



Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20230170
Location	388 Rochester Road Gravesend Kent DA12 4TT
Proposal:	Application for a Lawful Development Certificate in respect of the proposed erection of outbuilding to provide gym, WC/shower room and home office
Applicant:	Mr J Bhangle
Site Visit	N/A Desktop Assessment

Plans & Documents

- Application Form
- Drawing D-02 (Site Block Plan Survey)
- Drawing D-03 (Proposed Block Plan)
- Drawing D-04 (Proposed Floors Plans and Elevations)
- Drawing D-03 (Proposed Block Plan – with verification)

Property Type

The property comprises a detached two storey dwelling.



There is an existing double garage and car port on site.

Application

The application form indicates as the grounds the LDC should be granted as:

Why do you consider that a Lawful Development Certificate should be granted for this proposal?

The proposed outbuilding meets the criteria under class E of The Town and Country Planning (General Permitted Development) (England) Order 2015:

Proposed Outbuilding to provide gym, WC/shower room and home office: All uses are incidental to the enjoyment of the dwelling house

E.1(a) The existing dwelling has always been in residential use

E.1(b) The total area of ground around the original house covered by buildings within the curtilage is much less than 50% of total curtilage area excluding the original house

E1.(c) The proposed outbuilding is situated so that no part of the new building is built on land in forward of the main front wall of the original house.

E1.(d) The proposed building is single storey

E1.(e) The proposed building does not exceed height restrictions

E1.(f) The height of the eaves of the proposed building does not exceed height restrictions

E1.(g) Not applicable

E1.(h) Not applicable

E1.(i) Not applicable

E1.(j) Not applicable

E2.Not applicable

E3.Not applicable

Material Consideration

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

Relevant Planning History

Reference	Description	Outcome	Decision Date
19980185	Erection of two storey side extension to form living room with two bedrooms over, single storey rear extension to form dining room and continuation of the new pitched roof over the existing flat roofed rear extension.	Permitted	07.05.1998

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);	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 – 3.9M DUAL PITCHE N – SET AWAY BY 2M N/A
(f)	The height of the eaves of the building would exceed 2.5 metres;	N – 2.4M
(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
(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

Analysis

The Technical Guidance for Permitted development rights for householders (2019) states:

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 scheme would introduce a significant sized outbuilding which would be to the side of the dwelling. This proposal needs to carefully consider whether the development, which consists of a single outbuilding is incidental to the main dwellinghouse.

Reference is made to 1 x appeal decisions when making this assessment which are included as appendices;

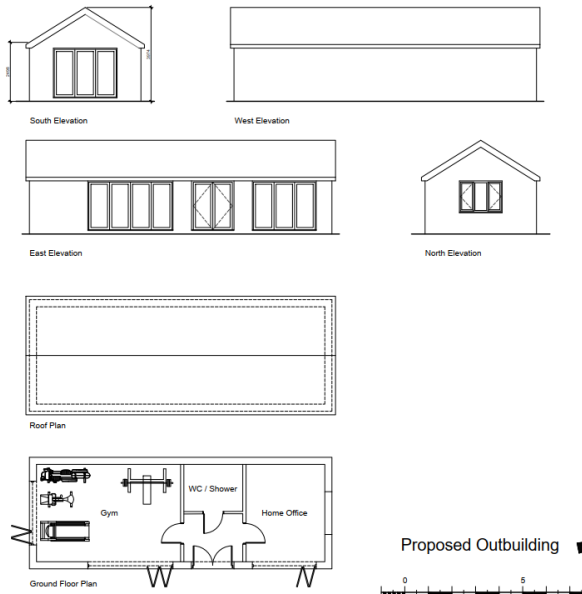
- Appeal Ref: APP/Y3615/X/3276664 (Lazenby V Guildford Borough Council) – 2022 (appendix 1)

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 outbuilding is incidental also relates to whether they are ‘reasonably required’ for the purposes of the use proposed use. In this case, one outbuilding is proposed which contains a w/c shower home office and gym area as shown below.



In this instance the out building whilst large contains rooms which are clearly found within a domestic setting and are deemed to be reasonably required.

Conclusion

The proposed erection of an outbuilding falls within Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015. A Lawful Development Certificate can be granted.

Recommendation: Grant Lawful Development Certificate

Case Officer:	Mrs Sharon Sahota	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	14 th April 2023	Dated:	20 th April 2023