



Appeal Decision

Site visit made on 07 October 2025

by Chris Preston BA (Hons), BPI, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2025

Appeal Ref: APP/B1415/X/25/3363626

38 Birch Way, HASTINGS, TN34 2JZ

- 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 Mr Loksan Harley against the decision of Hastings Borough Council.
 - The application ref HS/EX/25/00142, dated 17 March 2025, was refused by notice dated 31 March 2025.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is whether the use of the annex at 38 Birch Way remains lawful and ancillary to the main dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above, I have taken the description of the use for which a certificate is sought from the description given in the application form, as summarised in the opening sentence of that form. The information given on the form expands significantly on that description and is too lengthy to include in the summary set out in the heading above. However, I have used that information as the basis upon which the application is made.
3. In essence, the applicant seeks confirmation that the use of the annex to provide accommodation for visiting friends and family and also for short term stays on a letting basis by up to two paying guests at a time remains ancillary to the primary use of the dwellinghouse.

Main Issue

4. As with all applications for a Certificate of Lawfulness for an Existing Use or Development (CLUED) the main issue in the determination of the appeal is whether the Council's decision to refuse the application was well-founded. The planning merits of the use are not relevant to my determination and the issue is whether the use is lawful, on the balance of probability, based on relevant facts and judicial authority.

Reasons

5. The Council's stated reason for refusal states that the application does not provide sufficient evidence to show that the annex remains ancillary to the dwellinghouse to meet the requirements of Part 7 of Section 171B of the Town and Country Planning Act 1990 (the Act). That is a reference to the time limits within which

enforcement action must be taken against any breach of planning control before that breach becomes lawful due to the passage of time.

6. The appellant correctly points out that it was never part of his case that the use had gained lawfulness due to the passage of time. His argument is that the use has remained ancillary to the use of the main dwelling such that no material change of use has occurred. However, whilst the wording of the refusal could have been clearer, I am satisfied that the Council has understood the nature of the application. In effect, its argument is that the use of the annex is not ancillary to the use of the main dwelling and that there has been a material change of use.
7. Reference to section 171B of the Act was simply a way of expressing that the material change of use considered to have taken place by the Council had not gained immunity due to the passage of time such that it was not lawful. Thus, the Council's approach was clearly set out and both parties have submitted their cases accordingly.
8. The key issue at hand is whether the use of the annex has resulted in a material change of use of the property which would require planning permission or whether there has been a breach of condition 4 of planning permission reference HS/FA/23/00432 (the 2023 permission). That condition states that the garage conversion shall remain ancillary to the residential use of the dwelling known as 38 Birch Way and shall not, at any time, be used or let out as an independent residential unit. If either of those situations has occurred, the use would not be lawful within the meaning of the Act.
9. A material change of use could come about in two main ways. Firstly, if the annex led to the formation of a separate planning unit and the formation of an independent dwellinghouse, that would be development for which planning permission was required, having regard to section 55(3) of the Act. Secondly, if the use did not result in the creation of a separate planning unit but the introduction of a holiday let element resulted in a mixed use which was materially different in character from the established residential use, that would be development for which permission would be required.
10. In terms of the former it seems to me that the use has not led to a new planning unit that is functionally separate from the main dwelling, on the balance of the evidence presented. The converted garage is set to the rear and side of the dwelling, accessed from the driveway which runs alongside the shared boundary with No.39. The driveway is shared between occupants of the dwelling and any guests staying in the annex and there is no demarcation or enclosure within the garden to provide an area solely for the annex – the garden remains a shared space.
11. The "air brick" wall was a pre-existing feature, presumably built as part of the original development, to separate the driveway from the garden. Whilst it does offer some privacy for those entering the front door of the annex, due to the screening from the rear of the dwelling, the other windows and doors face directly into the garden. Therefore, the presence of the wall does not indicate any notable degree of independence.
12. There are no separate utility meters or services. Internally, the space is modest, commensurate with the scale of the single garage that has been converted. It has a single main living area with a sofa bed and small desk, a worktop and some

kitchen style units, with a built in sink, and a separate toilet and shower room. There is no cooker or washing machine. A microwave and “mini” fridge were provided at the time the application was made but those items were moved into the main dwelling subsequent to the submission of the appeal.

