

APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR PROPOSED USE OR DEVELOPMENT

APPLICATION REFERENCE:	PL/2026/02641
APPLICATION TYPE:	Lawful development: Proposed use
SITE ADDRESS:	Daisyfield Cottage, 38, Latton, Swindon, SN6 6DS
DEVELOPMENT DESCRIPTION:	Proposed Ancillary Building
RECOMMENDATION:	Refuse

PROPOSAL

This application seeks a Certificate of Lawfulness (CLP) under Section 192 of the Town and Country Planning Act 1990 (as amended) for a proposed ancillary building.

The planning merits of the proposal are not under consideration. The only issue is whether the proposed works constitute "permitted development" (PD) under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) [hereafter referred to as "the GPDO"].

RELEVANT LEGISLATION AND POLICY

The statutory framework governing CLP's is set out in Section 192 of the Town and Country Planning Act 1990 (as amended). This section establishes that a proposed development or use is "lawful" if it would not constitute a breach of planning control. A CLP can be granted if the Local Planning Authority is satisfied, on the balance of probabilities, that the proposed development or use would not require planning permission.

The application has been assessed against the relevant criteria set out in Schedule 2, Part 1, Class E and G of the GPDO 2015 (as amended).

REPRESENTATIONS

There is no legal obligation to consult third parties, including Town/Parish Councils or neighbouring properties, for this type of application.

RELEVANT SITE HISTORY

The site has the following relevant planning history:

Proposal / Summary
N/05/02270/FUL - Full planning permission Decision - Approve with Conditions Date: 8/11/2005 – Erection of Single Storey Rear Extension, Front and Rear Porch, Dormer Windows, Rooflights and Solar Panels
PL/2025/08212 - Householder planning permission Decision - Approve with Conditions Date: 30/1/2026 – Replacement Two Storey Rear Extension and Home Office

PL/2025/08257 - Householder planning permission Decision - Refuse Date: 30/1/2026 – Demolition of Garage and Erect a Gym/Games Room/Annexe and replacement Outbuilding Storage

PL/2026/03148 - Replacement Store – under consideration

ASSESSMENT AND CONCLUSION

Daisyfield Cottage is a semi-detached, two storey dwelling located within the small village of Latton. The property has been extended to the rear and there are outbuildings to the north of the site. The property is not Listed, nor is it located within Article 2/3 Land or subject to an Article 4 Direction. The planning history indicates that permitted development rights remain intact on the property.

There is an extant permission reference PL/2025/08212 for a two-storey rear extension and home office. The most recent application reference PL/2025/08257 for the Demolition of Garage and Erect a Gym/Games Room/Annexe and replacement Outbuilding Storage was refused. A separate Lawful Development Certificate application reference PL/2026/ 3148 for a replacement store is currently also under consideration.

The proposal seeks to utilise permitted development rights under Part 1 Class E and G of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) via the erection of an ‘ancillary building’ to the rear of the property. The overall building would be dual pitched with a protruding open fronted porch entrance and double casement windows set beneath a pitched canopy roof and bi-fold doors to the rear. The proposal also includes an external flue.

The building would measure approximately 6.0 metres in width and approximately 9.59 metres in length. The building would have an overall height of approximately 4.0 metres and an eaves height of approximately 2.5 metres. The site plan indicates that the building would be located approximately 2.5 metres from the curtilage boundary of the dwellinghouse.

The accommodation shown within the building on the proposed floor plan includes a bedroom, en-suite bathroom, seating area and log burner with flue, together with a gym/games room area.

The physical dimensions and location of the proposed building would accord with the relevant permitted development limitations and conditions. However, the key issue is whether the building is required for a purpose incidental to the enjoyment of the dwellinghouse.

The interpretation of Class E is set out in paragraph E.4, which explains that a “purpose incidental to the enjoyment of the dwellinghouse” can include activities such as keeping poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants. The Permitted Development Rights for Householders Technical Guidance (MHCLG, 2019) provides further clarification, noting that incidental buildings may include structures such as garden sheds, storage buildings, garages and decking. The guidance further indicates that incidental use does not extend to functions that amount to

primary residential accommodation, such as bedrooms, bathrooms or kitchens. This interpretation has also been reflected in appeal decisions where Inspectors have found that Class E permits buildings genuinely required for incidental domestic purposes, but not those containing accommodation facilitating residential occupation.

In this case, whilst part of the building would be used as a gym/games room, the proposed outbuilding also incorporates a bedroom, en-suite bathroom and seating area served by a log burner. These facilities would enable day-to-day residential activities, including sleeping, washing and living, which are functions ordinarily undertaken as part of residential occupation of a dwellinghouse. Whilst the proposed building would remain physically separate from the main dwellinghouse, the provision of such facilities would facilitate residential occupation and go beyond a use that is merely incidental to the enjoyment of the dwellinghouse.

The distinction between incidental and ancillary accommodation has been established through case law. In *Emin v Secretary of State for the Environment and Mid Sussex District Council* [1989], it was recognised that a use may be ancillary to a dwellinghouse without necessarily being incidental to the enjoyment of that dwellinghouse. Ancillary accommodation comprises living accommodation that remains subordinate to the main dwelling but nevertheless forms part of the residential use of the property. This principle has subsequently been applied in appeal decisions relating to Class E outbuildings. In appeal APP/N0410/X/20/3259488, the Inspector considered whether a proposed outbuilding fell within the scope of Class E and distinguished between incidental domestic uses such as a studio, office, gym and storage, and accommodation that would amount to residential occupation. The Inspector concluded that the assessment must focus on whether the building would remain genuinely incidental to the enjoyment of the dwellinghouse.

