

# Delegated Report

## *Lawful Development Certificate (Proposed)*

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|------------------------|------------------------------------------------------------------------------------------------------|
| <b>Application no:</b> | 20211587                                                                                             |
| <b>Location</b>        | Cedarwood Longfield Avenue Gravesend Longfield                                                       |
| <b>Proposal:</b>       | Application for Lawful Development Certificate for proposed erection of a single storey outbuilding. |
| <b>Applicant:</b>      | Mr Gary Horsfield                                                                                    |
| <b>Site Visit</b>      | Desktop Assessment                                                                                   |

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### **Procedural Matters**

The description was chosen by the Local Planning Authority due to the application form being submitted with Section 4 (Description of the Proposal) stating: '*see supporting statement*'. The supporting statement references Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, and the plans submitted corroborate that the development is for the erection of an outbuilding. As such, the Local Planning Authority selected the following description:

*"Application for Lawful Development Certificate for proposed erection of a single storey outbuilding."*

### **Plans & Documents**

Application Form;  
Supplementary Information – Statement in Support of LDC;  
Drawing No. 01 – Site Location and Block plan;  
Drawing No. 02 – Existing Floor Plan;  
Drawing No. 03 – Existing Elevations;  
Drawing No. 04 – Proposed Block Plan;  
Drawing No. 05 – Proposed Floor Plan;  
Drawing No. 06 – Proposed Elevations; and  
Drawing No. 07 – Existing House Floor Plans.

### **Representations**

As this is an application for a lawful development certificate there is no statutory obligation to consult. However, one letter of representation has been received from Kent Fire and Rescue regarding distance to pump appliances, emergency access and Building Control requirements.

### **Property Type**

Cedarwood is a detached chalet style bungalow.

**Material Consideration**

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

**Relevant Planning History**

| <b>Application ref.</b> | <b>Description</b>                                                                                                                                                                                           | <b>Status</b>       | <b>Date</b> |
|-------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-------------|
| 20210988                | Application for Lawful Development Certificate for proposed erection of a single storey outbuilding to rear.                                                                                                 | Certificate Refused | 06.10.2021  |
| 20110742                | Conversion of rear part of garage into a games room and installation of mezzanine floor to provide storage in the roof space.                                                                                | Permitted           | 26.09.2011  |
| 20110224                | Extension to existing detached garage/store/kitchen to provide mansard roof with 8 no. rooflights to provide storage space at first floor level and conversion of rear part of garage to provide games room. | Refused             | 11.05.2011  |
| 20080432                | 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.                        | Certificate Granted | 16.06.2008  |
| 20030458                | 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.                                                  | Permitted           | 23.07.2003  |
| 19830742                | Alterations to external elevations                                                                                                                                                                           | Permitted           | 09.11.1983  |
| 19820836                | Erection of replacement dwelling and garage                                                                                                                                                                  | Permitted           | 20.12.1982  |
| 19810474                | Erection of rear extension to form lounge and kitchen and construction of one roof over existing and enlarged dwelling                                                                                       | Permitted           | 29.06.1981  |
| 19770921                | erection of single storey lounge extension at rear                                                                                                                                                           | Permitted           | 01.02.1978  |

## A Note on the Planning History

In the Statement in Support of LDC, it is mentioned that the existing outbuilding to the rear of the garden **“also has a guest room for occasional use.”** As shown below, the Decision Notice for application 20080432 makes it clear that the building should not be used for this purpose.

PS-CLPP Application GR/20080432

GRAVESHAM BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 191 AND 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)  
ORDER 1995 ARTICLE 24

To Mr & Mrs Horsfield  
c/o Russell A Broad & Associates  
127 Crayford Road  
Crayford  
Kent  
DA1 4AS

**CERTIFICATE OF LAWFUL USE OR DEVELOPMENT**

GRAVESHAM BOROUGH COUNCIL hereby certify that on the 07 May 2008 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason(s) -

The detached building would fulfil the criteria of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995.

**INFORMATIVE**  
The Lawful Development Certificate relates only to the use of the detached building as a games room and gym/fitness room, not for any annexe or form of accommodation.

*First Schedule*

Proposed erection of a detached building in rear garden to provide a games room, gym/fitness room, bar and shower room/wc.

*Second Schedule*

Cedarwood  
Longfield Avenue  
Gravesend  
Kent

Dated 16 June 2008

On behalf of  
Civic Centre  
Windmill Street  
Gravesend  
Kent  
DA12 1AU

Signed   
Director (Business)

## Preliminary Matters

An application for Lawful Development Certificate (LDC) was submitted and refused in 2021 (ref. 20210988). The previous application proposed the erection of a single storey outbuilding, and was refused a certificate 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 be 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).*

The current application proposes a similar development under Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, and must be considered in its own merit. However, with an LDC the burden of proof is on the applicant and sufficient evidence must be provided for the Local Planning Authority to determine the probability of the outbuilding being incidental to the enjoyment of the dwellinghouse.

