

# Delegated Report

## *Lawful Development Certificate (Proposed)*

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| <b>Application no:</b> | 20250383                                                                                                                     |
| <b>Location</b>        | 51 Mulberry Road Northfleet Gravesend Kent                                                                                   |
| <b>Proposal:</b>       | Application for a Proposed Lawful Development Certificate for the conversion of a detached garage to gym/family room and WC. |
| <b>Applicant:</b>      | Mr Harjit Samra                                                                                                              |
| <b>Site Visit</b>      | N/A Desktop Assessment                                                                                                       |

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### Plans & Documents

Application Form;  
Drawing No. 25015-01A – Floor Plans – Existing;  
Drawing No. 25015-2B – Floor Plans – Proposed;  
Drawing No. 25015-03B – Elevations – Existing and Proposed;  
Drawing No. 25015-L1 – OS Plan;  
Drawing No. 25015-L2 – Block Plan- Existing; and  
Drawing No. 25015-L3 – Block Plan – Proposed.

### Material Consideration

This is an application for a Lawful Development Certificate (LDC), considered in accordance with the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As such, Local and National Planning Policies are irrelevant to this application.

### Relevant Planning History

| Reference | Description                                                                                                                                                                                                                                                          | Decision  | Decision Date |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|---------------|
| 19790154  | Erection of a two storey extension at side to provide shower room, utility room and lounge extension on ground floor and two additional bedrooms on first floor, erection of an extension to existing detached garage and the erection of a 6 ft high boundary wall. | Permitted | 06.09.1979    |
| 19780093  | Erection of a two storey detached dwelling with a private garage                                                                                                                                                                                                     | Permitted | 19.12.1977    |

### Planning History Note

The decision notice for application reference number 19780093 restricts permitted development rights as follows:

- (ii) The area shown on the submitted layout as a car parking space shall be kept available for such use and no development, whether permitted by the Town & Country Planning General Development Order 1977 or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved car parking space.
- (iii) The curtilage of the dwelling shown edged red on the submitted plan shall be used for garden purposes ancillary to the use of the dwelling hereby permitted and for no other purpose.
- (iv) Notwithstanding the provisions of Article 3 of and paragraph 1 of Schedule 1 to the Town and Country Planning General Development Order 1977, no enlargement of the dwelling house (which term without prejudice to the generality thereof shall specifically include the erection of a garage, stable, loose box or coach-house within the curtilage of a dwelling house) shall be carried out, nor shall the erection or construction of a porch outside the front external door of the dwelling house be carried out without the prior permission of the District Planning Authority.

**Grounds:**

- (ii) That the development without provision for adequate accommodation for the parking or garaging of a private motor car or cars is likely to lead to car parking inconvenient to other road users and detrimental to amenity.
- (iii) & (iv) In order that an adequate garden area is at all times available for the occupants of the dwelling and in the interests of safeguarding the amenity and privacy of adjoining residents.

However, the above restrictions in relation to the garage, have since been updated through the decision notice for application reference number 19790154, which restricts permitted development rights as follows:

- (ii) The garage extension hereby permitted shall be used only for the accommodation of a private motor car and for uses ordinarily incidental to the enjoyment of a domestic dwelling and no trade or business shall be carried on therefrom.

and that the grounds for the imposition of such conditions are:—

- (i) In pursuance of Section 41 of the Town and Country Planning Act 1971.
- (ii) In order to safeguard the amenity of the occupants of adjoining dwelling houses.

This restriction means that the garage can only be used to accommodate a car or a use which is incidental to the domestic dwelling. Any other use would require planning permission.

**Officer Assessment**

This application is for a Lawful Development Certificate for the proposed conversion of a detached garage to

gym/family room and WC. An application form and plans have been submitted in support of the application.

