



Appeal Decision

Site visit made on 14 June 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 19th June 2025

Appeal Ref: APP/J1535/X/24/3350742

High Tawney, Tawney Common, Theydon Mount, Epping CM16 7PX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended ("the Act")) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Tony Andrews against the decision of the Council of the London Borough of Epping Forest.
 - The application Ref EPF/1092/24, dated 23 May 2024, refused on 22 July 2024.
 - The application was made under section 192(1)(b) of the Act.
 - The use for which a certificate of lawful use or development is sought is described in the appeal form as follows: "Use of a residential outbuilding as an annexe [sic]".
 - An application for costs has been made by the appellant against the Council. This is a subject to a separate Decision.
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Decision

1. The appeal is dismissed.

Inspector's reasons

2. High Tawney forms a single planning unit. The proposal would involve the internal conversion of an existing detached garage within the curtilage to the main dwellinghouse. Drawing no. 223135 CLP 00 102 illustrates the extent of the operations involved in the conversion. Externally, the triple garage doors to the southeast elevation would remain in place as would the fenestration detail on the other elevations. The ground floor plan shows a new layout resulting in the provision of a kitchen and living space. The staircase would be relocated and at first floor level the existing storage space would form bedroom, and the existing toilet would be accessed from a new landing.
3. Planning merits or the quality of habitable space or compliance with building regulations are irrelevant. The Council has evaluated the proposal against the provisions set out in article 3, schedule 2, part 1, class E of the Town and Country Planning (General Permitted Development) Order 1995 as amended. The relevant part of class E sets out permitted development rights, subject to conditions and limitations in paragraphs E.1, E.2, E.3 and E.4, for the following type of development: 'The provision within the curtilage of the dwellinghouse of... any building or enclosure... required for a purpose incidental to the enjoyment of the dwellinghouse as such...' However, in this case, the development involves the conversion of an existing building and not the provision of a new outbuilding. Technically speaking, class E is also irrelevant.
4. The correct question is whether the proposal amounts to 'development' for the purposes of planning control. Section 55(1) of the Act states that '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. Section 55(2)(d)

states that the following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land: 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 [emphasis added]. Essentially, the appellant maintains that the proposed use of the residential outbuilding as an annex falls within the scope of the latter and would not require express planning permission. However, for the following reasons, I disagree.

5. The words ‘incidental’ and ‘ancillary’ do not strictly mean the same thing, but they are often used interchangeably. It is not wrong for a party to use the word ‘ancillary’ even when the question is whether a use is ‘incidental’ for the purposes of s55(2)(d). Case law provides authority for how “incidental” should be interpreted by decision makers, although in the context of class E to the GPDO. These authorities indicate that things like games rooms, gymnasiums and utility areas are capable of being a type of use that is incidental to the enjoyment of a dwellinghouse. These judgments assist in understanding how decision-makers should interpret the word “incidental” for land-use purposes.
6. In the leading case of *Emin*¹ it was held that it was wrong to conclude that an outbuilding could not be said to be required for a use reasonably incidental to the enjoyment of a dwellinghouse as such because it would provide more accommodation for secondary activities than the dwelling provided for primary activities. Nevertheless, the test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier². On the other hand, a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling³.
7. An incidental use is one which is functionally related to the primary use: the former cannot be one that is integral to or part and parcel of the latter. The functional relationship should be one that is normally found and not based on the personal choice of the user⁴. I give an example. Where the sole primary use of a planning unit is use as a dwellinghouse, the use of land within that unit for say the parking of vehicles will normally be incidental to the primary residential use. This is because parking is a use which differs in character to a residential use but is being carried out as a function of the enjoyment of the dwellinghouse, and the functional relationship is one commonly found. On the other hand, where an outbuilding within the same planning unit as the dwellinghouse is used for the provision of additional living space, it will not be in incidental use. It will be in the same use as the house. It will be in residential use and not a use that is incidental to that residential use.
8. In *Uttlesford DC v SSE & White* [1992] it was considered that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling – instead it would be a matter of fact and degree. In that case the accommodation gave the occupant the facilities of a self-contained unit although it was intended to function as an annex with the occupant sharing her living activity in company with the family in the main dwelling. There was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling. The key issue is whether a separate planning unit would be created. If the garage with its living accommodation was part of the same planning unit as the dwellinghouse, and provided that the planning unit remains in single

¹ *Emin*¹ v SSE [1989] JPL 909.