## Officer Assessment

### Permitted Developments Rights Restrictions

|                                                 |                                                                                                                                                  |
|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Article 2 (3) Land (AONB, Conservation Area)    | N                                                                                                                                                |
| Article 4 Direction                             | N                                                                                                                                                |
| Permitted Development Rights Removed/Restricted | Y<br>GR/82/836<br>However,<br>the wording<br>is such that<br>this clearly<br>restricts the<br>enlargement<br>of the<br>dwelling<br>specifically. |

### 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.**

### Incidental to the main dwellinghouse

Class E provides permitted development rights within the curtilage of a house. Buildings under Class E should be built for **purposes incidental** to the enjoyment of the dwellinghouse.

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.

A purpose incidental to a house would **not** cover normal residential uses such as kitchen/utility rooms and bathrooms and would require planning permission. The proposed outbuilding cannot be lawful development as the building is not incidental to the use of the dwellinghouse.

Case law suggests that the size of buildings/uses proposed, whilst complying with the limitations of the Order, may be considered to take the development out of the definition of 'incidental'. The outbuilding is 5sqm smaller than the previously refused building, however the size is still large with a total footprint of 100.75sqm.

This large floor area contains facilities that would be expected in a separate dwelling such as:

- Utility Room;
- Double garage;
- Study;
- WC; and
- Garden room/hobby room.

As indicated by the supporting statement (excerpt below), the use of the outbuilding appears to be an extension of the primary use of the dwellinghouse, rather than being incidental to the enjoyment of the dwellinghouse.

*"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 4 adults living in the house and **additional floor space for incidental uses is required by the family.**"*

As demonstrated above, the applicant requires more principal living accommodation as the main dwellinghouse is not large enough to suit their requirements, which is not permitted under Class E. In a dismissed appeal for an outbuilding, the inspector stated that "the provision of the study, kitchen and toilet go close to the notion of a primary dwellinghouse purpose" and were not incidental, which by definition should be "distinct from activities which constitute actually living in a dwellinghouse" (App/H1840/X/06/2028475). Furthermore, in *Crawley v SOS & Brentwood DC* (04/01/1990) the court agreed with the inspectors reasoning that an outbuilding containing a kitchen and study was not permitted development. Therefore, the provision of a study, utility/kitchen area and wc are not considered incidental.

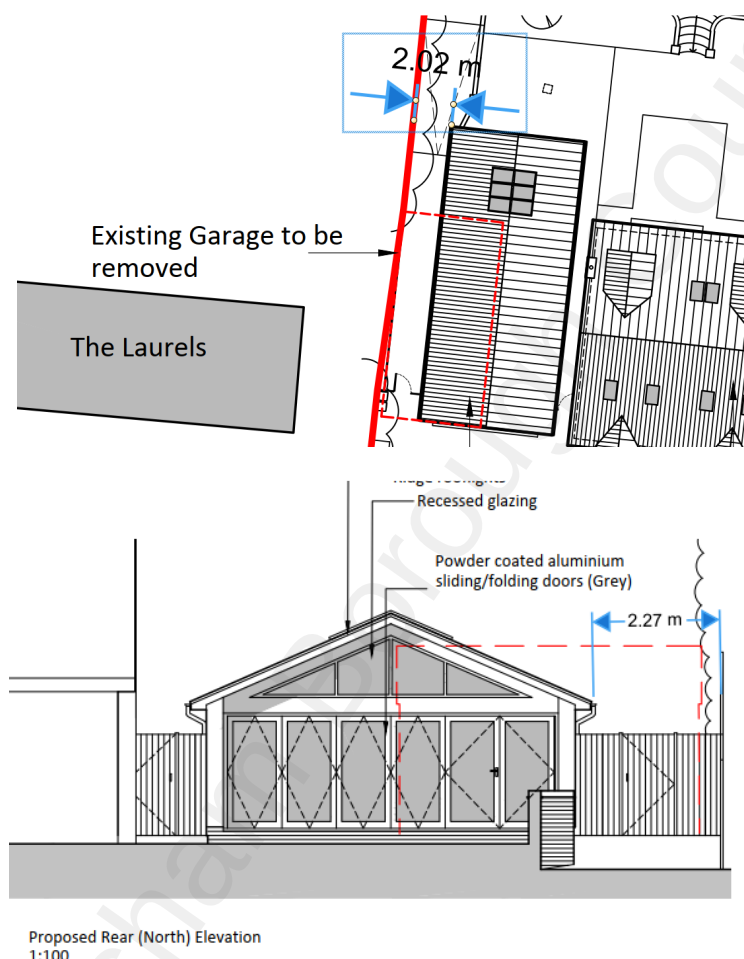
Although the plans for the outbuilding do not show that a kitchen would be provided, the study and utility room could easily be changed to a bedroom and kitchen, as highlighted in the previous ground of refusal (1). The supporting statement from Graham Simpkin Planning expressed concerns *"that the council have determined the application by referring to a possible use rather than the proposed use of the building"*. However, an inspector has addressed the area of concern raised by Graham Simpkin Planning regarding the possible use of the outbuilding, where it was determined that the intention of the outbuilding was for sleeping accommodation and therefore did not comply with Class E (see Brent 12/02/2003 DCS No 041-900-643). In the inspector's assessment it was considered that the construction and appearance of the outbuilding supported the view that it had been designed and intended mainly for use as living accommodation. Given that the outbuilding hereby proposed at Cedarwood has an appearance and layout that indicates a use not subordinate to that of the main dwelling and contains all the facilities for day-to-day independent living, it is not incidental and is not permitted development.

