



Appeal Decisions

Site visit made on 12 February 2026

by Grahame J Kean B.A. (Hons), Solicitor, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2026

Appeal A Ref: APP/K3605/C/25/3360941

Appeal B Ref: APP/K3605/C/25/3360942

Appeal C Ref: APP/K3605/C/25/3360943

100 Speer Road, Thames Ditton KT7 0PP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Ms Alessandra Pusceddu.
 - Appeal B is made by Mr David Keane.
 - Appeal C is made by Mr Edson Davalos.
 - The appeals are made against an enforcement notice issued by Elmbridge Borough Council.
 - The notice was issued on 21 January 2025.
 - The breach of planning control as alleged in the notice is: without planning permission, and within the last 4 years, the erection of a dwelling to the rear of the premises, (as shown in the Drawing No 004, Summer House Elevation as attached).
 - The requirements of the notice are:
 - 1) Cease the use of the outbuilding as a separate dwelling,
 - 2) Demolish the outbuilding as shown in the Drawing No 004, summer house elevation as attached, and
 - 3) Permanently remove all resultant waste from the Land.
 - The periods for compliance with the requirements are:
 - nine (9) calendar months for requirement 1) from the date on which the notice takes effect.
 - twelve (12) calendar months for requirement 2) and 3) from the date on which the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended).
-

Appeal D Ref: APP/K3605/W/25/3360402

100 Speer Road, Thames Ditton, Surrey KT7 0PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Alessandra Pusceddu against the decision of Elmbridge Borough Council.
 - The application Ref is 2024/0977.
 - The development proposed is residential annexe in rear garden.
-

Decisions

Appeals A, B and C

1. It is directed that the enforcement notice is corrected as follows:
 - remove requirement 2); and
 - remove requirement 3).
2. Subject to the correction the appeals are dismissed and the enforcement notice is upheld.

Appeal D

3. The appeal is allowed and planning permission is granted for residential annexe in rear garden at 100 Speer Road, Thames Ditton KT7 0PP in accordance with the terms of the application, Ref 2024/0977, and the plans submitted with it, subject to the following conditions:

1. The development shall be retained with external timber cladding and roof materials of timber with GPR.

Reason: To ensure a satisfactory external appearance.

2. The residential annexe hereby permitted shall not be used other than as part of the dwelling known as 100 Speer Road, Thames Ditton KT7 0PP

Reason: to make the development acceptable in planning terms.

Appeals A, B and C

Procedural matter

4. I accepted the addition of ground (c) to the appeals, as requested by the appellants, since both parties' cases included matters related to this ground.

Ground (b)

5. An appeal on ground (b) is that the matters said to constitute the alleged breach of planning control have not occurred as a matter of fact. The onus of proof is on the appellant on the balance of probability. The factual allegation relates to the erection of a dwelling to the rear of the premises. In discussing whether the structure is a breach of planning control the appellant's agent may be conflating ground (b) and ground (c) which sometimes occurs. The appellant maintains that the use of the structure is ancillary to the main dwellinghouse. In citing the case of *Uttlesford*¹, where there was a self-contained unit intended to function as an annexe ancillary to the main dwelling, an argument is made that no planning permission is required. This would be a ground (c) appeal, dealt with below.
6. There is no definition of a dwelling in the 1990 Act. The issue strictly speaking is whether the building has the characteristics of a dwellinghouse, ie following the well-rehearsed principle in *Gravesham*² that a distinctive characteristic of a dwellinghouse is its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
7. I am satisfied from the evidence provided, including the use made of the facilities within it and my site inspection, that the outbuilding has the characteristics of a dwellinghouse. Ground (b) fails.

Ground (c)

8. An appeal on this ground is that the matters alleged do not constitute a breach of planning control, for example because permission has already been granted on an application or it is permitted development.

¹ *Uttlesford DC v SSE & White [1992] Uttlesford D.C. v Secretary of State for the Environment [1991] E.G.C.S. 29 (QBD); J.P.L. 1992, Feb, 171-177.*

² *Gravesham BC v Secretary of State for the Environment and Another (1984) 47 P. & C.R. 142*

9. Here, Uttlesford is potentially relevant in so far as it held that even if accommodation provides facilities for independent day to day living, it would not necessarily become a separate planning unit from the main dwelling – that question would be a matter of fact and degree for the decision-maker. In that case the accommodation gave the occupant the facilities of a self-contained unit although it was intended to function as an annexe with the occupant sharing her living activity in company with the family in the main dwelling.
10. No permission would be required for an outbuilding lawfully erected under Class E of the permitted development legislation and subsequently used for living accommodation as ancillary and subordinate in function to the main house. However, such permitted development rights do not apply in relation to a flat.
11. The building was intended to provide additional space for K, an elderly co-owner of 100 Speer Road, in late 2019. It was installed with a bathroom in early 2020, the additional space was for naps in the day or to watch television without disturbing the other owners, thus giving K some independence. Due to Covid and the need to shield in Spring 2020, K moved into the outbuilding to isolate and spent more time there.
12. I have found as a fact that the accommodation amounts to a self-contained dwelling. Whilst some facilities may have been added over time there is no clear evidence that the outbuilding was erected other than as a self-contained unit (whether or not functionally related to the main dwelling). It was operational development consisting of a dwelling.
13. The ancillary nature or otherwise of the dwelling may be a relevant consideration in the s78 appeal, however the building amounts to operational development that requires planning permission unless, which is considered in ground (d) below, it has gained immunity from enforcement action.
14. Therefore, the appeals on ground (c) fail.

