



**MAPLE**  
— PLANNING &  
DEVELOPMENT LTD

Planning Services  
Sevenoaks District Council  
Council Offices  
Argyle Road  
Sevenoaks  
TN13 1HG

30/11/21

Ref: 168

Dear Sir/Madam,

**Application for Certificate of Lawfulness of Proposed Use or Development  
Land at The Granary, Brasted Road, Westerham, TN16 1LJ**

This is an application for a certificate of lawfulness in respect of the ability to use the existing barn within the curtilage of The Granary for any purpose incidental or ancillary to the occupation of the main dwelling.

It follows a recently granted certificate of lawfulness for exactly the same proposal, under reference 21/03209/LDCPR. That certificate of lawfulness incorporated an incorrect site plan – and this resubmitted application is intended to remedy this.

Section 192 of the Town and Country Planning Act 1990 dictates that:

*(1) If any person wishes to ascertain whether—*

- a) any proposed use of buildings or other land; or*
- b) any operations proposed to be carried out in, on, over or under land, would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.*

*(2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.*

In respect of the foregoing, the barn as shown on the accompanying plan clearly falls within the residential curtilage of The Granary. It is currently used for storing gardening equipment, tools and household goods.

Going forward the site owner might wish to use some of that space for other incidental or ancillary purposes – be it a home gymnasium, swimming pool, an annex etc.

To this end, Section 55 of the Town and Country Planning Act 1990 (as amended) sets out a definition of ‘development’. It is only operations that fall within that definition of development that require planning permission.

The full definition of development is set out as follows:

*Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.*

However, Section 55(2) goes on to state that:

*The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land*

One such category is stated to be:

*the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such*

In this particular case, the barn in question undeniably falls within the residential curtilage of The Granary. In consequence it can be used for any purpose incidental to the enjoyment of The Granary.

Likewise, If there is an existing outbuilding within the residential curtilage of a dwellinghouse and the building is already lawfully ‘residential’ in use (e.g. incidental), a change of use to an ancillary ‘residential’ use is not deemed to be development under Section 55 of the Town & Country Planning Act 1990.

Contrary to the definition of ‘incidental’ that the Courts have ruled in respect of Class E of the General Permitted Development Order (i.e. no primary/ancillary living accommodation) the Courts have interpreted the use of ‘incidental’ more generously in respect of Section 55 of the Act.

They have determined that the creation of an annex via the change of use of an existing outbuilding used for incidental purposes and located within the curtilage of a dwellinghouse would not comprise development (providing it doesn’t result in the creation of a separate planning unit) as it would still fall within the primary use as a dwellinghouse.

In *Rambridge v SSE & E Herts DC* (1997) the QC stated:

*‘Miss Leven...rightly concedes that planning permission is not required for change of use from incidental residential use to primary residential use [annex]...if the owner really did*

*build the building for a purpose which was incidental and if he or his successor later had a change of mind and wished to make a change of use to primary residential use [an annex] [this would be acceptable].'*

In Uttlesford DC v SSE & White (1992) the QC concluded that if an existing building within the residential curtilage of the dwellinghouse was occupied by a family member it would not comprise a material change of use as it would not create a separate planning unit:

*'So long as the planning unit remained in single family occupation, no material change of use was involved'.*

The use of an existing incidental outbuilding as a granny annex does not therefore comprise development,

If a certificate of lawfulness could be issued, confirming such, that would be appreciated.

Yours faithfully,

**Paul Webster MRTPI**  
DIRECTOR