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## Appeal Decision

Site visit made on 7 May 2025

**by M Ollerenshaw BSc (Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2<sup>nd</sup> June 2025

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### Appeal Ref: APP/J4423/X/24/3342594

#### 4 Crofton Avenue, Sheffield, S6 1WF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Ms Jessica Gaskell against the decision of Sheffield City Council.
  - The application ref 23/03970/LU2, dated 14 December 2023, was refused by notice dated 20 February 2024.
  - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
  - The use for which a LDC is sought is use of existing incidental domestic building to the rear of 4 Crofton Avenue as ancillary accommodation to the main dwellinghouse.
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### Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the proposed use which is found to be lawful.

### Application for costs

2. An application for costs was made by Ms Jessica Gaskell against Sheffield City Council. This application is the subject of a separate decision.

### Preliminary Matters

3. The description of the development in the heading above is from the appeal form and reflects the one given on the Council's decision notice. However, the description on the application form states that the proposal is for the use of the outbuilding as a residential annexe. This is consistent with the appellant's case as set out in their appeal statement and I have referred to it in the certificate to describe the use.
4. For the purposes of obtaining a LDC the burden of proof lies with the appellant, and the standard of proof is the balance of probabilities. The relevant date for ascertaining whether the proposed development would be lawful is the date of the application. The planning merits of the case are not relevant.

### Main Issue

5. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

### Reasons

6. The appeal site comprises an end terraced dwelling, its domestic curtilage which extends to the side and rear of the property, and a rear outbuilding. The LDC concerns the latter, which is currently used as a games room, DIY workshop and for domestic storage which are incidental to the dwelling. There is a raised terrace

between the outbuilding and dwelling which can be accessed from the upper floor of the outbuilding or from steps up from the rear of the dwelling. There is no dispute between the parties that the planning unit comprises the dwelling, the outbuilding and the domestic curtilage, as outlined in red on the site location plan.

7. The appellant's appeal form and statement clarify that the building is intended to be occupied by family members and visiting friends. It would include a studio, kitchen, bedroom, bathroom and hall at lower ground level, with a further room above whose purpose is not identified on the plans, and an adjacent shower room/toilet. Whilst the Council suggests that this unidentified room could be used as a bedroom given that it is adjacent to a new shower room/toilet, the appellant intends to continue using it as a games room which I have no reason to doubt. I note that physical alterations to the building have been approved by the Council under a separate, concurrent application<sup>1</sup>.
8. The Council refused a LDC on the basis that the proposed use of the outbuilding includes primary living accommodation with rooms and facilities that would enable independent living which would not be incidental to the dwelling but would result in a self-contained dwelling, a separate planning unit and a material change of use. However, the appellant has not claimed that the proposal would be 'incidental', a term used in section 55(2)(d) of the 1990 Act and Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) to mean activities which are not integral to the use as a dwellinghouse but which are incidental to it and within its curtilage are lawful by virtue of section 55(2)(d). Rather, the outbuilding would be used predominantly as primary living accommodation as part of the main dwelling.
9. The Council has assessed the proposal as a form of operational development which it says would not be permitted under Class E of the GPDO. However, operational development is defined in section 55(1) of the 1990 Act as the carrying out of building, engineering, mining, or other operations in, on, over or under land. That is not relevant to the proposal which is concerned with the use of the existing building only, rather than the erection of a new one. Class E of the GPDO and the tests set out in the Emin judgement<sup>2</sup>, which established the need for an assessment as to whether a building is genuinely and reasonably required, relate to the provision of new buildings within the domestic curtilage and not change of use. They cannot therefore be strictly applied to the proposal. That said, I am satisfied based on the evidence that the proposal is reasonably required to address the considerable caring responsibilities the appellant has for other family members, which has given rise to issues including a lack of space and privacy within the main dwelling.
10. I acknowledge that the outbuilding would contain spacious accommodation which would provide all the facilities required for day to day living. However, an outbuilding comprising facilities for independent living is not automatically considered a separate planning unit from the main dwelling, as established in the Uttlesford case<sup>3</sup>. It is a matter to be decided on a fact and degree basis. Where an annexe contains primary living accommodation, a judgment should be made on whether the use is part and parcel of the use of the dwelling or there has been a material change of use to create a new self-contained dwelling in its own planning unit<sup>4</sup>. In this case, if the

