

APPLICATION NUMBER: 24/00494/CPL

Application Number:	24/00494/CPL
Location:	1 Ramsden Farm, Roundthorn Road, Middleton, M24 1ZB
Proposal:	Application for a certificate of lawfulness for proposed a detached building to house swimming pool
Applicant:	Mr Marcel Duffy
Case Officer:	Bob Melling
Recommendation:	Refuse

Location

This application relates to the rear amenity space of a domestic property sited within a residential area of Middleton.

Description of Proposal

A certificate of lawfulness is sought for an outbuilding. Internally, it would comprise a swimming pool, WC and changing room, sauna, storage room, and pump room.

The proposed outbuilding would be separated by approximately 22cm from a previously approved outbuilding (application ref: 23/00799/CPL). The previously approved outbuilding has not been constructed, as shown by the existing site plan. Originally, the plans indicated that the proposed outbuilding would form an extension of the approved outbuilding, however the Council deemed that the extension could not be considered in isolation and that the applicant would need to apply for the outbuilding as a whole. Subsequently, the applicant submitted amended plans which now show a gap between the proposed outbuilding and the approved outbuilding. As such, the applicant has requested that the proposed outbuilding be considered in isolation, rather than as a combined development with the approved outbuilding. This matter will be addressed below.

Is the proposal wholly within the curtilage of the dwellinghouse?	Yes
--	-----

Relevant History

<u>16/01302/FUL</u>	Proposed residential development of 4 detached houses with private access road Decision: Grant Subject to Conditions
<u>23/00273/HOUS</u>	Erection of a detached single-storey outbuilding to form additional living accommodation and other recreational spaces Decision: Refuse
<u>23/00799/CPL</u>	Certificate of lawfulness for a proposed outbuilding within the rear garden Decision: Grant
<u>23/01341/HOUS</u>	Erection of single storey annexe Decision: Refuse

Permitted Development Rights removed?	No (16/01302/FUL)
--	-------------------

Representations

In accordance with the Council's code for publicity for this type of application, no letters of notification have been issued.

Legislation and Guidance

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

Permitted development rights for householders – Technical Guidance (September 2019)

Assessment (Class E)

Class E of Part 1 of Schedule 2 of the GPDO allows for:

- a) 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;

or;

- b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

- (a) Permission to use the dwellinghouse as a dwelling has not been granted only by virtue of Class M,N,P or Q of Part 3 of the GPDO

☐ **Complies**

☒ **Does Not Comply**

Even where two structures are physically detached, case law establishes that the proximity of two structures can be taken into consideration when assessing the level of attachment – see Enfield 14/11/2019 DCS No 400-024-148.

While physically detached from the previously approved outbuilding, the outbuilding proposed under the current application appears to have been contrived to try and fit within the limits of Class E, rather than being a genuine consequence of the intended function. Although in theory the structures would not be connected, the degree of separation would be so small as to be *de minimis*. Given the minimal separation, the buildings would be bound to have a more intimate visual relationship and they would generally be seen as one structure, as opposed to separate structures. This would be especially the case in views from the adjacent residential properties. Also, in practical terms given the minimal separation there is likely to be some form of physical attachment between the structures. The proposed plans show an external door leading to a circulation space between the structures and the plans also show two lines connecting the buildings, one of which encloses the circulation space. Additionally, the proposed elevations appear unfinished with no clear side wall.

Due to the above factors, it is the Council's view as a matter of fact and degree that the outbuildings would exhibit a significant level of attachment, in both visual and physical terms. Therefore, the Council would need to consider the proposed and previously approved outbuildings as one structure. On this basis, the applicant has

failed provide sufficient information regarding both outbuildings and it is clear that the proposal has been contrived to fit within the limits of Class E.

While the Council has insufficient information regarding the function of both outbuildings, it should be noted that in the case of *Emin v SSE & Mid Sussex DC* [1989] it was held that incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse and cannot rest solely on the unrestrained whim of him who dwells there. The outbuildings would have a combined footprint of approximately 252.12sqm, compared to the host dwelling which has a footprint of 136.2sqm. Therefore, it is not considered that the size of the outbuilding connotes a sufficient degree of subordination to the host dwelling. Moreover, given the insufficient information provided regarding the function of the outbuilding, the Council does not believe that it has been demonstrated why the outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

- (b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).

☒ **Complies**

☐ **Does Not Comply**

- (c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.

☒ **Complies**

☐ **Does Not Comply**

- (d) the building would have more than a single storey.

☒ **Complies**

☐ **Does Not Comply**

- (e) the height of the building, enclosure or container would exceed—
- (i) 4 metres in the case of a building with a dual-pitched roof,
 - (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
 - (iii) 3 metres in any other case.

☒ **Complies**

☐ **Does Not Comply**

- (f) the height of the eaves of the building would exceed 2.5 metres;

☒ **Complies**

☐ **Does Not Comply**

(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building

☒ **Complies**

☐ **Does Not Comply**

(h) it would include the construction or provision of a verandah, balcony or raised platform

☒ **Complies**

☐ **Does Not Comply**

(i) it relates to a dwelling or a microwave antenna.

☒ **Complies**

☐ **Does Not Comply**

(j) the capacity of the container would exceed 3,500 litres

☒ **Complies**

☐ **Does Not Comply**

Paragraph **E.2** of the above order stipulates that development is permitted by Class E would not be permitted if any part of the curtilage of the dwellinghouse is within –

- (a) an area of outstanding natural beauty;
- (b) the Broads;
- (c) a National Park; or
- (d) a World Heritage Site

the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

☒ **Complies**

☐ **Does Not Comply**

Paragraph **E.3** further states In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse

☒ **Complies**

☐ **Does Not Comply**

Recommendation: Refuse

Insufficient evidence has been submitted with the application to demonstrate that the proposed outbuilding in combination with the previously approved outbuilding is required for purposes incidental to the enjoyment of the dwellinghouse. In addition, the combined size of the outbuildings would not connote a sufficient degree of subordination to the host dwelling in land use terms. Therefore, the proposal would not constitute permitted development by virtue of non-compliance with the requirements of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Notes for applicant:

For the avoidance of doubt, the decision relates to the following drawings:-

- Location Plan. Drg no. 22.128.201. Rev P1.
- Existing Site Plan. Drg no. 22.128.202. Rev P1.
- Proposed Site Plan. Drg no. 22.128.203. Rev P2.
- Proposed Floor Plans and Elevations. Drg no. 22.128.305. Rev P2.

	Date	Officer
Report Completed	22/07/2024	Signed: BM
Authorisation	25.07.24	Signed: LA

Report Author Bob Melling