

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20221325
Location	Sunny Slope Longfield Avenue Gravesend Longfield
Proposal:	Application for a Lawful Development Certificate in respect of the proposed erection of side extension, front porch and alterations to the roof including a new chimney and conversion of the roofspace to form habitable rooms and proposed erection of a garage/garden building.
Applicant:	Mr And Mrs J Kemal
Site Visit	N/A Desktop Assessment

Plans & Documents

Application form
 Planning Statement
 Drawing no. D-04 (proposed elevations and section)
 Drawing no. D-03 (proposed floor plans)
 Drawing no. D-01 (existing plans and elevations)
 Drawing no. D-05 (garden building as proposed)
 Drawing no. D-08 (proposed block plan)
 Drawing no. D-07 (existing block plan)
 Drawing no. D-06 (site location plan)

Property Type

The property comprises a detached bungalow.

Material Consideration

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

Relevant Planning History

20220841	Erection of a single storey extensions to both sides of the property with hip to gable design on each side, and velux skylights on loft area for extra ventilation and liveable space.	Refused	02.11.2022
20200332	Demolition of existing dwelling and	Refused, appeal	20.05.2020

	erection of 2no. detached dwellings with associated shared access, parking and amenity areas.	dismissed	
20191060	Demolition of existing detached bungalow and erection of 2no. semi-detached dwellings with associated access, parking and amenity space.	Refused	02.12.2019
20190292	Demolition of existing dwelling and erection of replacement bungalow incorporating a basement.	Refused	24.05.2019
20180974	Demolition of existing dwelling and erection of replacement bungalow incorporating a basement.	Appeal against non-determination, appeal allowed	22.08.2019
20180580	Application for a Lawful Development Certificate in respect of the proposed erection of single storey side extensions to both sides and alterations to the roof from hip to gable end.	Certificate granted	29.06.2018
19720577	extension at rear for bedrooms, bathroom, kitchen and conservatory	Permitted	13.12.1972

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 A - The enlargement, improvement or other alteration of a dwellinghouse

A.1	Development is not permitted by Class A 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)	as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)	N
(c)	the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse	N

(d)	the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse	N – the current eaves are approx. 2.7m high and the proposed are 2.6m high
(e)	the enlarged part of the dwellinghouse would extend beyond a wall which – (i) forms the principal elevation of the original dwellinghouse; or (ii) fronts a highway and forms a side elevation of the original dwellinghouse	N
(f)	subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and - (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height	N
(g)	for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and - (i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height;	N/A
(h)	the enlarged part of the dwellinghouse would have more than a single storey and – (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or (ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse being enlarged which is opposite the rear wall of that dwellinghouse;	N
(i)	the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres	N
(j)	the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would – (i) exceed 4 metres in height, (ii) have more than a single storey, or (iii) have a width greater than half the width of the original dwelling; or	Y the chimney takes the height over 4m (see class G)
(ja)	any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j);	N
(k)	it would consist of or include – (i) the construction or provision of a verandah, balcony or raised platform,	Y, the installation of a

	(ii) the installation, alteration or replacement of a microwave antenna, (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or (iv) an alteration to any part of the roof of the dwellinghouse	chimney, see class G
(l)	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	N
A.2	In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if –	N/A
(a)	it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;	
(b)	the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or	
(c)	the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse.	
(d)	any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (b) and (c).	
A.3	Development is permitted by Class A subject to the following conditions –	N/A
(a)	the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;	
(b)	any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be – (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed; and	
(c)	where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.	

Class B - The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.

B.1	Development is not permitted by Class B 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)	Any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof;	N
(c)	Any part of the dwellinghouse would, as a result of the works, extend, beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway;	N
(d)	The cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than – (i) 40 cubic metres in the case of a terrace house, or (ii) 50 cubic metres in any other case;	N
(e)	It would consist of or include – the construction or provision of a verandah, balcony or raised platform or the installation, alteration or replacement of a chimney, flue or soil and vent pipe; or	N, see class G
(f)	The dwellinghouse is on article 2 (3) land	N
B.2	Development is permitted by Class B subject to the following conditions –	Y/N
(a)	The materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;	Y
(b)	The enlargement must be constructed so that – (i) other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension - (aa) the eaves of the original roof are maintained or reinstated; and (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and (ii) other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension, no part of the enlargement extends beyond the outside face of any external wall of the original dwelling house; and	Y
(c)	Any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be – (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.	Y

Class C - Any other alteration to the roof of a dwellinghouse.

