

Delegated Report

Lawful Development Certificate (Existing)

Application no:	20251096
Location	125 Downs Road Istead Rise Gravesend Kent
Proposal:	Application for an Existing Lawful Development Certificate for the continued use of an outbuilding at the rear as a garage and study/bedroom.
Applicant:	Mr & Mrs Glenn Hughes & Xiuzhen Li
Site Visit	10 March 2026

Plans & Documents

Application form for a Lawful Development Certificate for an Existing Use or Development;
Drawing no. 1087[EX]01 Existing ground floor layout;
Drawing no. 1087[EX]02 Existing first floor layout;
Drawing no. 1087[EX]03 Existing attic layout;
Drawing no. 1087[EX]04 Existing roof plan;
Drawing no. 1087[EX]05 Existing elevations;
Drawing no. 1087[EX]1250 Location and block plans and aerial photograph;
Drawing no. 1087[PE]1250 Previously existing location and block plans;
Planning Statement;
Google Maps images 1990-2011;
Google Maps images 2012-2015;
Google Maps images 2017-2025;
British Gas bill 27 November 2025;
British Gas electricity bill 27 November 2025;
Council Tax bill 28 February 2025;
Southern Water bill 06 February 2024; and
Letter from neighbours.

Property Type

The property comprises of a detached, two storey dwelling with front and rear gardens.

Legislation

Sections 171B and 191 of the Town and Country Planning Act 1990 (as amended).

Material Consideration

National Planning Practice Guidance <https://www.gov.uk/guidance/lawful-development-certificates>

Relevant Planning History

Reference	Description	Decision	Decision Date
20030114	Erection of two storey rear extension to form a dining room and conservatory at ground floor level with a bedroom, en-suite shower room/w.c., walk-in wardrobe and balcony at first floor level; erection of two storey front extension to form a porch at ground floor level with a study at first floor level; construction of two replacement dormer windows in front roof slope and installation of bay windows at front.	Permitted	30.05.2003

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate (LDC) that is considered on its facts and relevant planning law. As confirmed in the national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

The Development

This LDC application seeks to establish whether the existing outbuilding used as a garage and study/bedroom is lawful.

Officer Assessment

General approach

The case officer has had regard to the advice contained in the National Planning Practice Guidance (the section relating to LDCs, paragraphs 005 to 009). This application is for an LDC and not for a planning permission. As such, the planning merits of the case are not relevant. The determination must be based on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests with the applicant and the evidence submitted must be sufficiently precise and unambiguous to enable the Local Planning Authority to understand exactly what is involved. The decision must be made on the balance of probability.

On their application form, the applicants allege that the existing outbuilding has been in place and in use for ancillary residential purposes since 2007. In their Planning Statement, the applicants allege that the existing outbuilding has been in place and in use for incidental purposes since 2004 and refer to various pieces of evidence to corroborate their contention.

The applicants' evidence is set out in the Plans and Documents section above.

The case officer has gathered the following information, which will also be taken into consideration in the determination of this application;

- Google Earth images (Appendix 1)
- Information from the Zoopla Property Details online (Appendix 2)
- Information from the case officer's site visit (Appendix 3)

Relevant period(s) for consideration of lawfulness

The time limits for taking enforcement action are set out in Section 171B of the Town and Country Planning Act 1990 (as amended). In most cases, development becomes immune from enforcement if no action is taken:

- within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024
- within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024
- within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
- within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024
- within 10 years for any other breach of planning control (essentially other changes of use)

The existing outbuilding constitutes operational development and may constitute a change of use (if has been used for ancillary residential purposes). It is noted that it is not alleged by the applicants that there has been a change of use to a single dwellinghouse. Since the outbuilding is alleged to have been in place since either 2003/4 or 2007, the substantial completion/any change of use occurred before 25 April 2024. Therefore, consideration of both a four year immunity period (for the operational development) and a ten year immunity period (for any change of use) would be relevant.

Ancillary and Incidental Uses

Ancillary uses are secondary, subordinate activities that are directly related to, and support, the main, primary use of a property or land. In a residential environment, they include elements of primary living accommodation, such as a bedroom, bathroom or kitchen. A granny annex or staff accommodation would be ancillary uses (provided that they are functionally connected to and support the use of the main dwelling). Therefore, ancillary residential uses can be a duplication of an existing use in a dwelling but they must remain connected to it at all times. If an ancillary residential use no longer requires the use of the house (i.e. it is no longer functionally connected) and is self-contained, then the use becomes a separate one. Planning permission is usually required for ancillary residential uses and always required for separate residential uses.

An incidental use is parasitic on the main use of the land or building i.e. it cannot exist without it. Incidental residential uses might include a garage, storage, home office, gym, art studio, pool pump room, hobby room, cinema room, shed, pergola, decking etc. In a residential environment, an incidental use can contain an element of living accommodation usually found within an ancillary use, but only as long as it is subordinate to, or associated with, the incidental use. For example, a shower room to serve a gym or swimming pool or a w.c. to serve a home office.