13. Nonetheless, having regard to s191(4) of the Act I am required to determine whether the use was lawful “at the time of the application”. At that time the microwave and fridge were in place and available for occupants. However, although those facilities enable hot drinks to be made or food to be heated up they do not constitute a functional kitchen. The microwave is essentially a stop gap for short term use rather than something to cook with on a day to day basis. Having regard to the caselaw presented¹ the presence of a microwave and small fridge do not entail that the property contained all of the facilities required for day to day living. In other words, it does not have the essential characteristics of a dwellinghouse, as laid down in *Gravesham*².
14. Thus, the annex does not amount to a separate dwellinghouse and, given the links to the main house its use has not resulted in the creation of a separate planning unit in my view. However, that does not necessarily mean that the use of the building has been ancillary to the use of the parent dwelling.
15. Under s55(2)(d) of the Act, the use of buildings within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of that dwellinghouse will not involve the development of land. Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO) defines a dwellinghouse as follows:

Use as a dwellinghouse (whether or not as a sole or main residence) by –

(a) A single person or by people to be regarded as forming a single household;

(b) Not more than six residents living together as a single household where no care is provided for residents; or

(c) Not more than six residents living together as a single household where no care is provided to residents (other than a use within class C4).
16. There is no dispute that the main dwellinghouse is occupied by the appellant and his family and that such occupation would fall within Class C3 of the UCO. The use of rooms and buildings within a dwellinghouse to accommodate visiting friends and family is clearly a use and function that is ordinarily incidental to any dwellinghouse. The use of the outbuilding for that purpose does not, therefore, involve any material change of use or breach of condition 4 of the 2023 permission.
17. Such guests are likely to integrate with the family, take meals with the family and utilise shared spaces/ move between the annex and the main dwelling freely. It seems unlikely that paying guests, unknown of unrelated to the appellant and his family would occupy the annex in the same manner. The likelihood is that they will largely go about their business separately. Details of bookings indicate that paying guests largely stay for short periods of a few days. Whilst the annex does not contain a kitchen, the microwave and fridge would enable those staying to enjoy

¹ London Borough of Brent v SSLUHC [2022] EWHC 2051 (Admin)

² Gravesham BC v SSE & O'Brien [1983] JPL 306

the delights of a reheated meal and they would also no doubt eat away from the premises if sight-seeing or visiting friends in the area.

18. The appellant maintains that guests are encouraged to socialise and interact with those residing in the dwelling but little evidence of that occurring is before me. Five specific examples are provided in the Planning Statement. One occupant knocked on the door of the main dwelling to request some ice-cubes to make a drink; one parked on the drive and used the EV charging point; one used the washing machine in the main dwelling; one had a take away meal delivered to the main dwelling and one more regular visitor was invited into the house to socialise.
19. Those instances represent a small number of the total guest stays at the property. For the most part it is unlikely that any significant interaction would occur, beyond collecting keys and the like, given the fact that the occupants are unknown to the appellant and his family and the short nature of most stays. People are far more likely to use the annex as a base for a short stay whilst exploring the local area than to socialise with the family.
20. That is markedly different to family members staying at the property and the short-term paying guests do not form part of the single household in my view. It may not constitute a separate dwelling in the sense of *Gravesham* but, equally, it is not occupied as part of a single household when used for letting purposes. In effect, there are two households, the family in the dwelling and those staying in the annex.
21. Having regard to s55(2)(d) of the Act, I am not satisfied that the use for letting purposes can be said to be incidental to the use of the dwellinghouse in the same way as use by visiting family members. The purpose of those visits is related to the occupation of the property by those who occupy it as a single household. There is no such incidental relationship when letting to people who are unconnected with the household and no obvious link between the two elements. One part relates to the day-to-day occupation by members of the single household, the other to unrelated guests visiting the area for purposes unconnected to anything that occurs within the main household. It is not part of the normal function of a dwellinghouse to offer such accommodation.
22. It is not a case of intensification of the existing C3 use, as has been suggested by the Council. Rather, the introduction of the holiday let use has resulted in a mixed use in which the family occupy the dwellinghouse and the commercial letting element takes place in the annex. In my view that does lead to a change in the use of the property in that the planning unit is no longer occupied by a single household such that it no longer falls squarely within use as a dwellinghouse within Class C3.
23. Moreover, the extent of renting clearly goes beyond a level that could be considered *de minimis*. On average, the property is let to paying guests just over 8 days per month, the equivalent to 2 days every weekend, and is advertised as being available for rent on average 15 days per month. That is broadly half of the available time.
24. Given my conclusions in that regard, the commercial letting of the annex is in conflict with condition 4 of the 2023 permission which requires that the annex is not used other than for purposes ancillary to the residential use of the dwellinghouse or let out as an independent residential unit. Letting the building is

not an ancillary function but represents a commercial use that is not ordinarily incidental to the use of the dwellinghouse. In addition, whilst it may not constitute a dwellinghouse in the sense of *Gravesham*, the annex provides for short term residential occupation independent of the facilities in the main dwelling, thereby contravening the second part of that condition. For that reason alone the use cannot be considered lawful.