C.1	Development is not permitted by Class C if -	Y/N
(a)	permission to use the dwelling as a dwellinghouse has been granted only by virtue of	N

	Class M, N, P, PA or Q of Part 3 of this Schedule (changes of use);	
(b)	the alteration would protrude more than 0.15 metres beyond the plane of the slope of the original roof when measured from the perpendicular with the external surface of the original roof;	N
(c)	it would result in the highest part of the alteration being higher than the highest part of the original roof;	N
(d)	it would consist of or include – (i) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or (ii) the installation, alteration or replacement of solar photovoltaics or solar thermal equipment.	N
C.2	Development is permitted by Class C subject to the condition that any window located on a roof slope forming a side elevation of the dwellinghouse must be- (a) obscure-glazed; and (b) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.	Y

Class D - The erection or construction of a porch outside any external door of a dwellinghouse.

D.1	Development is not permitted by Class D 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 ground area (measured externally) of the structure would exceed 3 square metres	N
(c)	Any part of the structure would be more than 3 metres above ground level; or	N
(d)	Any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway; or	N
(e)	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	N
D.1	Development is not permitted by Class D if -	Y/N
(a)	permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use)	N
(b)	The ground area (measured externally) of the structure would exceed 3 square metres	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.

See below

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);	N
(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;	N
(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;	N
(i)	It relates to a dwelling or a microwave antenna; or	N
(j)	The capacity of the container would exceed 3,500 litres	N/A
(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.	N/A
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.	N/A

Class F - The provision within the curtilage of the dwellinghouse of hard surfaces incidental to the enjoyment of a dwellinghouse

Development consisting of -

- (a) the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such; or**
- (b) the replacement in whole or in part of such a surface.**

F.1	Development is not permitted by Class F 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 dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	N
F.2	Development is permitted by Class F subject to the condition that where	
(a)	The hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and	Y
(b)	The area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres,	Y
	Either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.	? No details have been provided

Class G – chimneys, flues etc on a dwellinghouse

The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse.

G.1	Development is not permitted by Class G if –	G.1
(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 height of the chimney, flue or soil and vent pipe would exceed the highest part of the roof by 1 metre or more; or	N
(c)	In the case of a dwellinghouse on article 2(3) land, the chimney, flue or soil and vent pipe would be installed on a wall or roof slope which (i) fronts a highway, and (ii) forms either the principal elevation or a side elevation of the dwellinghouse.	N/A
(d)	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	N

Class E

Class E allows the provision within the curtilage of the dwellinghouse of any building required for a purpose *incidental* to the enjoyment of the dwellinghouse.

There is no statutory definition of 'incidental' in the GPDO. Case law provides guidance on how it should be interpreted by decision-makers and indicates that games rooms and gym areas can be considered to be incidental to the enjoyment of a dwellinghouse. In the Emin [Emin v SSE & Mid Sussex DC [1989] JPL 909] case it was held that the relative sizes of an outbuilding and the dwellinghouse can be an important consideration but is not in itself conclusive for the purposes of Class E. However, the building must be required for some incidental purpose in relation to the dwellinghouse. When dealing with cases such as this it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. In other words, each case must be decided on its own particular circumstances.

In this case no evidence has been submitted by the applicant to demonstrate that a building of this size is reasonably required for the occupiers of the dwelling. The submitted planning statement does not mention Class E development.

The proposed building has an internal floor area of approx. 108.2sqm. This is the equivalent of a four bedroom bungalow, is approx. 18sqm larger than the original dwelling on the site and covers 67% of the floor area of the existing building. It is noted that there is no indication in the wording of Class E that the "original dwellinghouse" is relevant; these figures are used to demonstrate the size of the proposed building in relation. The Kent County Council parking standards for a double garage is 5.5m x 6m which equates to 33sqm. The proposed building is more than three times larger than this.

The term 'incidental to the enjoyment of the dwellinghouse' has been found in planning legislation since the inception of the modern system of development control in 1948. In the 1947 Act the term was used to exempt incidental uses at dwellinghouses from the definition of development. It also appeared in the 1948 General Development Order, in which new detached garden buildings (other than garages), not exceeding 10 feet in height or 1,000 cubic feet, being incidental to the enjoyment of the dwelling house as such, were given a permitted development right.

The 1947 provision, relating to uses which are incidental to the enjoyment of the dwelling house, was carried forward into sec. 55(2)(d) of the 1990 Act, and the 1948 permitted development right has evolved to form part of Part 1 Class E of the GPDO. However, development within the curtilage of a dwellinghouse for any building, enclosure, swimming pool or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, is stated to be permitted development provided that certain criteria relating to size and location are complied with. A general note to Class E states that purpose incidental to the enjoyment of the dwellinghouse as such includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. Class F relating to hardstandings also contains the incidental to the enjoyment qualification. The term is also used in Part 5 where a caravan is permitted within the curtilage of a dwellinghouse if incidental to its enjoyment.

Unfortunately, the Town and Country Planning Act does not provide a definition of the term 'incidental to the enjoyment of the dwellinghouse', and neither does the Permitted Development Order, apart from the general note to Class E already described.

