

Statement in Support of LDC

CEDARWOOD, LONGFIELD AVENUE, LONGFIELD, KENT, DA3 7LA

Proposal

This application is submitted under Section 192 of the Town and Country Planning Act 1990 to confirm that a proposal to erect a single-story outbuilding on land to the side of the residential dwellinghouse accords with Part 1 Class E of the Town and Country Planning General Permitted Development Order 2015 (as amended), and that no further grant of planning permission is needed for these works to proceed.

Planning History:

The relevant historic planning permissions for the dwelling and garage outbuilding are as follows.

- Application for Lawful Development Certificate for the proposed erection of a detached building in the rear garden to provide a games room, gym/fitness room, bar and shower room/wc.
Ref. No: 20080432 | Status: Certificate Granted
- Construction of two dormer windows each incorporating a balcony in rear roof slope and conversion of the roof space into three bedrooms and a bathroom/w.c.
Ref. No: 20030458 | Status: Application Permitted
- Conversion of rear part of garage into a games room and installation of mezzanine floor to provide storage in the roof space.
Ref. No: 20110742 | Status: Application Permitted
- Erection of replacement dwelling and garage
Ref. No: 19820836 | Status: Application Permitted

Permitted Development Rights to extend the dwelling have been removed by a planning condition (19820836). 'Outbuilding' (Class E) permitted development rights remain intact.

In 2021 a Certificate of Proposed Lawful Use or Development (20210988) was refused for the following reasons:

1 The proposed outbuilding, due to its size and location adjacent to the house, is of a size that has a similar floor area to what would reasonably expected for a two bedroom, three person flat. In terms of footprint, the proposed building is only 5sqm smaller than the primary dwelling and the internal rooms could be easily changed to bedroom and kitchen. The proposal is therefore not considered incidental to the enjoyment of the dwellinghouse and is not permitted under Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and needs permission.

2 In addition to the above, the height of the building has a dual pitched roof and exceeds 4m and the height of the eaves of the building would exceed 2.5m. The proposed development therefore fails to comply with Article 3, Part 1, Class E.1 (e) and (f) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

In this application Graham Simpkin Planning seeks to resolve the council's concerns, and also explain why the reasons for refusal are insufficient.

Existing dwelling

On the ground floor there is a living room, kitchen, study and bedroom with en-suite. On the first floor there are 3 bedrooms. Survey floor plans of the existing dwelling have been submitted with the application. Although the dwelling has 4 bedrooms, the living room and kitchen are modest in size. There are currently [REDACTED] living in the house and additional floor space for incidental uses is required by the family.

Class E GPDO Criteria:

The proposed extension is assessed against the relevant criteria in Part 1 Class E (as amended) as follows:

- In respect of Criteria E.1. (B) the total area of ground covered would not exceed 50% of the total area of the curtilage.
- In respect of Criteria E.1. (C) no part of any of the buildings/structures will be situated on land forward of a wall forming the principal elevation of the original dwelling house. Please note that the principal elevation is the east facing elevation and not the north facing elevation (see Photographs 1 and 2).
- In respect of Criteria E.1. (D) the buildings is single storey only.
- In respect of Criteria E.1. (E i) the height of the buildings will not exceed 4 metres with a dual pitched roof.
- In respect of Criteria E.1. (E ii) the building is more than two metres from the boundary of the property.
- In respect of Criteria E.1. (F) the height of the eaves of the buildings does not exceed 2.5 metres.

Cedarwood is not a listed building, there is no proposal to construct a veranda, balcony or raised platform, the proposal does not relate to the construction of a dwelling or a microwave antennae and there is no proposal to install a container.

In the Council's reasons for refusal of application 20210988, one of the reasons was that the development failed to comply with Criteria E.1 (e) and (f). The height to the ridge and to the eaves are labelled on the plans. The height does not exceed 4 metres and the height to the eaves does not exceed 2.5 metres.

The council is reminded that the 'Permitted Development for Householders Technical Guidance' (2019) states on Page 43 that *'The height of the building, enclosure or container should be measured from the highest ground level immediately adjacent to the building, enclosure, or container to its highest point'*. The council was incorrect to measure it from a lower ground level. This is confirmed by numerous appeal decisions including the following:

1. APP/M1595/X/20/3263141 (18th October 2021). The inspector made the following statement: *"The Permitted Development Technical Guidance provides guidance for Class E buildings on page 43. It refers to the guidance for measuring extensions on page 12. It explains that the eaves height of the building is where the lowest point of a roof slope meets the outside wall of the building, not including any overhang. It is measured from ground level at the base of the outside wall to the point where that wall would meet the upper surface of the roof slope. In this case, the ground gently slopes so that it is slightly higher at the front of the proposed building. From my reading of the drawings, I estimate the eaves height at the front of the building would be 2.5 metres, while at the rear it would be 2.6 metres. On this basis, the proposed building would comply with the limitation in paragraph E.1(f)."*
2. APP/Q1445/X/19/3234528 (18th March 2021). The Inspector made the following statement: *"The Council considers the garage is not permitted by the Order as it is shown positioned within 2 metres of a boundary and exceeding 2.5m in height, and, it is shown with an eaves height exceeding 2.5m. This being the case, Schedule 2, Part 1, Class E.1(e)(ii) and Schedule 2, Part 1, Class E.1 (f) of the Order would not be complied with. As is stated in paragraph 2.(2) of the Order, any references to the height of a building are to be construed as a reference to its height when measured from ground level immediately adjacent to the building. Moreover, it states where the level of the surface of the ground on which it is to be situated is not uniform, ground level is the level of the highest part of the surface of the ground adjacent to it (my emphasis). The drawings show that ground levels immediately adjacent to the proposed garage vary as the land slopes down from the front to the rear of the site and from the left to the right of the site when viewed from the street. Based on the drawings provided, the height of the garage from the highest part of the ground adjacent to it does not exceed 2.5m in height and nor does its eaves."*

The site is not located within an Area of Outstanding Beauty, nor a Conservation Area. It is not listed.

