

Delegated Report

Application for Lawful Development Certificate (Existing)

Planning Application No: 20230592

Location: Land At Haydown Buckland Road Luddesdown Gravesend

Description: Application for a Lawful Development Certificate in respect of the continued use of a garden room under permitted development.

Applicant: Miss Zara Edeleanu

Site Visit Date: Desktop Assessment

Submitted Documents/Plans

Covering Letter
Location Plan
Land Registry Plan
Site Plan
Floor Plan and Elevations

Relevant Planning History

No relevant Planning History.

Material Consideration

- Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended);
- The Town and Country Planning act 1990 (as amended); and
- The Use Classes Order 1987.

This application is for a Lawful Development Certificate and not a full planning application. 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 proof and 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 (paragraphs 005 to 009).

Sections 191(2) and (3) of the Town and Country Planning Act 1990 (as amended) relates specifically to the determination of LDC applications and sets out what is considered to be lawful;

191(2) for the purposes of this Act uses and operations are lawful at any time if-

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then

if force.

191(3) for the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if-

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach or condition notice then in force.

References to Sections 171B(1)-(3) of the Town and Country Planning Act 1990 (as amended) sets out the time periods for taking enforcement action relating to different types of unauthorised development;

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach

Consultations, Publicity and Representations

Consultees

Luddesdown Parish Council: No response received.

Ward Councillors: No response received.

Dickens Country Protection Society:

The Society would wish to object to this application on the grounds that the site is in an area within which Green Belt Policies and the North Downs Area of Outstanding Natural Beauty where new building should only be permitted if they are essential in the interest of agriculture or forestry.

Neighbouring properties

3no. surrounding properties were consulted and 1 comment of objection was received from a member of the public. The objection is summarised as follows:

- The application is on a plot of land without a residence.
- The application is incomplete as it does not seek consent for permission to create both a tarmac driveway and a new access point.
- Approval would allow the subdivision of land and allow new buildings to be built on the land.

Officer note: The applicant has specifically advised in the cover letter that **the new access and drive do not form part of this application**. This is an outstanding enforcement matter which will be dealt with separately. Should a Lawful Development Certificate be granted, it would not include consent for the drive or access.

Officer's Analysis

Description of works

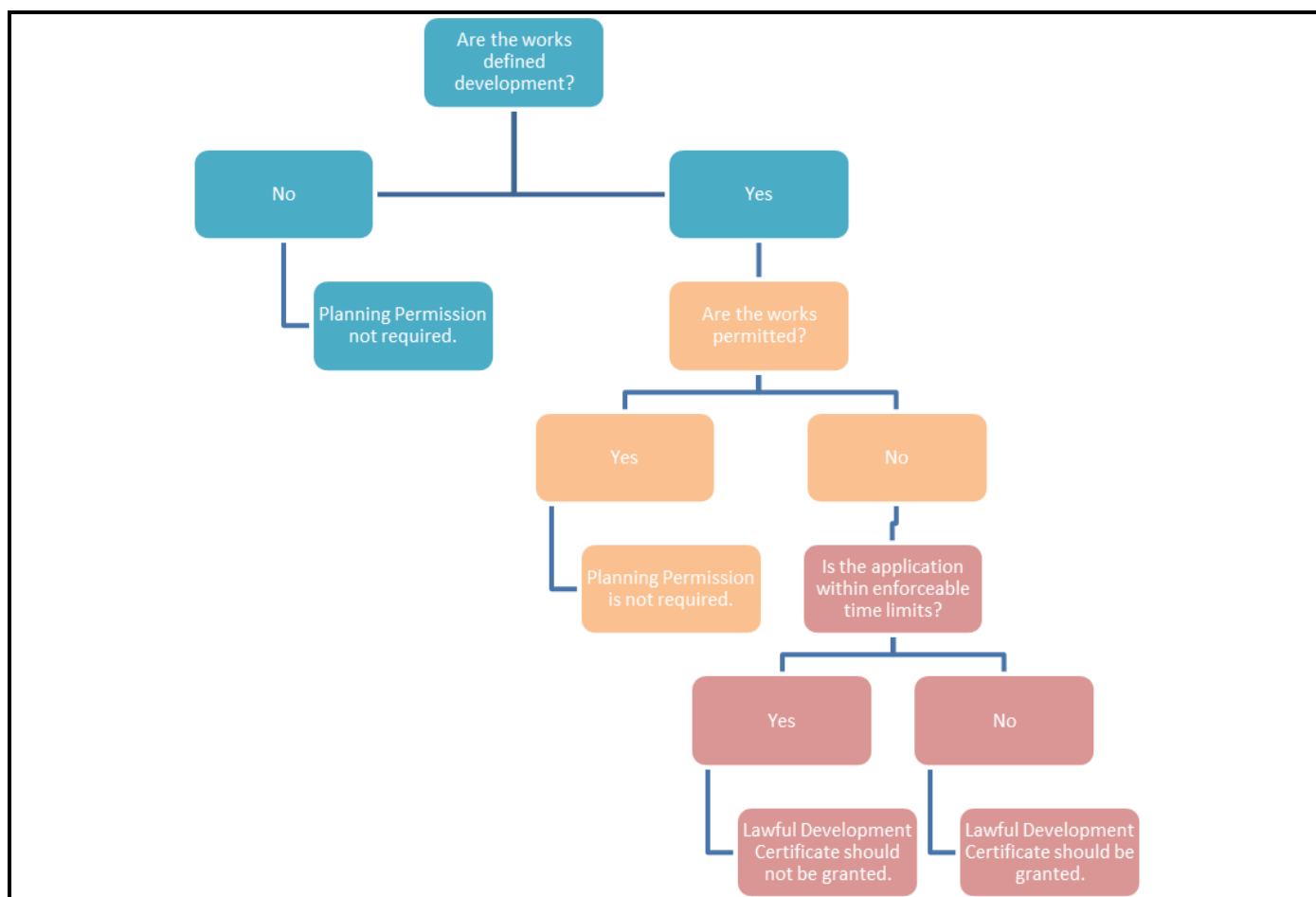
The site to which this application relates is a plot of land which previously formed part of the residential curtilage of Haydown (located to the South). In the Covering Letter the applicant advises that the southern portion of land which now forms the residential curtilage of Haydown to the South of the site was sold on 23rd March 2021. At this time, they state that the 'garden room' as described in this proposal was partially completed. By the Enforcement Teams visit on 15th July 2021, the works were complete, and the garden room was in use. The applicant submits that the garden room fell under permitted development rights when it was partially erected and so despite the later sub-division of the land, the development at the time was lawful.

