

Planning Statement

For Mr H. Anwar | 23-360

Certificate of Lawfulness of Proposed Use / Development (CLOPUD) – Nutbank House
1 Nutbank Lane, Manchester, M9 6BH

Project: 23-360
Site Address: Nutbank House, 1 Nutbank Lane, Manchester, M9 6BH
Client: Mr H. Anwar
Date: 27 July 2023
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Approved by: Stephen Harris

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1. Introduction

- 1.1 This statement has been prepared by Emery Planning on behalf of Mr H. Anwar (the applicant) in support of an application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) submitted under Section 192 of the Town and Country Planning Act 1990.
- 1.2 As will be set out within this statement, the development proposed comprises:
- The construction of an outbuilding incidental to the enjoyment of the main dwellinghouse.
- 1.3 The following plans prepared The Cave accompany the application:
- Location Plan – Drawing ref: 103.46-LP
 - Proposed Site Plan – Drawing ref: 103.46-P100 Rev B
 - Proposed Floor Plan – Drawing ref: 103.46-P101 Rev D
 - Proposed Elevations – Drawing ref: 103.46-P102 Rev C
- 1.4 This statement will demonstrate that the proposal would accord with the criteria and conditions contained within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). A positive certificate should therefore be granted.



2. Context

Site location and description

- 2.1 Nutbank House comprises a large, detached dwelling constructed in the early 1800s in a Regency style. The dwelling is neither a designated heritage asset nor a non-designated heritage asset.
- 2.2 The dwelling is predominantly two storeys in height, with a small cellar. The property, except for the approved orangery added to the southern elevation (ref: 093037/FH/2010/N1), is considered to be the original dwelling for the purposes of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- 2.3 The principal elevation is the south facing elevation of the dwelling.
- 2.4 In addition to the orangery, at ground floor level there is a large kitchen / diner, formal drawing / dining room, utility and an indoor swimming pool with associated facilities and plant. The property comprises 6 no. bedrooms and bathrooms at first floor level.
- 2.5 The property is occupied by a large family of nine, comprising two adults, and seven children / young people. Of the younger generation, all of the children / young people are of school age or studying at university.
- 2.6 The property is served via Nutbank Lane, a private road, and sits within a large plot with extensive manicured lawns to the front (south-east) of the dwelling. There is limited space to the rear of the dwellinghouse where there is a servicing area that would have originally been utilised as tradesman / servants' entrance.
- 2.7 Despite the large plot and dwelling size, views of the property are limited to those from the neighbouring detached properties accessed from Nutbank Lane. Mature trees and the change in levels arising from the M60 motorway, immediately to the west of the property, screens the site from wider views.
- 2.8 The property is not located within Article 2(3) Land, nor does it comprise land subject of an Article 4 Direction.

Relevant planning history

- 2.9 The following planning history is of relevance to this proposal:



Application ref:	Proposal	Decision
136311/LP/2023	Erection of a single storey outbuilding	Refused – 18 April 2023
134703/LP/2022	Erection of a single storey outbuilding	Refused – 14 October 2022
093037/FH/2010/N1	Rear extension to form orangery with associated external alterations	Approved – 23 July 2010

- 2.10 In the most recent determination of application 136311/LP/2023, it was established that the location of the proposed outbuilding was acceptable, and that the scale of the outbuilding proposed was not in itself unreasonable, however the applicant, in the view of the Council, had failed to demonstrate that on the balance of probability, all of the proposed uses are uses which are reasonably required, in particular of the scale proposed, for purposes incidental to the enjoyment of the host dwelling.
- 2.11 In particular the Council were concerned about the inclusion of uses that were considered ancillary rather than incidental. These included the library, snug, plant room and bathroom.
- 2.12 It is also noted that whilst not referenced directly within the comprehensive delegated officer report prepared to accompany the decision (136311/LP/2023), nor given as a reason for refusal on the associated decision notice, the table included within that report, relating to paragraph E.1(h) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) indicates that the previous proposal failed to meet that criteria, suggesting the previous submission include the construction of a verandah, balcony or raised platform.
- 2.13 It is presumed that this was a drafting error, as the previous proposals do not appear to include such a structure.
- 2.14 Following the Council's previous assessment of the proposal, minor amendments have been made to the previous scheme to address those previous concerns and clarify that the uses proposed would not comprise ancillary residential accommodation. As set out in further detail below, based on the submitted drawings, it is our view that the proposed uses of the outbuilding are reasonably required; are for purposes incidental to the host dwelling; and are of an appropriate nature and scale.



3. Legislative context

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

- 3.1 Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) is of relevance to the determination of this application.
- 3.2 Class E sets out the criteria and conditions relating to buildings incidental to the enjoyment of a dwellinghouse.
- 3.3 Section 5 of this statement will assess the proposal against the criteria and conditions set out within Class E.