### General approach - Lawful Development Certificates

This application is for a Lawful Development Certificate (LDC) and not for planning permission, as such, the application is not assessed against national and local planning policy. The government guidance on Lawful Development Certificates ( <https://www.gov.uk/guidance/lawful-development-certificates> ) sets out the process for obtaining a LDC for existing or proposed use. The advice states that, *the local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process... the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land... in the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.*

### Operational Development

Section 55 (1) of Part 3 of the Town and Country Planning Act 1990 (as amended) sets out the meaning of development as follows:

*“development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*

*(1A) For the purposes of this Act “ building operations ” includes—*

- (a) demolition of buildings;*
- (b) rebuilding;*
- (c) structural alterations of or additions to buildings; and*
- (d) other operations normally undertaken by a person carrying on business as a builder)*

Section 55 (2) (a) sets out that the carrying out for the maintenance, improvement or other alteration of any building of works which—

- (i) affect only the interior of the building, or*
- (ii) do not materially affect the external appearance of the building,*

shall not be taken for the purposes of this Act to involve development of the land.

In addition, Section 55 (2) (d) of Part 3 of the Town and Country Planning Act 1990 (as amended) sets out that the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such, shall not be taken for the purpose of the Act to involve development of the land.

As such, it must now be considered and balanced whether the proposed use of the garage is indeed incidental to the enjoyment of the dwellinghouse, and whether any structural changes (fenestration) would amount to a material effect on the external appearance of the building.

Would there be a material change of use of the land?

Whilst the proposed garage conversion, by way of its size and appearance, could be considered to be used as a separate independent dwelling, the information provided with this application states that the building would be used as a gym, WC and family room, as annotated on the plans. Although a WC could be seen as a form of primary living accommodation (which would not be incidental), a degree of reasonableness should be applied. On one hand, the building is in close proximity to the dwelling, and the toilet facilities would therefore be close by, raising the question of why the WC is needed. On the other hand, a full shower room or bathroom is not being proposed here, just a toilet and sink basin. In addition, it is not uncommon for outbuildings to be used as a gym, garden room or games room etc. The plans confirm there are no kitchen facilities, utility room or bedroom etc. proposed. On the balance of probability and convenience for the family when using the gym/family room, it is considered that the WC can be considered as reasonably required in this instance. Furthermore, there would be no separate access or boundary treatments for the outbuilding, and the single main use of the site would remain as a family dwellinghouse and is therefore one planning unit.

In the dismissed appeal at Sheridan, Walnut Hill Road, Gravesend (APP/K2230/X/19/3222526), the Planning Inspector refers to the parties consideration of incidental use. The Inspector states, *'the parties refer to the cases of Uttlesford DC and Whitehead. Uttlesford DC concerned an appeal relating to the change of use from a detached garage to a granny annexe. The Court held that the Inspector had been correct in concluding that the garage with living accommodation would remain part of the same planning unit as the dwellinghouse and that there was, accordingly, no material change of use.'* Furthermore, the Inspector goes on to state the *'case of Whitehead also refers to Emin, where the Court considered that the relevant consideration was the nature and scale of the activities taking place in the building, rather than the physical size of the building in relation to the size of the dwellinghouse. Size may be an important consideration but not by itself conclusive. The test is whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwellinghouse'*. The evidence provided with this application shows that the outbuilding would be used incidentally to the existing dwellinghouse (rather than ancillary) and therefore, a similar logic can be applied here. Furthermore, the plans showing the scale of the building (which would not change), existing dwelling and overall plot demonstrate the building would also be subordinate in scale. In accordance with the information provided, and the above, the building can therefore be considered incidental. Overall, on the balance of probability, and given the case submitted, the proposed garage conversion would not constitute a change of use of the land, and would form part of the existing planning unit, in an incidental manner.

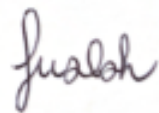
Structural Changes

The plans show there would be some structural changes by way of replacement fenestration. However, as established above, the converted garage would be incidental and therefore, further consideration of this matter is not required.

Conclusion

The proposed development, being the conversion of the existing detached garage within the curtilage of 51 Mulberry Road, to form gym/family room and WC, would not require planning permission, provided that it is used in line with the submitted application details.

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| <b>Recommendation: <u>Grant</u> Lawful Development Certificate</b> |
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| <b>Case Officer:</b> | Mrs Lucy Hankin | <b>Team Leader:</b> | Mrs Faye Walsh                                                                      |
| <b>Signed:</b>       | L Hankin        | <b>Signed:</b>      |  |
| <b>Dated:</b>        | 10th June 2025  | <b>Dated:</b>       | 13 June 2025                                                                        |