² *Wallington v SoS for Wales* [1990] 62 P & CR 150; *Holding v FSS* [2004] JPL 1405; *Croydon LBC v Gladden* [1994] 1PLR 30.

³ *Peche d'or Investments v SSE* [1996] JPL 311 and *Sage v SSHCLG & Bromley LBC* [2021] EWHC 2885 (Admin).

⁴ Judgments like *Millington v SSE* [2000] JPL 297 and *Harrods v SSETR* [2002] JPL 1258 illustrate these concepts.

family occupation and continues to function as a single household, no material change of use is involved. These judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on the particular circumstances.

9. Turning to the particulars of this case, the garage would be occupied a member of the appellant's household who has specific health needs. However, the proposal does not simply relate to the use of the garage as additional sleeping accommodation; it would contain facilities for day-to-day living even if the kitchen would not include a washing machine. The plans indicate that it would be possible to provide some kind of cooking facilities within the proposed annex. For example, to heat up food a camping style gas or electric cooker/hob, or even a microwave, could be placed on the top of the worktop. Even if the oven and washing machine are removed, I consider that the annex would be used as someone's home; self-contained facilities for living would be available.
10. There is also lack of precise detail explaining how the family would function as a single household. Information about when or how the family socialise or interact as a single household is also lacking in clarity. Apart from assertion that the annex would have shared utilities, a common driveway, and laundry or waste management would be collectively managed, no specific details are provided. The evidence does not clearly show how the occupier of the annex would socialise, or share their lives, with other family members.
11. I find the quantum of the presented evidence about the degree of interdependence between the living accommodation in the annex and High Tawney, and how the family functions as a single household incomplete and insufficient in detail. As the annex would contain the necessary facilities for day-to-day living, in all probability, the development would amount to the use of the annex as a physically and functionally separate and self-contained dwellinghouse. Therefore, it would result in the creation of a separate planning unit, and the proposed use cannot reasonably be regarded as being part and parcel of the primary residential use of the planning unit.
12. There is an added complexity. Planning permission for the erection of replacement detached garage was granted on 10 January 1995⁵. Condition 3) states the following: *"Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 (or of any Statutory Instrument revoking or re-enacting that Order), the garage(s) hereby approved shall be retained so that it is capable of allowing the parking of cars together with any ancillary storage in connection with the residential use of the site, and for no other purposes whatsoever"*. Condition 4) reads: *"The proposed storage area within the roofspace of the garage shall be used solely for the domestic needs and personal enjoyment of the occupants of the dwelling shall not be used for any form of business or commercial use whatsoever"*.
13. Clearly, the permission relates to operational development but condition 3) and 4) seek to control the use of the detached garage. The purpose is to specifically limit the garage's use to parking of cars and storage ancillary to the use of the main dwellinghouse. Even if an alternative view is held on the separate planning unit point above, a self-contained residential use of the garage is different in character to the use permitted by the planning permission. I find that the proposed use of the garage as a residential annex would conflict with the unequivocal terms of the permission.
14. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me. As the

⁵ Council ref EPF/1203/94.

Planning Practice Guidance says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Conclusion

15. Drawing all the above threads together, I find that the quantum of the evidence presented does not clearly or unambiguously show that, if the proposed change of use of the garage to an annex had occurred on the application date, it would have been lawful for planning purposes. The decision to refuse the LDC application was well-founded albeit for different reasons.

16. I conclude that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the Act.

A U Ghafoor

INSPECTOR