The overall size, appearance, layout and facilities of the proposed outbuilding indicate an extension of the primary living space, or granny annex rather than an outbuilding intended for incidental use. The combination of these factors, on the evidence provided to the Local Planning Authority and having regard to all other matters raised, it is considered, as a matter of fact and degree, on the balance of probabilities that the proposed outbuilding is not reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Therefore, it would not be permitted development falling within Class E of the GPDO.

| <b>E.1</b> | <b>Development is not permitted by Class E if –</b>                                                                                                                                                                                                                                                                                                                  | <b>Y/N</b>                                                                                        |
|------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| <b>(a)</b> | 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>(b)</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                                                                                                 |
| <b>(c)</b> | 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                                                                                                 |
| <b>(d)</b> | The building would have more than a single storey;                                                                                                                                                                                                                                                                                                                   | N                                                                                                 |
| <b>(e)</b> | The height of the building, enclosure or container would exceed –<br><br>(i) 4 metres in the case of a building with a dual-pitched roof,<br><br>(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<br><br>(iii) 3 metres in any other case;                                    | N<br>4.00m<br><br><b>N</b><br><b>See</b><br><b>plan</b><br><b>note</b><br><b>below</b><br><br>N/A |
| <b>(f)</b> | The height of the eaves of the building would exceed 2.5 metres;                                                                                                                                                                                                                                                                                                     | N<br>2.50m                                                                                        |
| <b>(g)</b> | The building, enclosure, pool or container would be situated within the curtilage of a listed building;                                                                                                                                                                                                                                                              | N                                                                                                 |
| <b>(h)</b> | It would include the construction or provision of a verandah, balcony or raised platform;                                                                                                                                                                                                                                                                            | N                                                                                                 |
| <b>(i)</b> | It relates to a dwelling or a microwave antenna; or                                                                                                                                                                                                                                                                                                                  | N                                                                                                 |
| <b>(j)</b> | The capacity of the container would exceed 3,500 litres                                                                                                                                                                                                                                                                                                              | N/A                                                                                               |
| <b>(k)</b> | the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)                                                                                                                                                                                                                                                                       | N                                                                                                 |
| <b>E.2</b> | In the case of any land within the curtilage of a dwellinghouse which is within –<br><br>(a) An area of outstanding natural beauty;<br><br>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                                                                                               |
| <b>E.3</b> | 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                                                                                               |

### Plan Note

There are discrepancies on the plans relating to the proposed development and distance from the curtilage boundary in relation to the height of the building. This is shown below on the Proposed Block Plan (Drawing No. 04) and the Proposed Rear Elevations (Drawing No. 06.)



However, this still adheres to class E.1 (e)(ii).

### Conclusion

The outbuilding hereby proposed is not incidental to the main dwelling due to the overall size, appearance, layout, facilities and location adjacent to the house. This is indicative of an extension of the primary living space, or granny annexe rather than an outbuilding intended for incidental use, and the previous reason for refusal (1) remains relevant. 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 requires planning permission.

The proposed development fails to comply with **THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (ENGLAND) ORDER 2015, AS AMENDED**, and the **LAWFUL DEVELOPMENT CERTIFICATE** is **REFUSED**.

| <b>Recommendation: <u>Refuse</u> Lawful Development Certificate</b> |                              |                                |
|---------------------------------------------------------------------|------------------------------|--------------------------------|
|                                                                     | <b>Name/Signature</b>        | <b>Date</b>                    |
| <b>Planning Officer</b>                                             | L Hankin                     | 22.02.22                       |
| <b>Principal Planner/ Manager</b>                                   | Richard Hart / <i>R Hart</i> | 23 <sup>rd</sup> February 2022 |