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<sup>1</sup> Council ref. 23/03951/FUL

<sup>2</sup> Emin v SSE and Mid Sussex DC [1989] JPL 909

<sup>3</sup> Uttlesford DC v SSE and White [1992] JPL 171

<sup>4</sup> Rambridge v SSE & East Hertfordshire DC (QBD 22.11.96 CO-593-96)

dwelling and outbuilding remain part of the same planning unit and are occupied by a functionally single household, there would be no material change of use.

11. The dwelling and the outbuilding are physically attached, and although there is no longer any direct internal access between them, as there was until recently, they can be easily accessed from one another via a small number of steps leading up from the rear door of the house and across the raised terrace. The Council says that the terrace could be considered akin to a private domestic amenity space for the outbuilding, but there is no indication on the plans that it would be sub-divided or used solely in connection with the outbuilding, and it seems unlikely that it would be given the lack of external amenity space serving the dwelling and potential privacy concerns. The terrace would still be easily accessible from the house as there would be no intervening boundary treatment, other than a privacy screen around part of the terrace which would not prevent access. Indeed, access from the main dwelling to the terrace would be improved through the provision of new patio doors to the rear elevation and replacement steps approved under the application for external works.
12. Both buildings would share the gated access from the road to the front of the property. Whilst that access could be used to provide separate access to the outbuilding independently of the main house, this is not necessarily indicative of a separate planning unit since domestic outbuildings can be and often are accessible from the highway through the gardens of a dwelling without having to enter it. Some facilities within the outbuilding would likely be shared between occupants of the outbuilding and the main house, including the games room, kitchen and toilets. Moreover, given the close physical relationship with the main dwelling, the degree of overlooking between them and the shared access arrangements and terrace, it is unlikely that the outbuilding would lend itself to a separate dwelling and I note that they would remain in common ownership.
13. The Council raises concerns about the number of people that could potentially use the building, but elsewhere states that it would remain subordinate to the main house. The scale of the accommodation within the outbuilding, though spacious, would be clearly subordinate to the main dwelling which is much larger than it.
14. I have had regard to the appeal decisions provided by the appellant<sup>5</sup>. However, the substantive details of these have not been provided and so I cannot be sure that they represent a direct parallel with the appeal that is before me, which I have determined on its own merits.
15. Overall, the physical and functional relationship between the outbuilding and the main house indicate that the proposal would, as a matter of fact and degree, be a residential annexe which would be used as part and parcel of the existing dwelling and would not result in the creation of a separate planning unit. However, should the outbuilding be used separately to the main dwelling in the future, this appeal decision would not prevent the Council from taking appropriate enforcement action.

## Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the detached building to the rear of 4 Crofton Avenue as a residential annexe

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<sup>5</sup> Appeal ref. APP/F5540/X/13/2208455 and APP/M1520/D/20/3251477

was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*M Ollerenshaw*

INSPECTOR

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# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 14 December 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been shown on the balance of probabilities that the use of the existing outbuilding as a residential annexe to the main dwellinghouse to be occupied by family members and visiting friends would not be development within the meaning of the Act.

Signed

*M Ollerenshaw*

INSPECTOR

Date: 2<sup>nd</sup> June 2025

Reference: APP/J4423/X/24/3342594

## **First Schedule**

Use of existing incidental domestic outbuilding as a residential annexe to the main dwellinghouse.

## **Second Schedule**

Land at 4 Crofton Avenue, Sheffield, S6 1WF

IMPORTANT NOTES – SEE OVER

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified 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 matters which were relevant to the decision about lawfulness.

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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 2<sup>nd</sup> June 2025

by M Ollerenshaw BSc (Hons) MTPI MRTPI

Land at: 4 Crofton Avenue, Sheffield, S6 1WF

Reference: APP/J4423/X/24/3342594

Scale: Not to Scale

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