Ground (d)

15. This ground of appeal considers whether, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. Considering the relevant changes to immunity periods, development becomes immune from enforcement if no action is taken within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024. As the notice was issued on 21 January 2025, for the building to be immune from enforcement action it must have been completed by 21 January 2021.
16. P's statutory declaration states on oath that the outbuilding was erected in April 2020. The appellants have no photographs of when it was completed. Some aerial images are said to show that the outbuilding was substantially completed by March 2020, and some photographs are said to show that it was in place in April 2020. A statement from the owner of 99 Speer Road asserts that the outbuilding was completed in April 2020.
17. The Council submits a building control record, dated February 2021, referring to a Building Regulations application. The appellants state that the application was made prior to that date and not initially registered by the Council. When the

outbuilding was erected, it was not realised that planning permission or building consent was required. The Building Regulations application followed a “*request by the Council to do so in 2020*” to confirm that it had been built to a relevant standard. In these circumstances which are undisputed, I am not satisfied that the record date of February 2021 represents the true date of the building’s completion.

18. The Council also notes that the 19 April 2020 image shows the damp proof coursing material (DPC) was being installed to the building, with a section laying over the nearby fence. Additionally, a large gap at the rear elevation of the building is apparent where doors were due to be installed. Whilst I can readily infer from the image that construction was still ongoing in terms of the DPC and the patio doors, there is no indication that anything else needed to be completed. In all likelihood, considering the season and the timespan involved, both items would have been completed a relatively short time thereafter, ie before January 2021.
19. Although the residential use is not immune, the appeals succeed on ground (d) as far as concerns the erection of the outbuilding. The notice will be corrected to delete the requirements to demolish it and remove any waste materials.

Ground (f)

20. The appeal on this ground is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. The purpose may be to remedy the breach of planning control that has occurred, or any injury to amenity. The aim of the notice (as corrected) is to remedy the breach of planning control by requiring the residential use of the building to cease. I find such a requirement necessary for that purpose and not excessive.
21. The fact that a similar outbuilding may have been approved nearby on the planning merits is not relevant to this ground of appeal, nor are the planning merits of the application which to some extent are repeated by the appellant here.
22. The appeals on ground (f) therefore fail.

Ground (g)

23. In my view the period for compliance with the step required to be taken is reasonable. The appeals on ground (g) do not succeed.

Conclusion

24. For the reasons given above I conclude that the appeals should succeed on ground (d) in part only and I shall uphold the notice with a correction.

Appeal D

Preliminary matter

25. I have amended the description of the development in the banner heading above better to reflect what is being applied for which is not a “granny” annexe but a residential annexe. I have also altered the description of development to remove “retrospective” as this is not a form of development, the proposal being to retain a building already in situ.

Main issues

26. The reasons for refusal of the application were that the outbuilding was not considered to be genuinely ancillary to the main dwelling due to the separate rear accessway and facilities provided; and that it unduly harms the character and appearance of the area.
27. Key policies of the development plan in the determination of this appeal are the Core Strategy 2011 (CS) Policies CS7 and CS17, and the Development Management Plan 2015 (DMP) Policies DM2 and DM10. Also relevant is guidance in the Council's adopted SPD on Design and Character 2012 and the National Planning Policy Framework (NPPF).
28. Especially relevant to the Council's determination is DMP Policy DM10:
"Ancillary residential extensions, including 'granny annexes' and staff accommodation, should be subservient to the main dwelling. Freestanding units that can demonstrate they are genuinely ancillary to the occupation of the main house will be considered in light of the character and amenities of the area and may be subject to conditions restricting their occupancy."
29. Policies DM2 and CS17 aim to achieve high quality design for new development, and Policy CS17 seeks to make efficient use of urban land and protect amenities of those in the area. NPPF policies include (Paragraph 63) encouraging housing provision for different groups in the community.

Character and appearance

30. As noted in the officer's report on the appealed application to retain the outbuilding as ancillary accommodation, the outbuilding was not considered by the Council to be detrimental to the appearance of the main dwelling, nor did it cause material harm to the character and appearance of the surrounding area. I agree.
31. Subject to a condition retaining the external structure as timber clad and the roof as timber with glass reinforced plastic (GRP) I am satisfied that the development will be of a high quality design and cause no material harm to the character or appearance of the host dwelling, the property as a whole or the street scene, in accordance with the policies described above.

