

Delegated Report

Lawful Development Certificate (Existing)

Application no:	20220960
Location	The Orchards School Lane Higham Rochester
Proposal:	Application for Lawful Development Certificate in respect of existing building works comprising of alterations, extensions, new buildings, driveway, boundary walls and existing use as a single family dwelling.
Applicant:	Mrs J Mattu
Site Visit	18 October 2022

Plans & Documents

Application for lawful development certificate for an existing use, operation or activity form;
 Drawing no. 22/380/01 Rev. A Existing ground floor layout;
 Drawing no. 22/380/02 Rev. C Northern, western and eastern existing elevations;
 Drawing no. 22/380/03 Rev. B Existing southern elevation, location, site plan, garage elevations and garage annex elevations;
 Drawing no. 22/380/04 Rev. B Existing ground floor layout (post 2009 in red);
 Drawing no. 22/380/05 Rev. B Northern, western and eastern existing elevations (post 2009 in red);
 Drawing no. 22/380/06 Rev. B Existing southern elevation, location, site plan, garage elevations and garage annex elevations (post 2009 in red);
 Drawing no. 22/380/07 Existing garage and BBQ area elevations (post 2009 in red), entrance gate elevation and layout;
 Drawing no. 22/380/08 Elevations and layouts pre-2009;
 Statement to accompany the application;
 Evidence reference table;
 Affidavit Amareet Powar dated 09 December 2022;
 Affidavit Ricky Dhell dated 19 December 2022;
 Affidavit Jasbir Mattu dated 05 August 2022;
 Letter dated 01 December 2022 from Quinda Billing;
 Email dated 05 December 2022 from Ralph de Souza;
 14 invoices for works undertaken at the application property;
 6 aerial photographs (2011 to 2020);
 6 photographs showing garage annex and garage internally;
 5 photographs of the application property taken in 2009;
 Photographs and plans of the application property from 2009;
 Letter from the agent dated 19 August 2022; and
 Email from the agent received 25 January 2023.

Procedural issues

Following a request for clarification from the case officer, the applicant provided additional information and clarification of the proposed development and agreed to an amendment of the description. The description was amended from 'Application for Lawful Development Certificate in respect of the existing building works comprise alterations, extensions, new buildings and existing use as a family home' to 'Application for Lawful Development Certificate in respect of existing building works comprising of alterations, extensions, new buildings, driveway, boundary walls and existing use as a single family dwelling'.

Drawing no. 22/380/04 Rev. B shows a different internal layout to drawing no. 22/380/01 Rev. A, for the areas identified as nos. 7 and 8 by the applicant. Following the case officer's site visit, it is noted that drawing no. 22/380/04 Rev. B is the most accurate.

Property Type

The property comprises of a detached dwelling set in a large plot, located on the eastern side of School Lane, outside of the village of Higham.

Relevant Planning History

Reference	Description	Outcome	Decision Date
20100351	Retention of the manege	Permitted	31.08.2010
20090710	Application for a Lawful Development Certificate in respect of the proposed erection of a detached building providing swimming pool and leisure facilities.	Certificate granted	11.11.2009
20060719	Construction of new pitched roof to replace existing flat roof over double garage, utility room and part of kitchen.	Refused	16.10.2006
19980561	Retention of front boundary wall and entrance gates.	Permitted	26.10.1998

Consultations, Publicity and Representations

There is no statutory requirement to undertake publicity or consultation regarding a Lawful Development Certificate (LDC) application. However in this instance, the Borough Council consulted the following;

Dickens' Country Protection Society

Queries the exact nature of the building works at the application site and raises concerns regarding the extent of the building in the Green Belt.

KCC - West Kent Public Rights Of Way Officer

As the above application is retrospective and does not materially affect the path I have no comments to make.

Higham Parish Council

No response received.

The application was publicised to three neighbouring properties by letter. No representations have been received.

Officer Assessment*Permitted Developments Rights Restrictions*

Article 2 (3) Land (AONB, Conservation Area)	No
Article 4 Direction	No
Permitted Development Rights Removed/Restricted	No

General approach

This application is for a LDC and not for a planning permission and 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. 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).

