
Site Address:	54 Stakes Road, Waterloooville, PO7 5NT		
Proposal:	Application for Certificate of Lawfulness relating to proposed extension to existing annex.		
Application No:	APP/21/01132	Expiry Date:	25/11/2021
Applicant:	Mr Garland		
Agent:	Mr P Bennett	Case Officer:	Julie Terzoudis
	Kalotec Limited		
Ward:	Purbrook		

Recommendation: **REFUSE A CERTIFICATE OF LAWFUL USE**

1 Site Description

- 1.1 The subject site relates to a detached bungalow located at 54 Stakes Road within the neighbourhood of Waterloooville. The property is undergoing significant renovation and comprises interlocking concrete tiles, and white render and weatherboard on the walls.
- 1.2 The site is level with an east/west decline in the road. Open vehicular access is set to the front leading to a shingled parking area forward of the dwelling, enclosed by a 1m high wall to the front boundary.
- 1.3 Two outbuildings are set within the rear garden, one of which is the subject of this application. The western rear boundary is treated with shrubs and a 1m high fence, with shrubs and a low hedge rising to a height of 2m along the eastern boundary.
- 1.4 Detached bungalows are set to the east and west of the site, a detached chalet style property is located opposite and a wooded copse is set to the rear. The area is of medium density with detached and semi-detached bungalows, chalet style dwellings, and two storey properties of similar and different age, style and design.

2 Planning History

APP/18/01179 - Remodelling of property to include rear extension, with new raised roof structure to entire dwelling to provide first floor accommodation, new render and weatherboarding; erection of detached double garage. (28.01.19). Request to discharge condition No2. (14.03.19)., PERM,28/01/2019

3 Proposal

Application for Certificate of Lawfulness relating to proposed extension to existing annex. The application refers to an outbuilding set approximately 11m from the rear elevation of the main dwelling.

4 Policy Considerations

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

5 Statutory and Non Statutory Consultations

No statutory or non-statutory consultees for this application.

6 Community Involvement

This application type does not require publication.

7 Planning Considerations

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

(i) Principle of development

7.2 The proposal would be assessed against the 'Permitted Development' allowances in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 1, Class E – the following assessment has been made.

7.3 The proposed development is to extend an annexe outbuilding situated within the curtilage of 54 Stakes Close, Waterlooville (the Annexe). Drawing number KALO-0201-101 enclosed with the application shows that the existing ground floor layout of the Annex includes a bedroom, shower room, and kitchen/living area.

7.4 The following assesses if the proposed development can benefit from a general planning permission granted by Class E Part 1 Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 SI 2015/596 (Class E).

Class E reads as follows:

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** [emphasis added]*

The question arises as to whether the Annexe is required for a purpose incidental to the enjoyment of the dwellinghouse.

Case Law

Two principals have emerged in the case law. First, that something which is “incidental” cannot itself be a dwellinghouse; nor, therefore, can it be something for the provision of a primary dwelling-house purpose, such as a bedroom or kitchen. In an appeal decision reported at [1987] J.P.L. 144, the Secretary of State rejected the argument that a granny annex which was separate from the dwelling would fall within this Class.

The Annex consists of a bedroom, shower and kitchen and therefore is something for the provision of a primary dwelling house purpose. It therefore follows that the building

or alteration of such a building is not incidental to enjoyment of the dwellinghouse.

Technical Guidance

The relevant section in the 'Permitted development rights for householders Technical Guidance' (the Guidance) states:

"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." [emphasis added]

The Guidance is consistent with the Case Law in the interpretation of Class E namely that the use of the building for primary living accommodation is not incidental to the enjoyment of the dwelling-house.

The proposed development does not fall within Class E.

8 Conclusion

- 8.1 There is sufficient evidence to demonstrate that the proposed development does not constitute permitted development as set out in Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) and it is therefore concluded that the extension would require an application for planning permission. Therefore, a Lawful Development Certificate **cannot** be issued.

9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE A CERTIFICATE OF LAWFUL USE** for application APP/21/01132, for the following reasons:

FIRST SCHEDULE:

This certificate relates to the following development:
Application for Certificate of Lawfulness relating to proposed extension to existing

annex. as described in the written particulars, plans and other documents submitted with your application received on 30 September 2021.

SECOND SCHEDULE:

This certificate relates to land at 54 Stakes Road, Waterloooville, PO7 5NT as shown edged red on the submitted Location Plan received 30 September 2021.

OTHER IMPORTANT INFORMATION:

- (1) This Certificate is issued solely for the purpose of Sections 192 of the Town and Country Planning Act 1990 (as amended). It does not relate to any other application that may be required under any other part of the Town and Country Planning Act, the Building Regulations or under any other Act, Regulation, Byelaw or Order where the Council's approval may be needed. For further guidance as to the need for consent under the Building Regulations please phone 023 9244 6571.
 - (2) It certifies that the development specified in the First Schedule taking place on land described in the Second Schedule would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) on the specified date and thus would not have been liable to enforcement action under part 7 of the 1990 Act on that date.
 - (3) The certificate only applies to the extent of the development specified in the First Schedule taking place on land described in the Second Schedule and identified on the attached plan. Any development which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action under section 172 of the 1990 Act.
 - (4) The effect of the certificate is also qualified by the provision in section 192(4) of the 1990 Act (as amended), which states that the lawfulness of a described use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matter relevant to determining such lawfulness.
 - (5) Your attention is drawn to the attached information regarding your right to appeal to the Department for Transport Local Government and the Regions, if you are aggrieved by the Council's decision.
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- 1 There is sufficient evidence to show that the proposed development does not constitute permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). This is because the existing development to be extended is not considered incidental to the enjoyment of the dwellinghouse as required by Class E and does not satisfy the Interpretation of Class E (E4) of the Technical Guidance 2019. The proposed development is not considered lawful and as such planning permission from the Local Planning Authority is required. Therefore, a Lawful Development Certificate cannot be issued.