



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2025

Appeal Ref: APP/K3605/X/24/3347131

Outbuilding to the west of 59 High Street, Thames Ditton KT7 0SF

- 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 P Steward against the decision of Elmbridge Borough Council.
 - The application ref 2024/0822, dated 18 April 2024, was refused by notice dated 13 June 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which an LDC is sought is use as a single dwellinghouse.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.
3. The Council maintains that “Any evidence submitted after...(the date of the application)...cannot be taken into account either as part of the planning application or the current appeal”. This is incorrect. An appeal is determined on the basis of ‘all the evidence now available’ and an Appellant is entitled to bring forward evidence, in addition to that submitted at application stage, in support of his appeal. Section 191(4) of the Act simply establishes, either at application or appeal stage, that lawfulness is or is not established “...at the time of the application...”. Consequently, the Appellant, to be successful, must submit sufficient precise and unambiguous evidence, to include that submitted on appeal, to demonstrate that the use of the outbuilding as a single dwellinghouse subsisted continuously for, in this case, the four year period prior to the date of the application; the four year period being 18 April 2000 to 18 April 2024.

Reasons

4. Appeal documentation includes several sworn, signed and dated statutory declarations; from Mr P Steward, the Appellant, Mr R Bastillo, the occupant of the outbuilding, Ms L Collings, Ms F Hepburn, Mr I Nevill, and Ms F Cameron Clarke. Mr Steward owns 59 High Street and its associated outbuilding, and 57 High Street, which is a hair and beauty salon leased and operated by Ms Cameron Clarke. Ms Hepburn lives at Flat 2, 55 High Street which overlooks the outbuilding, Mr Nevill lives at 66 High Street, and Ms Collings lives at 59 High Street which has a garden immediately adjacent to the outbuilding. 55, 57 and 59 High Street are within a terrace of properties that is part of dense development at the heart of Thames Ditton.

5. From the statutory declarations of Mr Steward and Mr Bastillo, the latter first rented the outbuilding, for £100/month, in 2017 as storage for his tiling tools. At that time he lived in Sutton but due to changed personal circumstances he took up occupation of the outbuilding, which had a basic kitchen and shower room, in early 2018. Mr Steward discovered that Mr Bastillo was occupying the outbuilding in mid-2018 but agreed that this could continue at the same rent plus "...two days a month to deal with any repairs on...(Mr Steward's)...rental properties". Mr Bastillo "...undertook further works to the chalet to make it more habitable". The outbuilding "...was connected to the water and electrics at 59 High Street..." and Mr Bastillo and Ms Cameron Clarke reached an agreement on dividing payment for these utility services.

6. Mr Bastillo's rent was increased to £500/month in about 2022 because Mr Steward "...considered that the discounted rent to compensate Romeo for his works installing a kitchen and floor had now been adequately compensated". The Council has suggested that residential occupation of the outbuilding was in addition to the original storage use and that it is not clear which was the primary use, particularly given the low rent paid for the first half of the four year period. The outbuilding is in a confined location and there is no vehicular access to it. Any storage use for tiling materials and equipment is likely therefore to have been minimal and residential use of the outbuilding, once it had commenced, would have been the primary use.

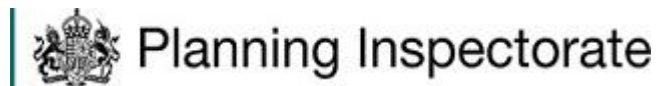
7. Ms Cameron Clarke and Mr Bastillo clearly have a friendly relationship and the arrangement they reached for payment of water and electricity bills is perfectly plausible. The lack of Council Tax payments for residential occupation of the outbuilding is not damaging to the Appellant's case. The statutory declarations are compelling and consistent. Ms Hepburn and Ms Collinge live in close proximity to the outbuilding and they have regular contact with Mr Bastillo. Their statutory declarations, and those of Mr Nevill and Ms Cameron Clarke, clearly indicate that Mr Bastillo has occupied the outbuilding since well before the start of the four year period. Residential use of the outbuilding commenced before 18 April 2000 as a primary use.

8. The Appellant has submitted sufficient precise and unambiguous evidence to demonstrate that the use of the outbuilding as a single dwellinghouse subsisted continuously for the four year period prior to the date of the application.

9. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for use as a single dwellinghouse of an outbuilding to the west of 59 High Street, Thames Ditton was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

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

IT IS HEREBY CERTIFIED that on 18 April 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the outbuilding as a single dwellinghouse was continuous throughout the four period prior to the date of the application

Signed

John Braithwaite

Inspector

Date: 17 November 2025

Reference: APP/K3605/X/24/3347131

First Schedule

Use of the outbuilding as a single dwellinghouse

Second Schedule

Outbuilding to the west of 59 High Street, Thames Ditton KT7 0SF

IMPORTANT NOTES

This certificate is issued solely for the purpose of Section 191 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 was 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 17 November 2025

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Scale: Not to Scale

