

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20230988
Location	Owlswood Cottage Priestwood Road Meopham Gravesend
Proposal:	Application for a Lawful Development Certificate in respect of the proposed erection of a single storey side extension and 2no. detached outbuildings for use as a summer house and workshop/gym.
Applicant:	C Mair
Site Visit	N/A Desktop Assessment

Plans & Documents

Application Form
 01 – Site Location Plan
 02 – Existing Block Plan
 03 – Existing Ground Floor and First Floor Plan
 04 – Existing Elevations
 05 – Existing Outbuildings Elevations
 06 – Proposed Block Plan
 07 – Proposed Ground Floor Plan
 08 – Proposed Elevations
 09 – Proposed Outbuilding and Shed

Material Consideration

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

Relevant Planning History

Reference	Description	Decision	Decision Date
20230989	Application for a Lawful Development Certificate in respect of the proposed two storey rear extension with installation of a window on the south elevation.	Pending Consideration	N/A
20220646	Demolition of existing bungalow and erection of a 3-bed bungalow.	Refused	11.08.2022
20060049	Construction of pitched roof over existing side extension with dormer window in proposed front roof slope; conversion of proposed roof space into a bedroom; erection of a conservatory at the rear and erection of a detached triple garage at the side.	Permitted	15.03.2006

Relevant Appeals

- Appeal Ref: APP/N1730/X/21/3278127 (Kneller V Hart District Council) – 2022 (Appendix A)
- Appeal Ref: APP/Y3615/X/3276664 (Lazenby V Guildford Borough Council) – 2022 (Appendix B)

Officer Assessment

Permitted Developments Rights Restrictions

Article 2 (3) Land (AONB, Conservation Area)	N
Article 4 Direction	N
Permitted Development Rights Removed/Restricted	Y

Planning approval 20060049 included the following conditions:

Condition 2: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 no windows, doors or other openings shall be formed at any time in the northern elevation of the extension hereby permitted.

Condition 3: The garage hereby permitted shall be used for the accommodation of a private motor car (or cars) for the occupants of Owlswood cottage as a private dwelling house and for no other purpose and no development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995, shall be carried out on the site in such a manner or in such a position as to preclude vehicular access into the garage.

The extension approved by this application appears to have never been completed. Only the garage was completed. As such, the restriction on permitted development rights as per the condition 2 of the approval would not apply.

Class A - The enlargement, improvement or other alteration of a dwellinghouse

A.1	Development is not permitted by Class A 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)	as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (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)	the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse	N
(d)	the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse	N
(e)	the enlarged part of the dwellinghouse would extend beyond a wall which – (i) forms the principal elevation of the original dwellinghouse; or (ii) fronts a highway and forms a side elevation of the original dwellinghouse	Y The proposed extension would front the principal elevation of the

		dwellinghouse, and form a side elevation fronting the highway.
(f)	subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and - (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height	N
(g)	for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and - (i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or (ii) exceed 4 metres in height;	N/A
(h)	the enlarged part of the dwellinghouse would have more than a single storey and – (i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or (ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse being enlarged which is opposite the rear wall of that dwellinghouse;	N
(i)	the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres	N
(j)	the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would – (i) exceed 4 metres in height, (ii) have more than a single storey, or (iii) have a width greater than half the width of the original dwelling; or	N
(ja)	any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j);	N/A No previous relevant enlargement
(k)	it would consist of or include – (i) the construction or provision of a verandah, balcony or raised platform, (ii) the installation, alteration or replacement of a microwave antenna, (iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or (iv) an alteration to any part of the roof of the dwellinghouse	N/A
(l)	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	N

A.2	In the case of a dwellinghouse on article 2(3) land, development is not permitted by Class A if –	Y/N
(a)	it would consist of or include the cladding of any part of the exterior of the dwellinghouse with stone, artificial stone, pebble dash, render, timber, plastic or tiles;	N/A
(b)	the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse; or	N/A
(c)	the enlarged part of the dwellinghouse would have more than a single storey and extend beyond the rear wall of the original dwellinghouse.	N/A
(d)	any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (b) and (c).	N/A
A.3	Development is permitted by Class A subject to the following conditions –	Y/N
(a)	the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;	Y
(b)	any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be – (i) obscure-glazed, and (ii) non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed; and	N/A
(c)	where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.	N/A

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	N

	curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);	
(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
(f)	The height of the eaves of the building would exceed 2.5 metres;	N
(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

The buildings undoubtedly comply with the listed limits and conditions of Class E, Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015. However, this would apply to incidental buildings only as explained in the pre-amble. The Technical Guidance for Permitted development rights for householders (2019) states the following:

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 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 proposed scheme would introduce 2 buildings in addition to the existing 6 which would create significant built form on a large portion of the residential garden space. The existing buildings include a garage, shed, greenhouse, and 3 other outbuildings of unknown use. The proposed scheme would add a summer house and an outbuilding containing; gym, workshop, storage room and wc/shower.