25. Whether the mixed use that is occurring is *materially* different to the previous use within Use Class C3 is a balanced judgement. It does not appear that the use, to date, has had any notable effect on the living conditions of the neighbouring residents or led to additional traffic and parking congestion. However, whilst environmental effects can be an indication of whether a material change of use has occurred they are not determinative of themselves. It is necessary to consider whether there has been a material change in the essential character of the use³.
26. In my view there is a material difference between a use solely as a dwellinghouse and a mixed use of a dwellinghouse and additional rental accommodation. At any one time that will lead to occupation by two groups, the family and the additional visitors who will mostly come and go for different purposes and at different times.
27. Whilst that may not have manifested itself in any clear environmental effects to date it does not follow that would be the case in future if the occupants of the main dwelling altered or the nature of those renting was different to those who have stayed to date. Viewed in a different way, if numerous residential properties in the vicinity were occupied in the same manner the effect on the character of an area would be notable in terms of travel patterns, use of services and overall character of an area. In my mind, that is an indication that the mixed use has fundamentally different characteristics.
28. That is not to say that the use has been harmful – I make no comment on the planning merits – but it is not ancillary to the use as a dwellinghouse. It is a material change of use for which planning permission is required.
29. The circumstances of the case are not directly comparable to those applying in caselaw referred to by the parties. The relevant authorities were summarised in *Moore* [2012]⁴, including *Blackpool*⁵ and the earlier case of *Moore* [1998]⁶. In *Blackpool* a dwellinghouse was occupied by the owner and his family as a second home for part of the year, by members of his office and staff and also let to paying “family groups” for 10 of 18 weeks in the holiday season. It was held that occupation in that manner did not constitute a material change of use on the circumstances of the case and that the groups were occupying the dwelling as single households. Whilst that may not always be the case in respect of holiday accommodation it was held to be the case in that instance.
30. In *Moore* [1998] ten units of holiday accommodation within the grounds of a large country house were each found to constitute separate dwellinghouses on the basis that they contained all of the facilities for day to day living. The fact that they were occupied for holiday purposes and not as permanent homes did not alter that fact.

³ Planning Practice Guidance Paragraph: 014 Reference ID: 13-014-20230726

⁴ *Moore v SSCLG* [2012] EWCA Civ 1202

⁵ *Blackpool BC v SSE* [1980] JPL 527

⁶ *Moore v Secretary of State for the Environment* [1998] 2 PLR 65

31. In *Moore [2012]*, the argument that a commercial holiday let will always amount to a dwellinghouse was rejected. In that case, a large home, let to groups of up to 20 people was held to be materially different from a dwellinghouse based on its particular characteristics, including (amongst other things) the “unlikelihood of occupation by family or household groups”.
32. In all of those cases, the particular planning units in question were let, as a whole, to paying guests. None of the cases involved a situation whereby the resident family would continue to live in the dwellinghouse whilst an outbuilding would be let to people not comprising part of that family unit. For the reasons set out above, I find that use is of a materially different character than a use within Class C3.
33. The appellant has also referred to another instance where a converted garage has been let as holiday accommodation, notwithstanding a similar condition which is to ensure that the building was used for ancillary purposes to the main dwelling⁷. I am not aware of the full circumstances of that case and must determine the appeal on the basis of the information before me. Even if the Council has taken a contrary position in that case, it does not convince me that the use of the outbuilding in the present case is lawful, for the reasons set out above. Similarly, the Windemere appeal decision referred to by the Council is not directly comparable because that appears to have been advertised as self-catering accommodation which is somewhat different to the building in the present instance.
34. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Chris Preston

INSPECTOR

⁷ 134 Downs Road “Sea Breeze” LPA ref: HS/FA/13/00925