



Appeal Decision

Site visit made on 14 February 2026

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

an Inspector appointed by the Secretary of State

Decision date: 27 February 2026

Appeal Ref: **APP/M5450/X/24/3342917**

Letchford House, Headstone Lane, Harrow HA3 6PE

- 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 Andrea Surace against the decision of the Council of the London Borough of Harrow.
- The application Ref PL/0199/24, dated 28 January 2024, was refused by decision dated 25 March 2024.
- The application was made under section 192(1)(a) of the Act.
- The proposed development for which a certificate of lawful use is described in the application form in the following terms: *the proposal is to reuse the outbuilding certified as lawful by LDC (existing) P/4137/18 and now used as a garden kitchen and store.*
- An application for costs is made by the appellant against the Council and that decision is attached at the end of this Decision.

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.

Reasons

2. The main issue to consider is whether the Council's decision to refuse the LDC was well-founded. In this appeal, the onus is firmly upon the appellant, and the legal test is on the balance of probabilities. Planning merits are not relevant at any stage and the assessment involves a discussion of the relevant facts and planning law. The fundamental question to answer is this: if this proposed change of use had occurred, on the application date, would it have been lawful for planning purposes? The word "lawful" has a specific meaning¹.
3. The appellant seeks a declaration that the proposed use of an existing outbuilding, which is located within the residential curtilage to the listed building known as Letchford House - a dwellinghouse, would not require express planning permission. Although it is down to the applicant to describe exactly what is proposed with sufficient clarity and precision, the submitted application is imprecise as to what is proposed. This is because it simply states the following: "*see attached letter. The proposal is to reuse the outbuilding certified as lawful by Ldc (existing) P/4137/18 and now used as a garden kitchen and store*". The Council's decision notice uses the same phraseology but adds the following text at the end: "*...to provide carer accommodation*". From the written

¹ For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

representations, it is apparent that the proposal relates to the conversion of the existing outbuilding to provide residential accommodation for a carer due to the appellant's health condition: for clarity's sake, I proceed on this basis.

4. The Council refused the LDC on the basis that the information provided did not satisfactorily show that the proposed use as accommodation for a carer would remain incidental to the enjoyment of the main dwellinghouse. 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.

For the following reasons, I disagree with the Council's approach and here is why.

5. The relevant part of Class E sets out permitted development rights, subject to conditions and limitations set out 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...' Putting aside the fact that the Council overlooked the effect of paragraph E.1 sub (g)², in this case, the development involves the reuse or conversion of an existing outbuilding and not the provision of a new outbuilding. I have noted the Council's reference to relevant sections of the TG³, but, technically, the application of Class E to the facts of this case is wrong [emphasis added].
6. The first basic question to consider is whether the proposal amounts to 'development' for the purposes of planning control. Section 55 (1) of the Act states that the word '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. Subsection 55(3)(a) explains that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used [emphasis added].
7. It is well established that the right to use land for some primary purpose includes the right to use it for any purpose which is ancillary to that dominant purpose. The essential feature of an ancillary use is that there should be some functional relationship with the primary use of the planning unit. That functional relationship should be one that is normally found; it is not founded on the personal choice of the person carrying out both activities together.
8. There is considerable body of judicial authority regarding planning units, primary and ancillary or incidental uses. The judgments and the findings contained therein indicate that each case needs to be considered upon its individual circumstances. *Wakelin*⁴ involved a large house with a lodge, which was converted into two flats and used as guest suites. That proposal involved the conversion of the lodge into a separate dwelling and to sell it off separately. It was held that the house, lodge and grounds constituted one planning unit and to sever the lodge would constitute a material change in use by virtue of S55(3)(a) of the Act. On the circumstances of this case, the argument

² E.1 Development is not permitted by Class E if— (g) the building, enclosure, pool or container would be situated within the curtilage of a listed building.

³ Permitted development rights for householders: technical guidance (updated 10 September 2019).

⁴ *Wakelin v Secretary of State for the Environment* [1978] JPL 769.

advanced is that the outbuilding would be occupied for an ancillary residential purpose and not as a separate dwelling.

