

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20230098
Location	173 Singlewell Road Gravesend Kent DA11 7QA
Proposal:	Application for a Lawful Development Certificate in respect of the proposed new garden buildings to provide a new gym / games room, a garden office, a garden store / workshop, a garage for domestic vehicles, a garden shed for gardening equipment, and a bin store.
Applicant:	Mr Matthew Peckover, Prestige Worldwide IT Ltd
Site Visit	N/A Desktop Assessment

Plans & Documents

Application Form
D01 B – Plans and Elevations/Site Location Plan as Existing
D12 A – Proposed Plans

Property Type

The application site comprises of a two storey semi-detached property in use as a single dwelling. It is situated on a corner plot fronting onto Singlewell Road with Dennis Road running parallel with the side of the property. Due to the property being positioned on a corner plot, it benefits from a generous side garden area.



Material Consideration

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

Relevant Planning History

20211211	Demolition of existing side and rear extensions, erection of a new single storey rear extension, insertion of dormer windows to rear elevation, erection of a detached garage and two storey side and rear extension to create an additional 4 bedroom dwelling.	REF	13.12.2021
19544295	Private garage (lock-up)	PER	27.10.1954

Relevant Appeals

- Appeal Ref: APP/N1730/X/21/3278127 (Kneller V Hart District Council) – 2022 (Appendix A)
- Appeal Ref: APP/Y3615/X/3276664 (Lazenby V Guildford Borough Council) – 2022 (Appendix B)

Officer Assessment*Permitted Developments Rights Restrictions*

Article 2 (3) Land (AONB, Conservation Area)	N
Article 4 Direction	N
Permitted Development Rights Removed/Restricted	N

Class E - The provision within the curtilage of the dwellinghouse of –

(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.

E.1	Development is not permitted by Class E if –	Y/N
(a)	Permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (changes of use);	N
(b)	The total area of ground covered by building, 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);	455.64m2 curtilage area excluding house. Proposed area of all outbuildings is 170 m2 = 37.3% N
(c)	Any part of the building, enclosure, pool or container would be situated on land	N

	forward of a wall forming the principal elevation of the original dwellinghouse;	
(d)	The building would have more than a single storey;	N
(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 dwellinghouse, or (iii) 3 metres in any other case;	N
(f)	The height of the eaves of the building would exceed 2.5 metres;	N
(g)	The building, enclosure, pool or container would be situated within the curtilage of a listed building;	N
(h)	It would include the construction or provision of a verandah, balcony or raised platform;	
(i)	It relates to a dwelling or a microwave antenna; or	N
(j)	The capacity of the container would exceed 3,500 litres	N
(k)	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	N
E.2	In the case of any land within the curtilage of a dwellinghouse which is within – (a) An area of outstanding natural beauty; Development is not permitted by Class E if 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.	NA
E.3	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.	NA

