

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20250272
Location	The Red House, Wrangling Lane, Luddesdown, Gravesend, Kent, DA13 0XF
Proposal:	Application for an Existing Lawful Development Certificate for two existing outbuilding.
Applicant:	Mr Andy Wilson
Site Visit	18 April 2025

Plans & Documents

- Application Form – dated 21 March 2025;
- Supplementary Information – Site Photographs (1-4);
- Drawing no. OB/01 – Site Location and Existing Block Plans;
- Drawing no. OB/02 – Existing Plans and Elevations;
- Drawing no. OB/03 – Existing Plans and Elevations.

Site Description

The application property is a detached chalet style bungalow located within the Kent Downs National Landscape.

The site has a live planning application seeking to extend the dwelling, which is pending consideration. The site contains three outbuildings, a garage/store (pre-existing), a new kennel block and a new pump room. This application seeks to regularise the kennel and pump room outbuildings, which were constructed without planning consent:





Material Consideration

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

Relevant Planning History

Reference	Description	Decision
20240236	Erection of first floor extension to bungalow with pitch roof dormers to front, two storey front porch extension and single storey rear and side extensions with alterations to fenestration.	PENDING CONSIDERATION

Consultations, Publicity and Representations

This is an application for a Lawful Development Certificate that is considered on its facts and relevant planning law. As confirmed in national planning guidance, views expressed by third parties on the planning merits of such cases are irrelevant. Accordingly, unlike planning applications, there is no statutory requirement to undertake publicity or consultation.

Nevertheless, four third party representations have been received that raised the following concerns:

- Does not comply with permitted development
- Outbuildings 20m from the house should be no more the 10m² - does not comply
- External lighting impacting on wildlife
- Insufficient information
- Buildings erected without planning consent

- Inappropriate development in the Green Belt and North Downs National Landscape
- Impact on the openness of the Green Belt

As referenced previously, views expressed by third parties on the planning merits of applications seeking a Lawful Development Certificate are irrelevant. The Local Planning Authority will assess the proposal against the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Officer Assessment

Permitted Developments Rights Restrictions

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

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.

Class E(a) – Is the development incidental to the enjoyment of the dwellinghouse?

The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, requires outbuildings to be built for purposes incidental to the enjoyment of the house, which can include the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the house (*Class E.4 – Interpretation of Class E*).

In this case, the larger kennel block outbuilding contains 6no. bays and is capable of housing a number of dogs at any one time. Therefore, it is important to test if the outbuilding as use as kennels is incidental to the enjoyment of the dwellinghouse. No information has been provided to clarify the number of dogs being kept on the kennels, or whether they are kept for personal enjoyment, or other purposes.

Within Case Law, arbitrary figures to ascertain whether kennel outbuildings fall within the incidental criterion are not necessarily applicable to every case due to matters of fact and degree, and there is no 'rule of thumb' measure to apply to the numbers of animals housed to be incidental or not. However, in *Wallington v SSW & Montgomeryshire D.C. [1991] PL 942*, the Court held that activities such as the keeping of dogs in large numbers would amount to a material change of use if outside what would normally be expected within a dwellinghouse and its curtilage, from this case it may be deduced that the keeping of more than six dogs could be a material change of use. This approach is followed by *Stratford-on-Avon DC v Hitchman [2001]*, relating to an injunction sought by the Local Planning Authority requiring the number of dogs housed to be reduced from nine to six, where the Court required the defendant to enter a formal undertaking to allow the number of dogs to decrease to six through natural decline.

An Inspector applied Wallington to an appeal for an enforcement notice seeking to prevent the use of a terraced house as dog breeding establishment (APP/Q1445/C/13/2208935), stating that the number of dogs that might trigger a material change of use is a matter of fact and degree, which would differ from case to case and depend on factors such as the type and size of the dwellinghouse and curtilage in question. Following on the Inspector also considered the size of the dogs and the physical changes required to accommodate them

would need to be factored into the consideration. The Inspector considered that the breeding of six German Shepard dogs could not be reasonably incidental to the enjoyment of the dwellinghouse, which was a small mid-terraced house on an urban residential estate, irrespective of any change in character brought about by the comings and goings related to the business-related breeding activity.

In this case, the application site is a relatively generous plot within an isolated location. The site is adjoined by residential properties to the North, North-East and South, located approximately 66m, 73m and 35m (respectively) from the kennel block. The kennel block contains 6no. large bays for the housing of dogs. It is noted from the site visit that the dogs were a large breed (although the exact breed cannot be confirmed with certainty), due to the depth of barks heard by Officers. These factors are all applicable to the consideration of the building as being incidental, however the Local Planning Authority do not consider sufficient evidence has been provided to confirm accordance with Class E(a).

The onus is on the applicant to provide sufficient information/evidence to demonstrate that the use of development is lawful beyond any reasonable doubt. In this case, no information has been submitted in relation to the breeds or number of dogs kept on site or the purpose of keeping the dogs on the site, etc. which are relevant to the incidental criterion. Therefore, as a matter of fact and degree, the Local Planning Authority cannot determine with certainty that the use of the outbuilding would be incidental to the personal enjoyment of the dwellinghouse and are unable to confirm that the proposal satisfies Class E(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

