

Delegated Report

Lawful Development Certificate (Proposed)

Application no:	20250350
Location	Tawahi Telegraph Hill Higham Rochester
Proposal:	Application for a Proposed Lawful Development Certificate for the erection of a two storey rear extension, front porch, garage, workshop, a summerhouse and gym.
Applicant:	Mr Nav Singh
Site Visit	N/A Desktop Assessment

Plans & Documents

Application Form
L1 – Location Plan
100 – Ex Block Plan
101 – Ex Ground Floor Plan
102 – Ex First Floor Plan
103 – Ex Roof Plan
104 – Ex Elevations
105 – Ex Elevations
200 – Proposed Block Plan
201 – Proposed Site Plan
202 – Proposed Ground Floor Plan
203 – Proposed First Floor Plan
204 – Proposed Roof Plan
205 – Proposed Elevations
206 – Proposed Elevations
207 – Proposed Garage and Summer House
208 – Proposed Gym
209 – Proposed Workshop
Planning Statement

Property Type

The property comprises a two-storey, semi-detached dwellinghouse, located in a rural area.

Material Consideration

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

Relevant Planning History

Reference	Description	Decision	Decision Date
20231232	Erection of a double storey front and rear extension with alterations to fenestration which includes 3 Juliette balconies. Erection of a single storey side extension and conversion of garage with 2 roof light. Conversion of loft area to habitable space with 2 dormer windows, 6 rooflights and a sky lantern.	Refused	07.02.2024
20230682	Erection of a double storey front and rear extension, conversion of loft space, to include two dormers, conversion of garage, to include a new roof. Erection of an outbuilding for car parking, storage and office space, and changes to fenestration.	Refused	15.08.2023

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	N

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 G, M, MA, 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 5m high
(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	N

(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/A It is a two-storey extension
(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 It is a two-storey extension
(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) 3m depth (ii) 11.5m from rear wall
(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 Not within 2 metres of boundary curtilage.
(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 Extends beyond side elevations but not <i>original</i> side elevations
(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
(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	(i)N (ii)N (iii)Y – See Class G (iv) N
(l)	the dwellinghouse is built under Part 20 of this Schedule (construction of	N

	new dwellinghouses)	
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 D - The erection or construction of a porch outside any external door of a dwellinghouse.

D.1	Development is not permitted by Class D if -	Y/N
(a)	permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use)	N
(b)	The ground area (measured externally) of the structure would exceed 3 square metres	N 3m ²
(c)	Any part of the structure would be more than 3 metres above ground level; or	N 3m
(d)	Any part of the structure would be within 2 metres of any boundary of the curtilage of the dwellinghouse with a highway; or	N

(e)	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	N
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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 G, M, MA, 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 Garage – 4m Workshop – 2.5m Gym – 2.5m Summerhouse – 2.5m
(f)	The height of the eaves of the building would exceed 2.5 metres;	N Garage – 2.5m Workshop – 2.5m Gym – 2.5m Summerhouse – 2.5m
(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
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

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-ambble. The Technical Guidance for Permitted development rights for householders (2019) states the following:

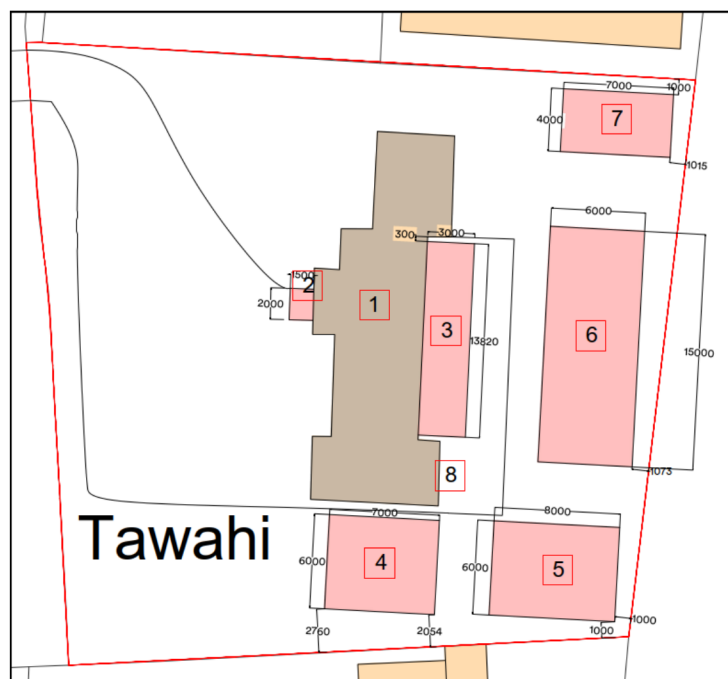
Class E sets out the rules on permitted development for buildings etc within the curtilage of a house (see page 7). Buildings which are attached to the house are not permitted under Class E (they would be subject to the rules in Class A). Buildings under Class E should be built for purposes incidental 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 be 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 4 buildings, which would create significant built form on a large portion of the residential garden space. The buildings would include a gym (90m²), a summer house (28m²), a workshop (48m²) and a garage (42m²).