The applicant alleges that the application site has been used as a single family dwelling and that the building works, which are the subject of this application were completed more than four years prior to the date of this application. Therefore the relevant period for consideration is 19 August 2018 to 19 August 2022. However, as the evidence submitted by the applicant also refers to the building works being undertaken over the period 2009 to 2012, the following discussion covers this longer period where necessary.

The applicant has submitted evidence, which is set out above and the case officer has gathered the following information, which will also be taken into consideration in the determination of this application;

- Information from previous planning applications;
- Information from STG Building Control Partnership;
- Information from pre-application enquiries;
- Google Earth images 2007 to 2022;
- 2009 and 2015 Aerial photographs;
- Site visit photographs and information; and
- Information from GBC Revenues.

Details of the proposed development

In a supporting statement, the applicant has set out that the building works, which are the subject of this application, comprise of the following;

- Paving of the drive to the front of the house and altering the alignment of the drive, garden walls either side of the drive and along the front of the house. Numbered 5 on drawing no. 06B;
- Store room, party enclosed BBQ area, side kitchen and dining area numbered 7 on drawing no. 04B;
- Cloakroom to south side of entrance hall numbered 2 on drawing no. 04B;
- Front entrance porch numbered 1 on drawing no. 04B;
- Enlarged utility area to north side of front entrance area numbered 3 on drawing no. 04B;
- Conversion of a garage to form part of the kitchen, removal of the former conservatory roof and enlargement of the kitchen, conversion of part of the garage to form an annex comprising a bedroom and bathroom, numbered 8 on drawing nos. 04B and 01A;

- Car port to north side of the house, numbered 4 on drawing no. 04B;
- Pool room comprising a lounge, indoor pool, gym, shower room, w.c. steam room, guest bedroom; bathroom and pump room numbered 6 on drawing no. 04B;
- Garage/store located to the east of the pool room numbered 9 on drawing no. 04B;
- Garage with small annex to the north-east of the garden numbered 10 on drawing no. 04B;
- First floor balcony on east side of house numbered 12 on drawing no. 04B; and
- Rear garden alterations comprising raised planters forming vegetable gardens and raised patio shown numbered 11 on drawing no. 06B and located to the south of the garage/annex number 10.

Although not specifically referred to in the supporting statement, the submitted drawings also illustrate front boundary walls and gates (numbered 13 on drawing nos. 06B and 07). As such, these works also form part of this application.

In relation to the use of the application property as a single family dwelling, the applicant has set out (in a supporting statement) that the house and the buildings within its garden are all used by the same family, that the annex within the rear garage building is not permanently occupied, that there are extensive periods when the garage annex is empty and when it is occupied, it is by family members only, who assist in the care of elderly parents.

Analysis of evidence provided by the applicant

The applicant has submitted three affidavits, two from occupiers of the application property and one from a person who has worked there. The applicant's affidavit sets out that the garage conversion was undertaken between 2009 and 2010 and that at the same time, a building was constructed and the two buildings were joined together. However it is not clear from the drawings exactly which buildings are being referred to.

The second occupier's affidavit (the applicant's daughter) states that she has occupied the application property since May 1998 and that a program of alterations to the house began in 2009 and were completed in 2012. It also states that there are three generations of the family in occupation at the application site.

The third affidavit is from a person who has worked at the property since 2016 and states that the works and alterations had been completed long before he attended the application site.

In addition, the applicant has submitted letters from two other persons who have visited the application site, which outline that works were completed between 2009 and 2011.

The applicant has submitted various photographs of the application site. The earliest show the dwelling on 02 March 2009, when works at the rear of the dwelling were ongoing but the front elevation appears to be untouched.