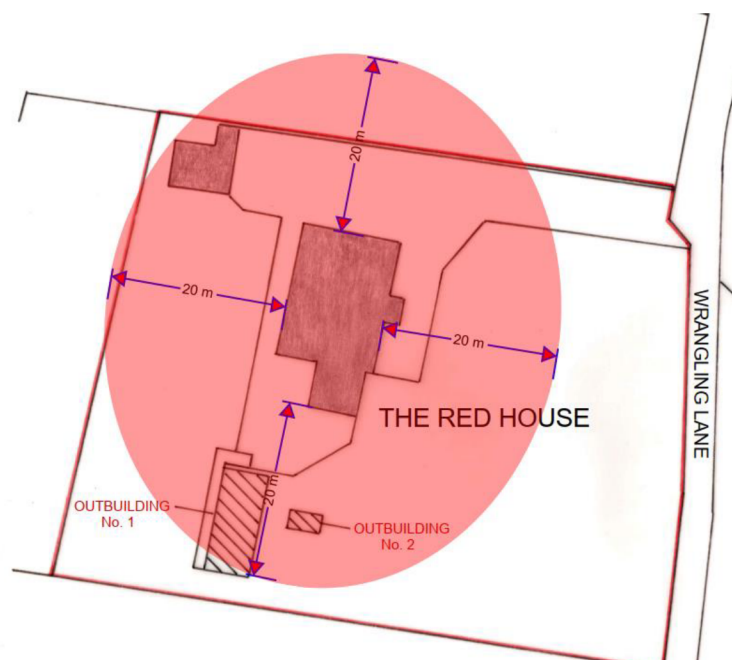
Development not permitted

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 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
(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 (3.65m / 2.5m) N/A N/A
(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/A
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 (see note below)
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

Note

The development meets the criteria of Class E.2 (see annotation below), with the ground covered by buildings being below 10m².

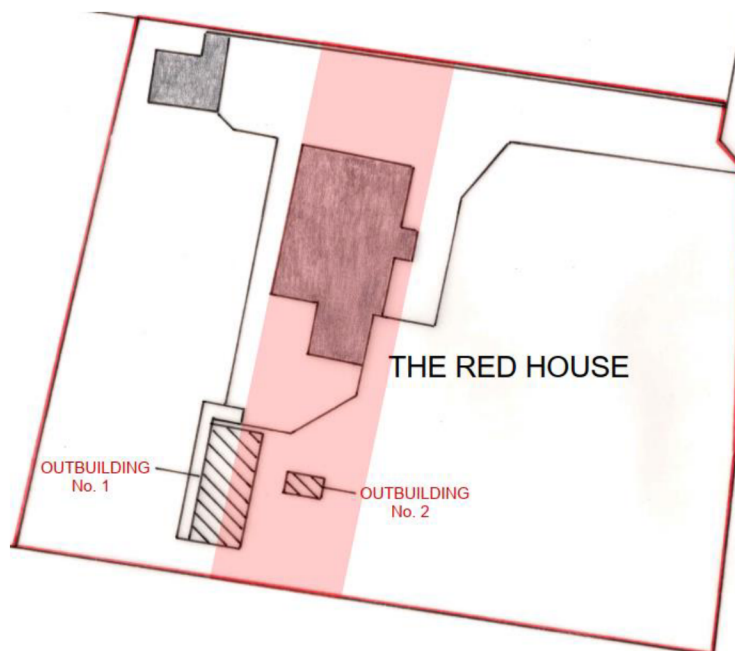


Assessment – Development not permitted

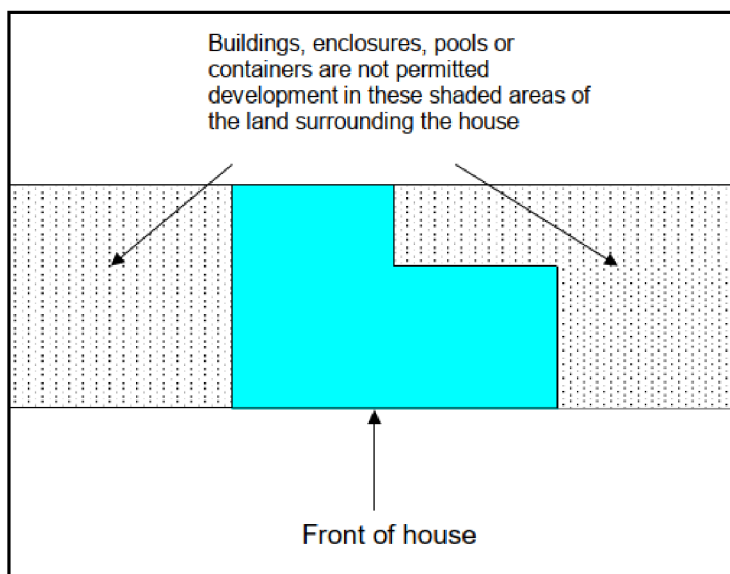
The outbuildings as constructed fail to comply with Class E.3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, by virtue of being constructed on land between

the side elevation of the dwellinghouse and boundary of the curtilage. The rule applies to properties which fall within a National Landscape as is the case here.

As demonstrated in the screenshot below, the small pump room outbuilding and approximately half (43%) of the kennel block are within land between the side elevation of the dwelling and the boundary of the curtilage, which is not permitted development within Article 2(3) land (National Landscape designation).



This is confirmed within the 'Permitted Development Rights for Householders - Technical Guidance' (Ministry of Housing, Communities & Local Government) excerpt below:



Conclusion

The outbuildings fails to comply with the parameters set out in Schedule 2, Part 1, Class E.3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, by virtue of constructing the outbuildings between the side wall of the dwelling and the boundary of the curtilage.

The application has been supported by insufficient information for the Local Planning Authority to determine with certainty that the use of the kennel outbuilding would be incidental to the personal enjoyment of the dwellinghouse. Therefore, it cannot be confirmed that the proposal satisfies Class E(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

Recommendation: <u>Refuse</u> Lawful Development Certificate			
Case Officer:	Mr Ethan Bonthron	Team Leader:	Mrs Faye Walsh
Signed:		Signed:	
Dated:	16 th May 2025	Dated:	16 May 2025