Incidental

The building will be used for purposes incidental to the enjoyment of the dwellinghouse. The drawings illustrate a garage, utility room, study, toilet/shower and garden room. The primary accommodation is all retained within the house.

It is therefore concluded that all of the criteria are met by the proposed extension in respect of Class E of Part 1 of GPDO.

There is an existing class E outbuilding which is being used as a gym and games room. It also has a guest room for occasional use. Due to the distance from the dwelling (and the significant decent required to reach it) this building cannot be conveniently used in connection with the rear patio of the dwelling and kitchen. In any case it is occupied by gym equipment. The proposed building is needed for different purposes. The location of this building close to the house means that the garden room can be used for seating and shelter during occasional family meals (especially barbecues), which may include guests or just casually by any family member for hobbies / relaxation. The end elevation facing the garden will be glazed, but because the building is north facing it is proposed that roof lights would make the space much lighter. An additional study space is located in the building and because there are [REDACTED] living in the house (during a time when working from home is encouraged), this is a reasonably necessary addition. The existing garage contains a utility room and this room will be replaced in the proposed outbuilding. The kitchen in the dwelling is modest in size and additional space for laundry and other equipment and indoor drying space is reasonably necessary.

The number of adult occupants is expected to increase [REDACTED] later in the year. The applicant's [REDACTED] currently intend to move into Cedarwood s [REDACTED] but the applicant proposes to erect this building with the proposed spaces and uses whether or not they do decide to move in to the dwelling. The proposal is not in response to an anticipated expansion of the household as inferred by the planning officer.

The council state in the first reason for refusal of the previous application 20210988 that '*in terms of footprint, the proposed building is only 5 sqm smaller than the primary dwelling and the internal rooms could easily be changed to bedroom and kitchen*'. Graham Simpkin Planning is concerned that the council have determined the application by referring to a possible use rather than the proposed use of the building. The building is proposed to be an incidental outbuilding and will not have primary accommodation. The rooms are as follows:

1. Double garage to replace the existing double garage in the replacement building;
2. Utility room to replace the existing utility room in the replacement building. In this revised application the utility room is located closer to the house with its own external door to make it convenient to use. You will note from the floor plans that the kitchen in the dwelling is small, such that it is useful to have the washing machine and drier in a utility room and that is the arrangement they currently have in the existing outbuilding.

3. A study, which is commonly found in an incidental outbuilding. There are currently [REDACTED] living in the dwelling and therefore two studys (including one in the dwelling) is entirely reasonable. During the covid pandemic individuals are frequently encouraged to work from home.
4. A WC is commonly found in outbuildings and does not seek to replace primary accommodation in the dwelling. This facility could be used while working in the study, or during/after being occupied in the garden / hobby room.
5. A garden room / hobby room to be used in connection with the kitchen, garden and patio for seating and shelter during occasional family meals, which may include guests (especially barbecues), or just casually by any family member. It will be used as if it were a 'summerhouse' which are frequently erected in the garden of dwellings. It will also be used as a hobby space. A recent appeal decision (APP/A5270/X/21/3267966) concluded that a garden room can be 'incidental', stating:

"A garden room can, in my view, be incidental as a means of enjoying the garden in a position away from the main house. I would expect the garden room to accommodate garden seating and other items, such as a small table. The space to be provided would be sufficient to accommodate such furniture but would not be excessively spacious".

These are all clearly incidental uses and the applicant intends to use the building for incidental purposes.

In the previous application the council referred to the footprint of the outbuilding being only 5 sqm less than the footprint of the dwelling. The council is reminded that the dwelling is two storey and has a floor area of (184 sqm). Nevertheless, in this revised application the footprint has been reduced by 19.5 sqm to 100.75 sqm (and replaces an existing garage of 59.4 sqm). Planning Appeal App/A0665/X/20/3264895 provides useful guidance, clarifying the importance of a focus on the 'use of the building' rather than the size, stating at paragraph 12:

"As established in Emin, while size can form part of the assessment, it is the use that should remain subordinate. In this case, I consider that the size of the accommodation is consistent with the envisaged use and not excessive in this instance. The layout of the proposed building would be functional and all of the leisure facilities to be provided could be considered incidental to the enjoyment of the dwellinghouse".

It is the view of Graham Simpkin Planning that the building is reasonably required for purposes incidental to this particular dwellinghouse and therefore concludes that the outbuilding does constitute development permitted by Class E, Part 1, Schedule 2 of the GPDO. It is settled case law (*Emin v Secretary of State for the Environment* [1989] J.P.L. 90) that the key consideration is reasonableness. Case law establishes that what is abnormal is not necessarily unreasonable, but also that what could be regarded as incidental does not depend on the unrestrained whim of the occupier. It is therefore not a question of the minimum size that is

necessary to provide for a purpose incidental to the enjoyment of the dwellinghouse: it is a question of what is genuinely and reasonably required. The proposed outbuilding replaces an existing (and actively used) garage and utility room, a study is clearly not unreasonable, and neither is a garden room / hobby room. The building will be closely used in connection with the dwelling, and the 1 metres distance between the buildings and the connection to the rear patio and the rear of the dwelling supports this. The building will be used in a 'casual manner', and is genuinely and reasonably required for the proposed incidental purposes.

It is relevant that this building is replacing an existing outbuilding which already accommodates some of the proposed uses.

Photograph A: The front elevation (principal elevation)



Photograph B: The rear elevation



Photograph C: The existing garage