Whether overlarge buildings may be incidental?

Case law provides guidance on how 'incidental' should be interpreted by decision-makers and indicates that games rooms and gym areas can be considered to be incidental to the enjoyment of a dwellinghouse. In the *Emin v SSE & Mid Sussex DC* [1989] JPL 909 case it was held that the relative sizes of an outbuilding and the dwellinghouse can be an important consideration but is not in itself conclusive for the purposes of Class E.

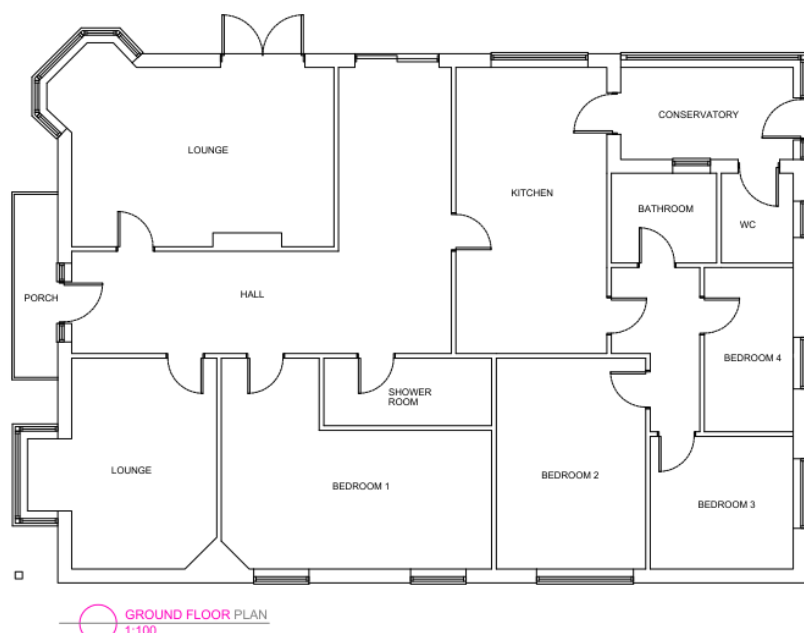
Cases would suggest that the sheer physical extent of buildings/uses proposed, while complying with the physical limitations laid down in the Order, may be considered to take the development out of the definition of 'incidental'.

There are many appeals relating to lawful development certificates for outbuildings and two examples are listed below. A recent appeal (APP/N1730/X/21/3278127 – appendix 1) bears similarities with this application. The property was a 1.5 storey building and the proposed outbuilding was to be situated approx. 1.8m from the side. The outbuilding had a footprint of 95sqm compared to the house of 130sqm. The council refused to issue a lawful development certificate because it was not satisfied, due to lack of evidence of the proposed building's intended use, and due to its size and layout, that it was required for a purpose incidental to the enjoyment of the dwellinghouse as such.

In the above appeal there was nothing to explain why the occupier of the house required such facilities in what is, in terms of floor area when compared to that the house itself, a quite substantial building that would occupy a very large portion of the property's side garden. The Inspector agreed with the Council that caselaw indicates that the test in such cases is objective reasonableness and it was difficult to understand how the proposed outbuilding would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Another appeal (APP/B3030/X/22/3297671 – appendix 2) was dismissed for similar reasons. The Inspector stated 'The burden of proof rests with the appellant and the appropriate test is on the balance of probabilities. There is a lack of detailed reasoning for an outbuilding of this size and its purposes particularly the storage element. The appellant has not discharged the burden of proof to show that the proposed outbuilding and its uses would be incidental to the enjoyment of the dwelling house and fall within the wording of Class E.' Again, the building has a footprint of approx. 121sqm and the dwellinghouse a floor area of approx. 148sqm which is similar to the comparative proportions of this application dwelling and proposed outbuilding,

In summary, whilst the size of a building does not necessarily indicate it is not incidental to the use of the dwellinghouse, the onus is on the applicant to prove that this is the intended use. The proposed building has a footprint over 67% of the building currently on site with a 1.8m gap and no justification as to why it is required to be this size. The existing house has 4 bedrooms, 2 lounges, 2 bathrooms, a kitchen and a conservatory as can be seen from the plan below taken from 20200332:



The burden of proof rests with the applicant and the appropriate test is on the balance of probabilities. There is a lack of detailed reasoning for an outbuilding of this size and its purposes. The applicant has not discharged the burden of proof to show that the proposed outbuilding and its uses would be incidental to the enjoyment of the dwelling house and fall within the wording of Class E.

Recommendation: Refuse Lawful Development Certificate

Case Officer:	Mrs Alison Webster	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	6 February 2023	Dated:	6 th February 2023