The image below shows the proposed site plan (Not to Scale) for context:



This plan also includes a breakdown of the footprint area's existing and proposed shown below:

Permitted Development			
Schedule of accommodation			
Site area = 1462.2 sq m			
No	Description	Footprint Area (sq m)	Height
1	Ex House	116.00	Two storey
2	Porch	3.00	Single storey
3	House rear extension	41.46	Two storey
4	Garage	42.00	Single storey
5	Workshop	48.00	Single storey
6	Gym	90.00	Single storey
7	Summer House	28.00	Single storey

As shown, the existing dwellinghouse has an external footprint of 116m². The proposed outbuildings would have a cumulative footprint of 208m². The footprint of the outbuildings would have a footprint which would be 94.5% greater than that of the dwellinghouse.

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, four buildings are proposed. The summerhouse would be reasonably sized for the proposed use as a purpose incidental to the enjoyment of this dwellinghouse.

However, the proposed gym, workshop and garage buildings given their proposed use and respective scales are more complicated of an assessment.

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 E1¹. 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 for a gym, workshop and additional garage would be required. All of these buildings would have exceptionally large footprints which would compete against the footprint of the dwellinghouse. The games room in particular would extend along almost the entire width of the existing dwellinghouse and would have a similar depth. There is existing garaging space, and the proposed garage would be in addition to the existing space, creating 2 garages on the site, with enough spaces for 3 cars, in addition to the large drive which would be retained. This is a significant amount of parking for 4 bedroom dwellinghouse. However, it is noted that garaging spaces are often used flexibly, for other incidental uses, such as storage or workshop. If this is the case and the existing garage is not being used for parking of vehicles, it raised the query as to why some of these other building such as the games room or workshop would be additionally required, where the existing garage could be utilised for this purpose.

Such as in the *Lazenby V Guildford Borough Council* case, there would be a significant level of circulation space for which no explanation has been given. No explanation has been given either for the need for a gym room, larger than the kitchen, dining and living room together, 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 gym room, summerhouse, workshop and significant garaging facilities, of exceptional scale as has been proposed.

It is also noted that recent planning application ref 20231232 (refused) was submitted for *'Erection of a double storey front and rear extension with alterations to fenestration which includes 3 Juliette balconies. Erection of a single storey side extension and conversion of garage with 2 roof light. Conversion of loft area to habitable space with 2 dormer windows, 6 rooflights and a sky lantern.'*

In this application it was not indicated that space was required for the substantial scale/type of facilities proposed here.

Class G – chimneys, flues etc on a dwellinghouse

The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse.

G.1	Development is not permitted by Class G if –	G.1
(a)	Permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use)	N
(b)	The height of the chimney, flue or soil and vent pipe would exceed the highest part of the roof by 1 metre or more; or	N
(c)	In the case of a dwellinghouse on article 2(3) land, the chimney, flue or soil and vent pipe would be installed on a wall or roof slope which (i) fronts a highway, and (ii) forms either the principal elevation or a side elevation of the dwellinghouse.	N
(d)	the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)	N

The removal of chimneys, would not be considered 'development' and would comply with the requirements of Class G in any case.

Conclusion

The proposed extensions and alterations under Classes A, D and G fall within the parameters of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

However in relation to Class E, based on the above assessment, insufficient evidence has been presented to establish that the proposed Gym and Workshop, Summerhouse and Garage, 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.

Recommendation: <u>Refuse</u> Lawful Development Certificate

Case Officer:	Mrs Lisa Fisher	Team Leader:	Mrs Faye Walsh
Signed:		Signed:	
Dated:	28th May 2025	Dated:	28 May 2025