9. In *Uttlesford*⁵ the court 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; it would be a matter of fact and degree. The accommodation gave the occupant the facilities of a self-contained unit although it was intended to function as an annexe only 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. On the specific circumstance of the case, the key issue is whether a separate planning unit has been created. If an outbuilding with its living accommodation was part of the same planning unit as the dwellinghouse and provided that the planning unit remains in single family occupation and continues to function as a single household, no material change of use is involved.* Likewise, *Whitehead*⁶ also touched on the concept and application of the planning unit and considered when ancillary residential accommodation might become a self-contained dwelling [my emphasis added].
10. To my mind, these established judgments seem to suggest that where one property is owned by a family the courts were reluctant to hold that two physically distinct parts of that same property can be treated as being used as separate dwellings where the occupants are related or where there are ties of domestic enjoyment.
11. For some time now the courts and practitioners have grappled with the concepts of primary and ancillary uses. The words “ancillary” and “incidental” have become intertwined, but the latter is a use that is functionally related to the primary use. Such a use cannot be one that is integral to or part and parcel of the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user⁷. It follows that 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. Even if the outbuilding itself is described as ‘ancillary’ to the house, its use will not be.
12. Letchford House forms a single unit of occupation and is a residential planning unit and in its curtilage, there are existing outbuildings. The sworn statement clearly states that the intention is to convert and use a lean-to outbuilding, which was erected in 2013 and used as an outdoor kitchen and has been certified lawful, as separate residential accommodation for a live-in carer. The carer’s duties include preparing meals, maintain the house and plethora of domestic duties. There is nothing before me to cast doubt over the assertion that the carer cannot sleep overnight in the main house, due to cultural sensitivities. In any event, I have not been provided with any evidence to indicate separate quarters could be made available in the existing dwelling given its layout and space. Moreover, there is nothing to cast doubt over the claim that carers

⁵ *Uttlesford DC v SSE & White* [1992] JPL 171.

⁶ *Whitehead v SSE and Mole Valley DC* [1992] JPL 561.

⁷ In *Sage v SSHCLG & Bromley LBC* [2021] EWHC 2885 (Admin), Sir Duncan Ouseley, sitting as a High Court Judge, held that ‘incidental or ancillary [uses]...are in law part of the single main use, and for these purposes are not a separate use at all: the “singlemain use” is in reality the single use of which the incidental and ancillary uses are part’. It should be noted that the ‘purposes’ of that judgment were to decide ‘the materiality of environmental and amenity considerations to the question as to whether the use of a building within the curtilage of a dwellinghouse is for a purpose incidental...’ The judgment should not be interpreted as meaning there is no difference between an incidental/ancillary and a primary use; it rather upholds the established principle that a planning unit may have a single primary use, and not be in mixed use, even if uses incidental to the primary use are carried out.

would share their lives with the occupiers of Letchford House and function as a household.

13. Contrary to the Council's extrapolation of the evidence presented, to my mind the appellant's case shows that the outbuilding would be occupied and used for purposes that are integral to the residential use of the main dwellinghouse. There is nothing to suggest its separate residential use is likely to result in the subdivision of the planning unit nor result in the creation of a separate dwellinghouse: the latter would be a breach of planning controls but that is not the scenario here. Clearly, the facts are that the proposed use would be functionally linked to the use of the main property even though the outbuilding is physically separate.
14. A point raised by the appellant is that the building operations required to facilitate the change in the use of the outbuilding into a habitable space would not affect the external appearance of the outbuilding. The inference is that s55(2)(a) applies⁸. However, this is not determinative in this appeal and any operational development affecting the external appearance of the outbuilding would require assessment as to whether it amounts to development requiring express planning permission.
15. As a matter of fact and degree, I find that the proposed reuse of the outbuilding to provide carer accommodation, as described in the evidence, would be lawful at the date of the LDC application, because the use did not involve development or require planning permission and the use does not constitute a contravention of any of the requirements of any enforcement notice in force.

Conclusion

16. For the reasons given above and having considered all other matters, I conclude that the Council's refusal to grant a certificate of lawful use or development 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.