Assessment

When considering whether existing works are lawful, three questions need to be answered in turn.

- Are the works defined as development in planning terms?
- Do the works comply with permitted development rights?
- Is the application within the enforceable time limits?

The below chart details the process of this assessment:



Defined Development

Section 55(1) of the Town and Country Planning Act 1990 (as amended), defined the meaning of development as follows:

;Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “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.;

Section 55 provides further clarification on what works constitute development. Section 55(1A) specifies that building operations include:

- 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

For the purposes of this application, it is considered that the erection of a building would fall under the definition of building operations and would therefore be defined development. It is also noted that the building is located on a platform on land which has a steep decline. So it appears in all likelihood that there would have been earthworks and level changes amounting to engineering works.

The images below taken by the enforcement Team show the building in situ and the high level from the road:





A second query arises with regard to the use of the building. At the time of partial erection it would likely have been considered a building incidental to the enjoyment of the dwellinghouse, which is specifically a use not considered to be development under Section 55(2) of the Act.

So at the point where the curtilage was altered to exclude the dwellinghouse, it is submitted that the use would have changed so as not to be incidental to the dwellinghouse, and so at this point it is the use of the building which also is considered development requiring clarification as to whether the change of use would be permitted.

Both the erection of the building, and engineering works in the first instance and then its later change of use, are considered development under building operations and a material change in use. The next stage of the assessment is to address whether this development is permitted or not.

Permitted Development Rights

Permitted Developments Rights Restrictions

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

As previously mentioned, this proposal involves two forms of development. First, the initial erection of the garden building, then the change of use of the land and building.

Erection of outbuilding

The outbuilding is 7.5m wide by 4m deep with an external flat roof height of 2.5m.

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);	Y
(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);	Y
(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;	Y
(d)	The building would have more than a single storey;	Y
(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;	Y
(f)	The height of the eaves of the building would exceed 2.5 metres;	Y
(g)	The building, enclosure, pool or container would be situated within the curtilage of a listed building;	Y
(h)	It would include the construction or provision of a verandah, balcony or raised platform;	Y
(i)	It relates to a dwelling or a microwave antenna; or	Y
(j)	The capacity of the container would exceed 3,500 litres	Y
(k)	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	Y

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 Building in excess of 20 metres from dwellinghouse and has a floor area of 30m²
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.	Y

The building as originally erected failed part E.2 of the above assessment and therefore would not have been permitted development.

However, it should be noted that the land on which this building sits is not in residential curtilage and so Class E, as above would not apply to this building in any case. There are no other permitted development rights which would allow such a structure on a non-residential plot such as this.

Change of Use

It has been ascertained that the structure when built did not comply with permitted development rights and so the development is considered unlawful on this basis alone.. For fullness and clarity, the change of use of the land and building will also be assessed. Given that the building by the applicant's own admission was not completed until after the southern part of the land was sold, it would appear that the building was not incidental to the main dwellinghouse at all. That being the case, **Class E as above could not be applied to the intended independent use of the land**, which now does not fall under the residential curtilage of the main dwellinghouse. The details provided in the associated enforcement case by the applicant indicate that the intention of separating the land, was to allow for occasional recreational use of the land and the building this application relates to would allow for maintenance of the land. No specific use class exists for such a use and so it would be considered Sui Generis. There are no permitted development rights which would allow for change of use of the building or indeed erection of a building falling under sui generis use not tied to a dwellinghouse such as this. As such planning consent is required for the specified use of the land and building.

Permitted developments do not apply to this development and so the next stage of the assessment is to assess whether the development is within the enforceable time limit.

Enforceable Time Limit

References to Sections 171B(1)-(3) of the Town and Country Planning Act 1990 (as amended) sets out the time periods for taking enforcement action relating to different types of unauthorised development;

- (1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
- (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
- (3) In the case of any other breach of planning control, no enforcement action may be taken after the

end of the period of ten years beginning with the date of the breach

Parts 1 and 3 would apply. Therefore, there is a time limit of four years to take enforcement action for the breach of planning control relating to the building operations. There is a time limit of ten years to take enforcement action for the breach planning control relating to a Material Change of Use not relating to use as a dwellinghouse. The applicant has advised that the house was sold, and the building partially completed on 23rd March 2021. This is approximately two years and five month from the current date. The development is therefore within the enforceable time limit.

Conclusion & Recommendation

The assessment has shown that the works constitute defined development, for which permitted development rights do not apply. The evidence also shows that the development took place within enforceable time limits. As such the Certificate of Lawful Development (Existing), should be Refused.

(For detailed conditions / reasons for refusal and informatives, see draft Decision)

Case Officer:	Ms Lisa Williams	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	11th August 2023	Dated:	11th August 2023