Summary of evidence

The submitted application form states that there has been an ancillary residential use of the outbuilding since 2007. That the building works were completed more than four years before the date of the application (on 02.05.2007) and that in terms of lawfulness, a four year period is relevant because the works were completed prior to 25 April 2025.

The submitted Planning Statement states that the outbuilding work was completed in 2004, well in excess of the 10 year rule for lawfulness and that the outbuilding has been used for incidental purposes only and is not a separate dwelling. It refers to evidence including a neighbour letter, historical Google Earth images, a Council Tax bill, a gas bill, an electric bill, a water bill, a land registry plan and two estate agent's listings.

The submitted drawings of the outbuilding illustrate a loft area used for storage, a first floor area used as a study/spare room and w.c. and a ground floor area used as a garage.

The letter from the occupiers of no. 127 Downs Road states that the outbuilding was constructed between 2003 and 2004 and has been in continuous use, as part of the house since at least 2004. They believe it has been in use as a study/spare room and garage for the whole period and not as an annex or separate residence.

The submitted Google Earth images appear to show construction works at the rear of the application site in December 2003 and the same outbuilding in place since May 2007. It is noted that the Google Earth information gathered by the case officer (Appendix 1) is essentially the same (except that the image dates are slightly different).

The utilities bills relate to the application site and show no separate gas, electric, water or Council Tax liabilities.

The Land Registry plan shows that the application site has a single title.

The submitted estate agent listings show that the outbuilding was in place in September 2018 and May 2022. Reference to Appendix 2 illustrates that a 2018 photograph of the interior of the outbuilding shows a lounge/study use at first floor level and that a 2022 photograph of the interior of the outbuilding shows a bedroom and w.c. use at first floor level. A virtual tour from 2022 describes the outbuilding as an office/annex and shows a double bed and small desk at first floor level.

The information from the case officer's site visit (Appendix 3) illustrates that the outbuilding is currently in use as a garage/domestic storage on the ground floor, for domestic storage/office and a w.c. at first floor and for domestic storage in the loft space.

Analysis of evidence

The photographic evidence shows that the outbuilding has been in place for a period of some 19 years (it is visible on aerial images since April/May 2007). According to the occupiers of no. 127 Downs Road, the outbuilding was constructed in 2003/2004, which would mean that it has been in place for some 23 years. As such, it is considered that the construction of the outbuilding is now lawful. This is because it was operational development, that was completed prior to 25 April 2024 and which has been in place for a period in excess of four years.

In terms of the use of the outbuilding, the applicants do not have any first hand knowledge, prior to their ownership of the application site (i.e. only since the end of 2022). Furthermore, the occupiers of no. 127 Downs Road do not appear to have any first hand knowledge of the use of the outbuilding, because their letter states that they 'believe' it has been in use as a study/spare room and garage and not as an annex or separate residence.

The 2018 Zoopla listing shows the first floor of the outbuilding in a lounge/study use and the 2022 Zoopla listing shows the first floor of the outbuilding in a bedroom and w.c. use. Both of which are ancillary residential uses. At present the use of the outbuilding at ground floor level is as a garage (although it is noted that no vehicle was parked inside at the time of the site visit and the area was used for storage/workshop purposes) and at first floor level it was used for storage/office/w.c., all of which are incidental uses.

The utilities information is only recent but illustrates that no separate bills are currently payable for the outbuilding. This and there being a single land registry title, suggests that no separate planning unit or residential use has been created. Furthermore, the occupiers of no. 127 Downs Road believe that the outbuilding has not been used as an annex or a separate residence, since it was erected and that it has been used as study/spare room and garage.

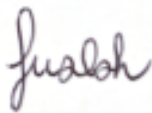
Overall, there is limited information regarding the nature of the use of the outbuilding over time and it is likely that the outbuilding has been used for both incidental and ancillary uses to the main dwelling, since its construction. However, taking account of the Zoopla listings, neighbour comments and because the Borough Council has no evidence to the contrary, it is considered likely that the outbuilding was used for incidental purposes at ground floor level and for ancillary residential purposes at first floor level for a period in excess of ten years. Therefore, it is considered that the use of the outbuilding is lawful.

Conclusion

Having reviewed all of the information submitted by the applicant and gathered by the case officer, it is considered that sufficient evidence has been provided to conclude, that on the balance of probabilities, the existing outbuilding has been in place and in incidental and ancillary residential use (as a garage and study/bedroom) for a period in excess of ten years.

The Borough Council is therefore satisfied that the development is lawful by reason of Section 191(2)(a) of the Town and Country Planning Act 1990 (as amended) and a Certificate of Existing Lawful Use can be granted.

Recommendation: <u>Grant</u> Lawful Development Certificate
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Case Officer:	Mrs Kelly Joyce	Team Leader:	Mrs Faye Walsh
Signed:		Signed:	
Dated:	12th March 2026	Dated:	13 March 2026