Relevant Case Law

- 3.4 For the purposes of Class E, there is no statutory definition of “incidental” in the GPDO, however case law provides clear guidance on how it should be interpreted by decision-makers.
- 3.5 The well-established judgement reached in *Emin v SSE & Mid Sussex DC* [1989] JPL 909 held that:

“the physical size of buildings could be a relevant consideration in that they might provide indicia as to the nature and scale of the activities”.
- 3.6 In *Emin*, the SoS erred in law by regarding:

“the physical size of the buildings and the relative size of the dwelling-house as the sole test of whether a use of incidental”.
- 3.7 *Emin* clarified that [the Courts]:

“...would not wish to be taken as saying that size and comparable sizes are irrelevant. When a matter is looked at as a whole, size may be an important consideration but not by itself conclusive”.
- 3.8 Matters [relating to the determination of proposals under Class E] should:

“apply the test, having regard to all the relevant circumstances, with the aim of identifying the purpose and the incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed buildings are genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose”.



3.9 Emin also held:

“The fact that such a building has to be required for a purpose associated with the enjoyment of a dwelling-house cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case. That is not to say that the arbiter can impose some hard objective test so as to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to his enjoyment of the dwelling. The word “incidental” connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling-house itself.”

- 3.10 The above approach taken in Emin was considered by Manchester City Council in its determination of application 136311/LP/2023.
- 3.11 In the case of the proposal at Nutbank House, the proposed outbuilding floorplan does not include any primary living accommodation and only includes uses incidental to the enjoyment of the dwellinghouse that cannot be accommodated within it.
- 3.12 This includes fitness facilities including a home gym, a home office and a home cinema. These uses cannot exist without being functionally linked to and dependent upon the primary residential use. The proposed use of the building would unquestionably be incidental to the main house.



4. The proposal

Class E

Incidental purposes

- 4.1 The submitted floorplans illustrate that the proposed outbuilding would comprise a mixed space, split approximately in to thirds. Approximately one third would comprise a home gym, one third a home office and one third a home cinema.
- 4.2 A bathroom / changing room is also proposed within the central section, accessible independently from the gym, office and cinema. The bathroom is reasonably required to provide basic changing, washing and hygiene facilities to users of the space, and to save users having to make secure the building and return to the host dwelling to utilise washing facilities and conveniences there.
- 4.3 There are numerous planning and appeal decisions that support the inclusion of proportionate w/c's and washing / showering facilities included in proposals for home gyms and offices. Recent examples of CLOPUDs determined by Manchester City Council are noted below, however it should be emphasised that there are many other historical examples within the City, and Emery Planning have, in recent years, had Certificates confirmed that include such uses on a large number of occasions within the neighbouring authorities of Trafford, Stockport and Cheshire East.
- App ref: 134149/LP/2022 – Erection of home office / studio – Approved 28 July 2022
 - App ref: 132020/LP/2021 – Erection of single storey outbuilding – Approved 15 Dec 2021
 - App ref: 129655/LP/2021 - Erection of single storey outbuilding – Approved 11 May 2021
 - App ref: 127553/LP/2020 - Erection of single storey outbuilding – Approved 5 October 2020
 - App ref: 122343/LP/2019 - Erection of single storey outbuilding – Approved 1 March 2019
- 4.4 The same applies to proportionate plant rooms, that are necessary to support the uses proposed. Plant is typically required in outbuilding proposals including leisure / sporting uses, to provide adequate heating and ventilation (A/C) and other specialist equipment including that relating to the operation of swimming pools/spas for example, and lighting and other audio-visual equipment in cases where home cinemas are proposed, as in this case.
- 4.5 Provided such plant / equipment is proportionate in scale to the uses proposed within the outbuilding, then it would not comprise an ancillary use to the host dwelling. It too would be incidental.



- 4.6 Notwithstanding the above discrepancy, it is accepted that the previous application's reference to "snug" inferred a degree of independent primary living accommodation that could be perceived as ancillary accommodation. The cinema room layout has now been revised to provide clarity on this dedicated use, with traditional cinema style seating to be utilised for this dedicated purpose.

Appropriate scale

- 4.7 In the previous determination of application 136311/LP/2023, the scale of the refused outbuilding was not itself a matter of concern. Rather the scale of the uses within it.
- 4.8 Additional changes over the previous application include a reduction in the amount of home office floorspace and general circulation space, resulting in an overall reduction in footprint of the outbuilding by 20.5 sqm (previously was 178 sqm and is now 157.5 sqm).
- 4.9 As has been set out in this Statement, whilst Nutbank House is a large dwelling, it is home to a very large family (9 members) and existing space within the host dwelling cannot be converted or lost to the uses that it is the applicant seeks to confirm via this CLOPUD.
- 4.10 The outbuilding proposed has been kept to the minimum floorspace necessary to provide residents with a reasonable amount of space required to take leisure and to focus on work and education.

