme of this scale' and his decision to dismiss the appeal was clearly based on fundamental concerns regarding the scale of development proposed. In this case, the absence of toilet and shower facilities does not alter my view that the development would not be required for a purpose incidental to the enjoyment of the dwellinghouse.

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful

development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

4/01629/16/OUT

MR SWIERK

OUTLINE APPLICATION FOR THE DEMOLITION OF THE EXISTING DWELLING (11 COVERT CLOSE) AND THE DEVELOPMENT OF A BLOCK CONTAINING 6 FLATS (4 X 2-BEDROOM, 2 X 3-BEDROOM) PLUS PARKING AND COMMUNAL AMENITY SPACE.

THE CHILTERN, 11 COVERT CLOSE, NORTHCHURCH, BERKHAMSTED, HP4 3SR

[View online application](#)

Appeal dismissed:

Whilst the principle of the density of the scheme may not be inappropriate within the surrounding area, the density of the proposal has led to the size of development proposed.

The proposal would cause harm to the character and appearance of the area and it is thus not the sustainable development for which there is a presumption in favour of. In reaching this conclusion I have borne in mind the guidance within the Framework that planning should always seek to secure high quality design, and that good design is a key aspect of sustainable development.

A shortfall of 2.5 spaces is not significant in this context, when considering that the parking standards are stated to be maximum, and the residential nature of the surrounding streets. These streets have no parking restrictions upon them.

4/04008/15/FUL

MR & MRS M GLASSER

CONSTRUCTION OF NEW DWELLING ADJOINING EXISTING MOTOR HOUSE (REVISED SCHEME)

THE OLD COWHOUSE, 7 TRING ROAD, WILSTONE, TRING, HP234NU

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The appeal is dismissed.

The application relates to the part demolition of a garage and the erection of a large 4 bedroom dwelling in the grounds of a large bungalow. The site falls within the Wilstone Conservation Area but outside the identified village boundary in the Rural Area. The key issues relate to the impact on the Conservation Area and whether the development would harm the countryside.

Although there is no Conservation Area Appraisal for Wilstone, the Inspector considered the location of the conservation area boundary, encompassing the garden of the bungalow, to be significant and that it was reasonable to conclude that at the time of designation this was considered to make a positive contribution to the character and appearance of the area.

The Inspector considered that the proposal would introduce a substantial built element into the appeal site which would diminish its openness and that of its wider garden setting. The proposed dwelling would be close to no. 17 The Mill and the double garage adjoining it, forming a dense cluster of buildings at that point which would exacerbate this harmful effect. The proposed development would therefore be seen as an encroachment of the more developed part of the village north and west into its open setting, and would thereby harm its rural character.

In terms of design, the Inspector considered the dwelling to be relatively bulky and in terms of its arrangement of built form and roofline towards the Mill to present a rather fussy and over-complicated structure which would exacerbate its intrusive effect of the open setting of the Conservation Area.

Whilst providing an additional dwelling, the Inspector nevertheless considered that the proposal would provide little public benefit to offset the harm to the Conservation Area, noting that Wilstone was not a particularly sustainable location.

The Inspector therefore concluded that there would be harm to the Wilstone Conservation Area, contrary

to Policies CS27 and saved Policy 120.

With regards to the Rural Area, the Inspector noted that the appeal site lies outside the village envelope and, being mindful of the conclusions of the Inspector in the Rosendale appeal decision which was brought to his attention, concluded that as a rural site on the edge of the settlement it could reasonably be considered as not being in a built-up area. In which case the site falls within the definition in the NPPF of 'previously developed land' and the reuse of such land is encouraged, provided it is not of high environmental value. Notwithstanding this, the Inspector's view was that, due to its open and well greened nature, the appeal site is of high environmental value, which therefore outweighs any benefits arising from its re-use for the appeal proposal.

The Inspector concluded that there would be harm to the character and appearance of the countryside, and the proposal would therefore conflict with Policy CS7 of the CS.

Noting that this was not a generalised fear, the Inspector also considered that, if the appeal were to be allowed, it would be more difficult for the Council to resist similar development, and the cumulative effect on the rural character and identity of the village would as a result be harmful.

Having regard to the Council's Authority Monitoring Report January 2016, the Inspector gave little weight to the appellant's contention that the Council is unable to demonstrate an achievable 5 year housing land supply, and therefore paras. 14 and 49 of the Framework are not invoked.

**F. ALLOWED**

None