The applicant has submitted aerial photographs for 2011 (two versions), 2013-2015 and 2020. In the 2011 photograph, the roofs of the pool building, garage/store located to the east of it, the garage/annex located to the north east and the car port are all in place and ongoing works to the driveway and rear garden are visible. Due to the poor definition of the image it is not possible to determine if other works are ongoing or in place. In the 2013 photograph, the driveway alterations and works around the front porch appear to be completed. In the 2015 photograph, the raised beds in the rear garden are in place and in the 2020 photograph, the raised rear patio is in place.

Other photographs submitted by the applicant show that the garage/annex located in the north eastern corner of the application site is currently used for domestic storage and as a residential annex (with a bedroom/lounge/kitchen area and bathroom).

The applicant has submitted invoices/details (including kitchen fittings, steel supplies, blinds, glazing, tiling, painting etc) that illustrate various building/internal works at the application property over the months of February, June, July and August 2009, June, July, September to December 2010 and January to April 2011.

The applicant has also submitted details and plans of internal works to enlarge the kitchen and to convert part of the attached garage into a bedroom in early 2009.

Analysis of the evidence gathered by the case officer

A letter from STG Building Control Partnership shows works associated with three building regulations applications were completed in January 2012;

0266/10/IN - Enclosure of swimming pool including changing rooms.

5030/10/IN - Detached double garage.

5293/10/IN - Carport to side of house.

Two of these building regulations applications were referred to in pre-application letters from the Borough Council dated 11 November 2010 (5293/10/IN) and 22 November 2010 (5030/10/IN).

Planning application reference 19980561 relates to the retention of front boundary walls and entrance gates at the application site and was granted on 26 October 1998. Photographs from that application file illustrate that the existing front boundary walls are unchanged from that time and that the existing front gate is very similar to the one that was in place in 1998.

The file for planning application reference 20060719 contains photographs of the application site taken on 20 July 2009. These illustrate that works were occurring at the front and rear of the property, including around the front porch, to the front and rear of the attached garages, to a pathway directly in front of the dwelling and at ground and first floor level at the rear.

The delegated report for planning application 20090710 refers to 'extensive works being carried out on the site including landscaping and erection of low level walls'. A submitted drawing on this file shows a first floor rear balcony at the application property.

An aerial photograph taken in 2009, shows that building works were ongoing all around the application site and an aerial photograph taken in 2015, shows the roofs of the pool building, garage/store located to the east of it, the garage/annex located to the north east, the car port and the front elevation alterations and the front driveway/walls and the rear raised beds works are all in place.

The Google Earth images of the application site show that in 2007, the application property was significantly smaller and the plot overall contained much less built development. In 2011, the roofs of the pool building, garage/store located to the east of it and the car port are all visible and works to the driveway are ongoing. In 2013, the raised beds and patio at the rear are not in place but by 2015, the raised beds are and by 2018, the raised rear patio is also.

The case officer's site visit photographs show that the building works, which are the subject of this application, are all currently in place and are complete. At the site visit it was noted that the bedroom in the converted attached garage was occupied by elderly relatives.

Despite the application property having a residential annex in the detached garage, a bedroom occupied by elderly parents in the converted attached garage and a guest bedroom in the pool outbuilding, there is no evidence that this accommodation has ever been used separately to the rest of the application property. According to the information from GBC Revenues, the application site appears to have been used as a single family dwelling and has been occupied by the applicant's family since 1998.

The Dickens' Country Protection Society has queried the exact nature of the building works at the application site and is concerned regarding the extent of the application property in the Green Belt. However the planning merits of the case are not relevant to the determination of this LDC application and the additional plans and information submitted by the applicant have clarified the full extent of the building works, which are the subject of the application.

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 building works, which are the subject of this application, were substantially completed more than four years before the date of this application and that the application site has always been in use as a single family dwelling.

The Borough Council has no evidence to cast doubt over the applicant's contentions and indeed the information gathered by the case officer supports the applicant's version of events.

The Borough Council is therefore satisfied that the building works are exempt from enforcement action by reason of section 171B (1) of the Town and Country Planning Act 1990, as amended.

The development is therefore lawful by reason of section 191(2) 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:	Miss Faye Hobbs
Signed:		Signed:	
Dated:	08 February 2023	Dated:	10 February 2023