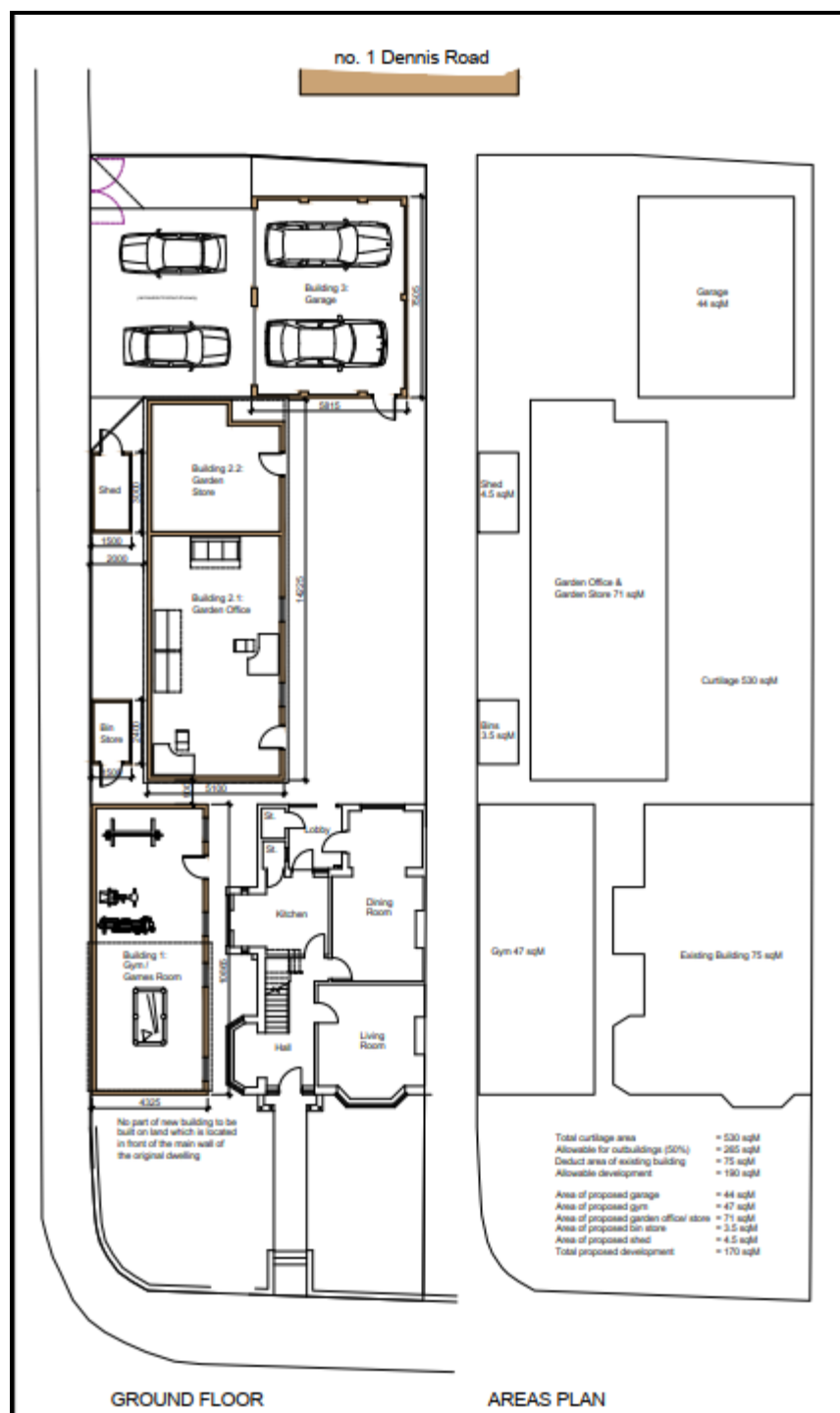
The buildings undoubtedly comply with the listed limits and conditions of Class E, Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015. However, this would apply to incidental buildings only as explained in the pre-amble. The Technical Guidance for Permitted development rights for householders (2019) states the following:

Class E sets out the rules on permitted development for buildings etc within the curtilage of a house (see page 7). Buildings which are attached to the house are not permitted under Class E (they would be subject to the rules in Class A). Buildings under Class E should be built for purposes incidental to the enjoyment of the house. Paragraph E.4 of Class E indicates that purposes incidental to the enjoyment of the house includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the house.

But the rules also allow, subject to the conditions and limitations below, 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 or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.

This guidance therefore advises that Class E would only apply to outbuildings that can be *'properly described as having a purpose incidental to the enjoyment of the house.'*

In this instance the proposed scheme would introduce 5 buildings, which would create significant built form on a large portion of the residential garden space. The buildings would include a gym (47m²), Garden Office and Garden Store Building (71m²), Garage (44m²), Shed (4.5m²) and Bin Store (3.5m²). The image below shows the block/floor area plans (Not to Scale) for context:



As shown, the existing dwellinghouse has an external footprint of 75m². The proposed buildings would have a cumulative footprint of 170m². The footprint of the outbuildings would have a footprint which would be 126.7% greater than that of the dwellinghouse.

This assessment should carefully consider whether the development, which consists of a number of outbuildings of various sizes, is incidental to the main dwellinghouse.

Reference is made to 2 x appeal decisions when making this assessment which are included as appendices;

- Appeal Ref: APP/N1730/X/21/3278127 (Kneller V Hart District Council) - 2022
- Appeal Ref: APP/Y3615/X/3276664 (Lazenby V Guildford Borough Council) – 2022

In the case of *Lazenby V Guildford Borough Council* (2022), where the Inspector dismissed an appeal for Lawful Development Certificate for the construction of a single storey detached building to provide a garage/bike and bin store, home office and gym, and demolition of the existing garage, it was accepted that the uses of the outbuildings proposed were generally incidental to the enjoyment of the dwellinghouse and that the outbuildings comply with the limitation at Classes E.1, E.2 and E.3.