Reasonably required

- 4.11 Given the family size and age ranges, the additional space sought via this CLOPUD is necessary to provide dedicated space for taking leisure, and for concentrating in a dedicated environment to work and for education.
- 4.12 As was previously set out in the determination of application 136311/LP/2023, the applicant is recovering from a period of ill health whilst also undertaking their role as a managing director of a large national organisation.
- 4.13 A home office is reasonably required by the applicant to work in a quiet, dedicated location away from the associated background noise and distractions of the main house that typically come with such a large family. As previously set out, the office would also likely be utilised on occasions by the older children / young people within the household at times of revision or work when a dedicated quiet space would be beneficial.
- 4.14 A home gym is reasonably required by the applicant to further improve their health, following advice stemming from the recent period of ill health. Options have been explored to have the gym within the



host dwelling however there is no available space within the existing leisure / pool area of the house, and as has previously been highlighted, the existing plant is already at capacity for those uses.

- 4.15 A home cinema is reasonably required by the applicant as they enjoy watching films and one of the few activities the family can undertake on mass together. The cinema room would provide a dedicated space for this function, with specialist lighting and audio / visual equipment. 8 no. dedicated cinema seats are considered reasonable given the family size.
- 4.16 Given the large number of children in this household, the home cinema would also enable them to entertain friendship groups when visiting and would enable family members to watch films at times that may otherwise cause disruption to the remainder of the household.

Conclusion

- 4.17 All the uses proposed are reasonably required by the applicant, and the scale and type of those uses are clearly incidental to the enjoyment of the associated dwellinghouse.
- 4.18 We assess the physical characteristics of the proposed outbuilding against the criteria and conditions set out within Class E of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) in Section 5 below.



5. Planning considerations

5.1 This section of the statement will consider the proposed development against Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Class E

5.2 Paragraph E.1 of Class E sets out the criteria where the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse is not permitted. These are set out below, together with our assessment as to whether the criteria are applicable to this proposal.

Criteria – Development not permitted (Paragraph E.1)

The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 1, Class E		Applicable (Yes / No)
(a)	Permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);	NO Permitted development rights were not used to authorise the use or construction of the existing dwelling
(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);	NO The area of ground covered would not exceed 50% of the curtilage.
(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;	NO The outbuilding is proposed to the rear of the principal elevation.
(d)	The building would have more than a single storey;	NO The outbuilding is single storey in height.
(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; or	NO



		The outbuilding does have a dual pitched roof, but it does not exceed 4m in height.
	(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	NO The outbuilding is not within 2m of the boundary.
	(iii) 3 metres in any other case;	NO N/A.
(f)	the height of the eaves of the building would exceed 2.5 metres;	NO The height of the eaves would not exceed 2.5m.
(g)	the building, enclosure, pool or container would be situated within the curtilage of a listed building;	NO The outbuilding is not within the curtilage of a listed building.
(h)	it would include the construction or provision of a verandah, balcony or raised platform;	NO The outbuilding does not include any of these features.
(i)	It relates to a dwelling or a microwave antenna;	NO N/A
(j)	The capacity of the container would exceed 3,500 litres	NO N/A
(k)	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	No The original house was not built under Part 20.

- 5.3 With regard to Schedule 2, Part 1, Class E paragraph E.2 of the GPDO, we can confirm that the dwelling is not within any of the areas listed, therefore these criteria are not relevant in this particular case.
- 5.4 With regard to Schedule 2, Part 1, Class E paragraph E.3 of the GPDO, we can confirm that the dwelling is not on article 2(3) land, therefore these criteria are not relevant in this particular case.
- 5.5 As set out in paragraphs 2.12 – 2.13 of this statement, the proposal does not involve the construction of any features stated within paragraph E.1(h) above. Should the Council contend that the submitted plans



do include such a structure, we respectfully request that we are contacted at the earliest opportunity to discuss this matter and be afforded an opportunity to regularise the drawings – if required.



6. Summary and conclusions

- 6.1 We have assessed the drawings listed above against the criteria contained Class E of the GPDO and the relevant case law (*Emin*). Our assessment demonstrates that the proposed works accord with the principles within *Emin*; and would not contravene the criteria and conditions set out above. The proposed works should be considered as lawful permitted development.
- 6.2 The NPPG advises that the determination of a Certificate application should be made solely on the facts and relevant planning law. It also advises that planning merits are not relevant at any stage of the application process. The development would clearly be lawful.
- 6.3 As such, in accordance with Section 192 of the Town and Country Planning Act 1990 a positive Certificate of Lawful Proposed Development should be granted.