The area of the main dwellinghouse is approximately 89m². The proposed summer house would have a footprint of 57m² and the proposed outbuilding would have a footprint of 51m². Existing outbuilding 1 has a footprint of 27m². Outbuilding 2 has a footprint of 9m². The outbuilding 3 has a footprint of 36m². The shed has 4m². The Green House is 5m² and the existing garage is 55m².

In total the existing outbuildings have a cumulative footprint of 170m². The proposed outbuildings would increase the total footprint of the outbuildings to 278m². This would be over three times the footprint of the dwellinghouse as existing.

This assessment should carefully consider whether the development, which consists of a number of outbuildings of various sizes, is incidental to the main dwellinghouse.

Reference is made to 2 x appeal decisions when making this assessment which are included as appendices;

- Appeal Ref: APP/N1730/X/21/3278127 (Kneller V Hart District Council) - 2022
- Appeal Ref: APP/Y3615/X/3276664 (Lazenby V Guildford Borough Council) – 2022

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 outbuildings are incidental also relates to whether they are 'reasonably required' for the purposes of the use proposed use. In this case, five buildings are proposed. Given the large scale of the footprints and the numerous existing outbuildings on site, the outbuildings would not be reasonably sized for their uses as a purpose incidental to the enjoyment of this dwellinghouse.

In the *Lazenby V Guildford Borough Council* (2022) case, the Inspector considered the personal circumstances of the applicants to understand why such a large space for the home office would be necessary in that case. They also considered the scale, functional layout of the buildings and the necessity of circulation and storage space.

The inspector in that case also stated:

13. The space taken up by the home office goes to the overall size of the proposed outbuilding. It is settled case law that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E¹. Nevertheless, the Courts have held that the size of the outbuilding is a material consideration and indeed that, when the matter is looked at as a whole, size may be an important consideration.
14. In order to accommodate the home office as proposed, the outbuilding as a whole is larger than would be necessary to accommodate the purposes that are genuinely incidental to the enjoyment of the dwellinghouse as such (i.e the garage, the gym, the store and the WC). For that reason, I consider that the size of the outbuilding taken as a whole is not, as a matter of fact and degree, genuinely and reasonably required for purposes genuinely incidental to the enjoyment of the dwellinghouse as such.

In this case, the applicant has not provided any evidence to justify why such a large space summerhouse, gym, storage and wd/shower room would be required. The scale of the garden outbuildings individually would almost match the footprint of the dwellinghouse. Such as in the *Lazenby V Guildford Borough Council* case, there would be a significant level of storage space for which no explanation has been given. No explanation has been given either for the need for a gym room, where there are existing outbuildings which could accommodate this explaining why they are 'reasonably required', and thus incidental.

The *Kneller V Hart District Council* relates to an appeal which was dismissed for a Lawful Development Certificate for the erection of an outbuilding for Games Room/Gym and in that appeal the Inspector stated:

11. But nothing in that legal opinion, nor in Nova's covering letter, nor even in the second legal opinion dated 29 May 2021 submitted with the appeal explain why the occupier(s) of the house require such facilities in what is, in terms of floor area when compared to that of the house itself, a quite substantial building that would occupy a very large portion of the property's side garden.

In that case the inspector concluded that it had not been established by the appellant – on whom the burden squarely rests – that the leisure facilities contained in the proposed outbuildings were reasonably required for the occupiers of the house. In the case of this current lawful development certificate, no explanation has been given either for the need for a summerhouse and gym room, greater than the half the footprint of the main dwellinghouse.

It is also noted that recent planning application ref 20220646 (refused) was submitted for ‘Demolition of existing bungalow and erection of a 3-bed bungalow.’ In this application the applicant intended to remove all outbuildings and dwellinghouse and erect a new larger dwellinghouse with a detached garage. At no point during this application was it indicated that space was required for the substantial scale of facilities proposed here.

Conclusion

The proposed development fails to comply with the parameters set out in Schedule 2, Part 1, Classes A.1(e) of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. The eaves of the extension exceed the height of the eaves of the dwelling and exceed 3m within 2m of the boundary.

Based on the above assessment, insufficient evidence has been presented to establish that the proposed Gym outbuilding room and Summer House, based on the quantum of development proposed and the size of the outbuildings, would be reasonably required for purposes incidental to the enjoyment of the main dwellinghouse. The development is therefore not permitted under Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and planning permission is required.

Therefore, the application cannot be supported, a lawful development certificate is refused and planning permission is required.

Recommendation: Refuse Lawful Development Certificate

Case Officer:	Ms Lisa Williams	Team Leader:	Richard Hart
Signed:		Signed:	R Hart
Dated:	16th November 2023	Dated:	17 th November 2023