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

IT IS HEREBY CERTIFIED that on 28 January 2024 the matter described in the First Schedule hereto, constituting the reuse of the outbuilding certified as lawful by LDC (existing) P/4137/18 and now used as a garden kitchen and store to provide carer accommodation, in respect of the land specified in the Second Schedule hereto and edged 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 did not involve development or require planning permission and the use does not constitute a contravention of any of the requirements of any enforcement notice in force.

⁸ The following operations or uses of land shall not be taken for the purposes of the Act to involve development of the land: the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.

Signed

A U Ghafoor

INSPECTOR

Date: **27 February 2026**

Reference: APP/M5450/X/24/3342917

First Schedule

The reuse of the outbuilding certified as lawful by LDC (existing) P/4137/18 and now used as a garden kitchen and store to provide carer accommodation.

Second Schedule

Land edged as shown on the plan attached to this certificate and identified as Letchford House, Headstone Lane, Harrow HA3 6PE.

IMPORTANT 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 proposal 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 proposal described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation or 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

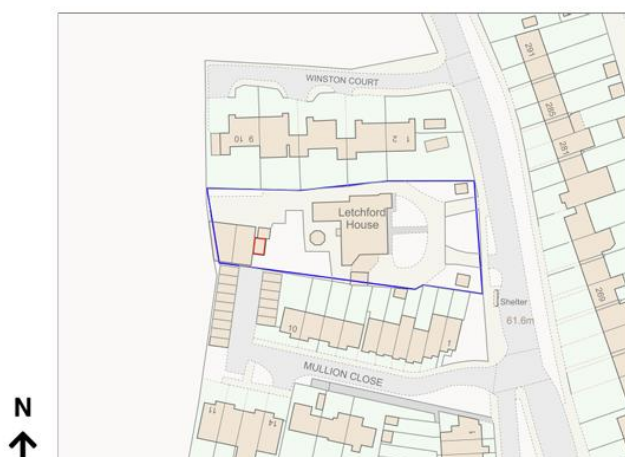
This is the plan referred to in the Lawful Development Certificate dated: **27 February 2026**

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

Land at: Letchford House, Headstone Lane, Harrow HA3 6PE.

Reference: APP/M5450/X/24/3342917

Scale: Do not scale.



Costs application

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Andrea Surace for a full award of costs against the decision of the Council of the London Borough of Harrow.
 - The appeal was in connection with an appeal against the refusal of a certificate of lawful use or development (LDC) for use of land for reuse of the outbuilding certified as lawful by LDC (existing) P/4137/18 and now used as a garden kitchen and store to provide carer accommodation.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Essentially, the applicant alleges the respondent refused, without good reason, the LDC application causing an appeal. The claim is that the respondent repeatedly misapplied and misinterpreted relevant case law and statutory provisions. It should, however, be kept in mind that the purpose of this application process is not to resolve by investigation every allegation of unreasonable behaviour. Rather it is to decide if an award of costs in respect of the appeal is justified on the available evidence in a particular case.
4. My appeal Decision explains why the appeal is allowed. Sufficient to say that at application stage the respondent seems to have come to the wrong conclusion due to its approach to the facts of this case and narrow focus on permitted development rights. Acting contrary to, or not following, well-established case law can amount to unreasonable behaviour but in this case, it appears to me the respondent did consider the cited case law and disagreed with the applicant. It seems the respondent came to a materially different conclusion to the applicant based upon the evidence they presented.
5. Although the handling of applications or behaviour prior to determination might be indicators of unreasonable behaviour, I am not persuaded that an appeal was totally avoidable. The submissions indicate to me that there has been a total breakdown of communication between the appeal parties: that is a matter for them to consider. Having refused the LDC application, the applicant exercised their right of appeal. The respondent did not make a full statement of case but the officer report, although focused on permitted development rights, sufficiently addressed the reasons for refusal of the LDC application.
6. I have carefully considered this application but come to an inescapable conclusion. The respondent's evidence sufficiently substantiated its reason for refusal. An appeal was totally unavoidable given the matters in dispute. I find that unreasonable behaviour leading to unnecessary wasted expense has not, on balance, been demonstrated as described in the PPG. An award of costs, full or partial, is unjustified in the circumstances.

A U Ghafoor

INSPECTOR