Similarly, in appeal APP/P1805/X/18/3202923, the Inspector emphasised that the lawfulness of an outbuilding under Class E is determined not simply by its physical form or compliance with dimensional limitations, but by its intended function and whether that function is genuinely incidental to the enjoyment of the dwellinghouse.

Having regard to the presence of the bedroom, bathroom and living area, it is considered that the proposed building would provide ancillary residential accommodation associated with the dwellinghouse rather than accommodation required for a purpose incidental to the enjoyment of it. The proposed gym/games room would not alter that overall conclusion, as the inclusion of facilities enabling sleeping, washing and day-to-day occupation would result in the building functioning as ancillary residential accommodation. Consequently, the proposal would fail to meet the requirements of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and would not constitute permitted development.

In addition, an external flue is proposed on the outbuilding. Schedule 2, Part 1, Class G of the GPDO permits the installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse. In this instance, the proposed flue would be installed on an outbuilding rather than on the dwellinghouse itself. As Class G applies only to a dwellinghouse and contains no equivalent provision permitting the installation of a flue on an outbuilding, this element of the proposal would also fall outside the scope of permitted development.

Having completed the detailed assessment checklist at Appendix 1 and 2, and based on the submitted plans, supporting information, and a review of relevant constraints (including planning history, Article 4 Directions, and any planning conditions), it is concluded that:

The proposed development does not fall within the scope of permitted development, as it fails to meet one or more of the limitations or conditions set out within the relevant classes of the GPDO.

The proposed development is not considered lawful under Section 192 of the Town and Country Planning Act 1990 (as amended).

RECOMMENDATION

It is recommended that the Certificate of Lawfulness for Proposed Development be REFUSED for the following reasons:

Reasons for refusal:

The proposed outbuilding incorporates primary living accommodation, as such the building would not serve a purpose that is incidental to the enjoyment of the dwellinghouse and would not be permitted development under Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

Class G, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended does not include provision for the installation of a flue on an outbuilding. The proposal would therefore not be permitted development.

APPENDIX 1 –

Checklist for Householder permitted development under Parts 1, 2 or 14 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)

If yes is answered to any of the below questions, then planning permission will be required for the proposal. If not, then proceed to complete the relevant checklist(s) at Appendix 2, 3 and 4.

Constraint		Notes
Is there an Article 4 Direction removing PD rights for a class within which the proposal falls?	No	

Constraint		Notes
Is there a condition removing PD rights for a class within which the proposal falls?	NO	
For the purposes of Part 1, is the property a flat or maisonette?	NO	Flats do not benefit from Part 1 PD rights

APPENDIX 2 –

Checklist for Householder permitted development under Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended)

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.		(a) No (b) N/A
If yes answer questions below, if no skip to Class F		
Criteria (E.1) – Development is not permitted if:		
	Is the development within curtilage and incidental to enjoyment of dwellinghouse?	No building contains primary living accommodation which would not to be incidental
(a)	Was the permission to use the dwellinghouse granted Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule?	NO
(b)	Would more than 50% of the curtilage be covered (excluding the original dwellinghouse)?	NO
(c)	Would any part of it be situated on land forward of a wall forming the principal elevation of the original dwellinghouse?	NO
(d)	Would the building have more than one storey?	NO
(e)	Would the height exceed 4m (dual-pitched roof), 2.5m (within 2m of the boundary) or 3m in any other case?	NO
(f)	Would the eaves exceed 2.5m height?	NO
(g)	Is it within the curtilage of a listed building?	NO
(h)	Would it include the construction or provision of a veranda, balcony or raised platform?	NO
(i)	Would it relate to a dwellinghouse or a microwave antenna	NO
(j)	Would the capacity of the container exceed 3,500 litres?	N/A
(k)	Was the dwellinghouse built under Part 20 of this Schedule?	NO

Criteria (E.2) – Development is not permitted if:		Yes/No
	If the dwellinghouse is within a National Landscape or World Heritage Site, would the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse exceed 10 square metres?	N/A

Criteria (E.3) – Development is not permitted if:		Yes/No
	If the dwellinghouse is within a National Landscape or World Heritage Site, would the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse exceed 10 square metres?	N/A

Class G – The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse		The flue is not proposed to be installed on a dwellinghouse. There is no provision within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) that permits the installation of a flue on an outbuilding
If yes answer questions below, if no skip to Class H		
Criteria (G.1) – Development is not permitted if:		
(a)	Was the permission to use the dwellinghouse granted Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule?	N/A
(b)	Would the height of the chimney, flue or soil and vent pipe exceed the highest part of the roof by 1 metre or more?	N/A

Class G – The installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse		The flue is not proposed to be installed on a dwellinghouse. There is no provision within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) that permits the installation of a flue on an outbuilding
If yes answer questions below, if no skip to Class H		
Criteria (G.1) – Development is not permitted if:		
(c)	In the case of a dwellinghouse on article 2(3) land, would the chimney, flue or soil and vent pipe be installed on a wall or roof slope which fronts a highway, and forms either the principal elevation or a side elevation of the dwellinghouse?	N/A
(d)	Was the dwellinghouse built under Part 20 of this Schedule?	N/A