Harm caused by the alleged functional separation of the outbuilding

32. The real issue for the Council is the perception that because there is no direct familial relationship between K and the rest of the household it would not be a granny annexe and so conflict with Policy DM10. I do not understand the logic of this approach as the policy refers in terms to "*ancillary residential extensions, including 'granny annexes'*", thus obviously not excluding an extension designed to accommodate persons other than those related to the other occupants of the property, provided it genuinely functions as an annexe with the occupant sharing living activity with others in the main dwelling.
33. The appeal site is a semi-detached two-storey dwelling comprising 2 flats. The appellants, P, K and D, live in the ground floor flat. K and P lived together previously but had their own living spaces. They moved to the appeal site in 2020. With K's increased age and health issues, the garden enabled them to erect an

outbuilding so K would have his own personal space and join the others in the house for some meals whilst being provided with day-to-day support and care. The outbuilding has self-contained facilities. During the Covid pandemic K isolated after which, due to age and reduced mobility, he was more comfortable staying in the outbuilding. P brought him some meals, but K comes into the main house to spend time with P and D.

34. The appellants consider themselves as a family unit. The bathroom area, installed in the outbuilding when erected, means that K does not have to use the main house for these facilities. There is no separate postal address or post box, utility meters, refuse bins or garden.
35. The Council's case is that since the outbuilding has its own facilities and a separate rear accessway, it is not genuinely ancillary to the main dwelling. At the rear of the plot a rear access gives onto the rear alleyway where a light and CCTV camera enable safe access to and from the property at night.
36. The Council seems to lay store by the fact that K receives some meals delivered via the rear access. This turned out to be a meals-on-wheels service provided by the Council's own community services department who have delivered to K since June 2024, ie a hot meal at lunchtime, three days a week. There is no separate external access directly into the outbuilding, so I attach no great significance to delivery at the rear. No doubt services may be provided to the other occupiers of the plot via the rear access which leads onto a path running up the garden to the main dwelling.
37. To suggest, as the Council does that delivering meals via the rear access to the plot and not the main dwelling confirms that there is no desire for K to come into the main dwelling is illogical and without foundation. Delivery to the rear was explained as making it easier for K when the other occupants are at work.
38. I find nothing in the state of the rear access or its use that is out of the ordinary or specially linked to K's occupation of the outbuilding. It is a separate rear access to the property, characteristic of many dwellings on Speer Road. Why the Council should maintain that placing CCTV equipment at the rear, not an unusual practice for any property owner, should be a key factor in determining that the use of dwelling is independent of the main house, is difficult to comprehend.
39. P's statutory declaration includes that K is fiercely independent, wants to stay living with P and D as they are at hand to assist with his needs and that it was never intended to create a separate property, rather than use it in conjunction with the main dwelling. The Council did not dispute any of this sworn testimony.
40. The Council accepted there were no separate utility meters but said "*considering that there is a separate access way to the rear, there is potential to apply for this service*" and the "*facilities...can be 'let out' separately as an independent residential unit.*" If the Council were concerned about this eventuality, it could have granted permission with appropriate conditions attached to secure its permanent use as ancillary to the main dwelling. Instead, it fastened on that part of the local plan requiring freestanding units of ancillary accommodation to be "genuinely ancillary" to the occupation of the main house. The policy allows for conditions restricting occupancy.

41. I find from the foregoing that in accordance with DMP Policy DM10 the development is a freestanding unit of ancillary accommodation that is ancillary to the occupation of the main house. Subject to conditions as to materials and to restrict the use of the annexe to no other use than as part of the main dwelling, I am satisfied that the development is compliant with Policies DM2, DM10, CS7 and CS17. I also find it complies with the development plan as a whole and whilst I have had regard to the other considerations submitted, I find none to be of sufficient weight as to indicate that a decision should be made otherwise than in accordance with the development plan.

Other Matters

42. The appeal site is in Flood Zone 2. The report on the appealed application accepted that the Flood Risk Assessment contained sufficient resistance, resilience and mitigation measures together with personal flood planning information to ensure compliance with CS Policy CS26 and the Flood Risk Supplementary Planning Document 2016.
43. The Council also considered in the same report that the development does not cause any adverse overlooking, loss of privacy or loss of light enjoyed by neighbouring properties. I saw no reason to disagree.

Conditions

44. To ensure that a satisfactory external appearance it is appropriate to retain the development with timber cladding and with roof materials of timber and glass reinforced plastic (GRP).
45. I am satisfied that what is described in the application would be development used in a way that is part and parcel of the existing dwellinghouse. Whilst a condition to secure that use is not always necessary, the development will remain in place permanently, therefore a condition to restrict the use to part and parcel of the main property will make the development acceptable in planning terms.

Conclusion

46. For the reasons given above the appeal should be allowed. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Grahame J Kean

INSPECTOR