

BRETT INCORPORATED

PLANNING AND DEVELOPMENT SERVICES

LIMITED



14 October 2026

Our Ref.: 1844.2

Dear Planning Admin,

Application for a Certificate of Lawfulness for Proposed Use or Development (CLPUD) at Henley Grange (formerly New Place) Chapel Road, Bolney RH17 5QY

I enclose herewith an application that seeks formal confirmation the incidental building shown on the attached drawing 1844.3/01 comprises permitted development (PD) under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

This is a resubmission with additional information in an attempt to satisfy the Council the building is PD, rather than pursuing what is likely to be a time-consuming appeal to address the grounds for refusal relating to DM/26/1568. For the avoidance of doubt, the application process is not subject to the new procedures for applications introduced on 01 April 2026.

The essence of the DM/26/1568 refusal reason is that the application failed to provide sufficient information to adequately define the proposed development as lawful permitted development. The Delegated Report sheds light on the matter and highlights that *“no internal layout is shown, and insufficient information has been provided regarding the design and configuration of the*

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building. The plans do not adequately identify the arrangement of rooms or facilities, nor do they establish the final form of the development for which certification is sought. Whilst the supporting statement refers to incidental uses such as a gym, workshop and summerhouse, these are provided as examples only and the submitted drawings indicate that significant details of the proposal remain to be determined.”

It is considered the officers misdirected themselves as to the proper construction of the law because matters surrounding the design and configuration of the building or the arrangement of rooms or facilities or the final form of the development for which certification is sought are not controlled by these particular PD rights. Furthermore, the supporting statement for the application did not give examples of intended use but confirmed the building “will be used for purposes incidental to the main house as a gym/workshop/summerhouse etc. as per E.” In this respect, Class E PD rights relate specifically to “buildings etc incidental to the enjoyment of a dwellinghouse.” Overall, it is considered the Council would not have been able to substantiate the refusal and could well have been vulnerable to a costs award for unreasonable behaviour had the refusal been appealed.

Nevertheless and notwithstanding the above, to be helpful, additional information is submitted with this latest application addressing the matters considered deficient from the previous application, albeit that they are not required by these particular permitted development rights.

The Law

Class E of Part 1 of Schedule 2 of the September 2026 consolidated version of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) states:

1. **Class E – buildings etc incidental to the enjoyment of a dwellinghouse**

Permitted development

E. The provision within the curtilage of the dwellinghouse of—

1. (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
2. (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

Development not permitted

E.1 Development is not permitted by Class E if—

- (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);
- (b) the total area of ground covered by buildings, 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);
- (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;
- (d) the building would have more than a single storey;
- (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 the dwellinghouse, or
 - (iii) 3 metres in any other case;
- (f) the height of the eaves of the building would exceed 2.5 metres;
- (g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;
- (h) it would include the construction or provision of a verandah, balcony or raised platform;
- (i) it relates to a dwelling or a microwave antenna; or
- (j) the capacity of the container would exceed 3,500 litres.; or
- (k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).

E.2 In the case of any land within the curtilage of the dwellinghouse which is within—

- (a) an area of outstanding natural beauty;
- (b) the Broads;
- (c) a National Park; or
- (d) a World Heritage Site,

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.

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.

Interpretation of Class E

E.4 For the purposes of Class E, “purpose incidental to the enjoyment of the dwellinghouse as such” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

There is various case law of relevance to this application, particularly in the context of the Council’s claims, which suggests there is doubt that gym/workshop/summerhouse use is not incidental to the use of the main dwellinghouse on the property and not captured by these incidental PD rights.

In *Emin v SoS for the Environment* 1989, it was held that whilst it is a matter primarily for the occupier to determine what incidental purposes to enjoy, an objective test of reasonableness should be applied having regard to the circumstances of a particular case. The sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities. When a matter is looked at as a whole, size may be an important consideration but not by itself conclusive.

The landmark case of *Peché d’Or Investments v SoS for the Environment* 1996 held that related matters must be judged on a fact and degree basis and that activities integral to ordinary residential accommodation constitute a ‘primary residential use’ that cannot be considered ‘incidental’.

Incidental use is a subordinate, secondary activity that serves the enjoyment of the primary use but is ‘parasitic’ on it. *Burdle v SoS for the Environment* 1972 is the definitive authority on identifying the ‘planning unit’ for the purpose of assessing any material change in use. *Sage v SoS for Housing, Communities and Local Government* 2021 confirmed that genuine incidental uses form part of the single primary use of a property but if carried on at a scale that alters the

overarching character of the whole site/planning unit it can transition into a mixed use of the whole requiring planning permission.

Overall, the test as to whether a use is incidental must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier. In turn, the decision maker should not apply a hard objective test to frustrate the reasonable aspirations a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling.

The use to which the proposed building will be put is an incidental use, which is largely already carrying on in the existing building that the applicants are keen to replace with a sustainable structure because it is poorly insulated and approaching the end of its life. The supporting information with the application goes well beyond the matters reserved for control under Class E PD rights and identifies the layout and overall design of the building sufficient to support a full planning application.

The demolition of the existing outbuilding will comprise permitted development under Class B of Part 11 of Schedule 2. The proposed new incidental building will satisfy all the related aspects of Class E. In particular, it will be used for purposes incidental to the main house as a gym/workshop/summerhouse as per the overarching requirements of Class E PD rights. The building will have a mono-pitched roof with an overall maximum eaves height no greater than 2.5m above the highest ground level adjacent to the building, which slopes down very slightly from west to east, to comply with Article 2(2) and E.1(e) & (f), and a front roof overhang of 30cm not considered to comprise a verandah in breach of E.1(h).

On the basis this property does not fall within a special protected area, is not listed and that all other aspects of Class E are complied with or not breached etc., it is hoped, particularly in the light of the case law outlined above and Government advice, that a Certificate of Lawfulness will now be issued at the

earliest opportunity to enable the building to be constructed with confidence that no specific planning permission is required for it.

Yours sincerely,



Simon Brett