The Inspector in *Lazenby V Guildford Borough Council* (2022) stated:

5. Class E provides for any building or enclosure, swimming or other pool *required* for a purpose incidental to the enjoyment of the dwellinghouse as such (emphasis added). The Oxford English Dictionary (OED) defines 'required' as 'needed for a purpose'. In relation to Class E, the Courts have interpreted 'required' as meaning 'reasonably required'. Put another way, in the context of Class E this translates as reasonably needed for that purpose.

Therefore, whether the outbuildings are incidental also relates to whether they are 'reasonably required' for the purposes of the use proposed use. In this case, five buildings are proposed. The shed, bin store and even the garage building would be reasonably sized for their uses as a purpose incidental to the enjoyment of this dwellinghouse.

However, the proposed Gym/Games Room and Garden Office/Garden Store buildings given their proposed use and respective scales are more complicated of an assessment.

In the *Lazenby V Guildford Borough Council* (2022) case, the Inspector considered the personal circumstances of the applicants to understand why such a large space for the home office would be necessary in that case. They also considered the scale, functional layout of the buildings and the necessity of circulation and storage space.

The inspector in that case also stated:

13. The space taken up by the home office goes to the overall size of the proposed outbuilding. It is settled case law that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E1¹. Nevertheless, the Courts have held that the size of the outbuilding is a material consideration and indeed that, when the matter is looked at as a whole, size may be an important consideration.
14. In order to accommodate the home office as proposed, the outbuilding as a whole is larger than would be necessary to accommodate the purposes that are genuinely incidental to the enjoyment of the dwellinghouse as such (i.e the garage, the gym, the store and the WC). For that reason, I consider that the size of the outbuilding taken as a whole is not, as a matter of fact and degree, genuinely and reasonably required for purposes genuinely incidental to the enjoyment of the dwellinghouse as such.

In this case, the applicant has not provided any evidence to justify why such a large space for home office, garden office and gym/games room would be required. The scale of the garden office would almost match the footprint of the dwellinghouse. Whilst the gym is not quite as large as this it would be over half the area of the footprint and would extend to the whole depth of the dwellinghouse. The garden store would also be quite large and given that there would be very little soft landscaping remaining, it is not clear why such a large garden

store space would be required. Such as in the Lazenby V Guildford Borough Council case, there would be a significant level of circulation and storage space for which no explanation has been given. No explanation has been given either for the need for a games/gym room, larger than the dining and living room together, explaining why they are 'reasonably required', and thus incidental.

The Kneller V Hart District Council relates to an appeal which was dismissed for a Lawful Development Certificate for the erection of an outbuilding for Games Room/Gym and in that appeal the Inspector stated:

11. But nothing in that legal opinion, nor in Nova's covering letter, nor even in the second legal opinion dated 29 May 2021 submitted with the appeal explain why the occupier(s) of the house require such facilities in what is, in terms of floor area when compared to that of the house itself, a quite substantial building that would occupy a very large portion of the property's side garden.

In that case the inspector concluded that it had not been established by the appellant – on whom the burden squarely rests – that the leisure facilities contained in the proposed outbuildings were reasonably required for the occupiers of the house. In the case of this current lawful development certificate, no explanation has been given either for the need for a games/gym room, greater than the half the footprint of the main dwellinghouse, particularly given the urban location of the property within walking distance of the town centre and subsequently, numerous gym facilities.

It is also noted that recent planning application ref 20211211 (refused) was submitted for '*Demolition of existing side and rear extensions, erection of a new single storey rear extension, insertion of dormer windows to rear elevation, erection of a detached garage and two storey side and rear extension to create an additional 4 bedroom dwelling.*' In this application the applicant intended a small reduction to the side of the existing dwellinghouse in floor space to allow for the additional dwellinghouse, with a ground floor extension to the rear. At no point during this application was it indicated that space was required for the substantial scale of facilities proposed here.

Conclusion

Based on the above assessment, insufficient evidence has been presented to establish that the proposed Gym/Games room and Home Office/Garden Store, based on the quantum of development proposed and the size of the outbuildings, would be reasonably required for purposes incidental to the enjoyment of the main dwellinghouse. The development is therefore not permitted under Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and planning permission is required.

Recommendation: Refuse Lawful Development Certificate

Case Officer:	Ms Lisa Williams	Team Leader:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	03 April 2023	Dated:	03 April 2023