



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 March 2026

Appeal Ref: APP/J1860/X/25/3369829

13 Callows Orchard, Rushwick, Worcester WR2 5GU

- 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 Nicholas Daffern against the decision of Malvern Hills District Council.
 - The application ref M/24/01335/CLPU, dated 21 September 2024, was refused by notice dated 20 February 2025.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is the conversion of one bay of the extant double garage into a private home office and gym with the removal and bricking up of the existing garage doorway.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed use which is found to be lawful.

Preliminary Matters

2. A site visit was not conducted because I was satisfied that I have sufficient information before me to determine the appeal. Both parties were notified of this approach and given the opportunity to comment. No objections were received, and I am therefore content that neither party has been prejudiced by my determining the appeal without a site inspection.
3. An application under S192(1) of the Town and Country Planning Act 1990 (as amended) (the 'Act') seeks to establish whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful if instituted or begun at the time of the application. Section 192(2) provides that where the local planning authority is satisfied that the proposed use or operations would be lawful, they shall issue a certificate to that effect.
4. For the purposes of the Act, section 191(2) clarifies that uses and operations are lawful if a) no enforcement action may 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 ii) they do not constitute a contravention of any enforcement notice then in force.
5. The burden of proof lies firmly with the applicant to satisfy the local planning authority of the case for the LDC. Planning merits of the development are not material to the grant of an LDC. On appeal, the decision is whether the refusal is well-founded. This rests solely on the facts of the case, relevant planning law and any applicable judicial authority.

Main Issue

6. The main issue is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the proposal amounts to development for which planning permission is required.

Reasons

7. The appeal concerns an existing detached double garage positioned to the side of the dwelling which is located at the end of a residential cul-de-sac. There is no dispute that the relevant planning unit is the dwellinghouse and its curtilage which includes the garage, and that the primary use of the planning unit is residential.
8. The development proposed is the change of use of half of the internal floorspace of the garage to provide incidental domestic accommodation consisting of a home gym and home office for the sole use of the occupiers of the dwelling. To facilitate the use, it is proposed to replace one of the two garage doors with a casement window and matching brickwork below.
9. The Council refused the LDC on the basis that the proposal was not permitted under the provisions of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). However, Class E concerns the provision of new buildings within the curtilage for a purpose incidental to the enjoyment of the dwellinghouse. In this case, the structure already exists, and no new building is proposed.

Whether there would be a material change of use

10. Section 55(1) of the Act defines "development" for which planning permission is required. This includes making a material change in the use of the land. Subsection (2) lists operations or uses of land which "shall not be taken for the purposes of this Act to involve development of the land..." By s.55(2)(d) the following use is not to be taken as involving development:

"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;..."
11. It is commonly held that the term "incidental to the enjoyment of the dwellinghouse" conveys an activity that supports domestic living and does not comprise primary living accommodation such as bedrooms, kitchens or self-contained accommodation. An incidental use is one which is functionally related, but not integral to, the primary use as a dwelling. The established test is whether the use is subordinate and ordinarily associated with the reasonable enjoyment of a dwellinghouse itself.
12. In this case, the proposed home office and gym would be used solely by the household. It would be functionally and physically linked to the main dwelling and, therefore would be a use which is already taking place within the planning unit. As a matter of fact and degree, I am satisfied that there would be no material change of use and that its purpose would be reasonably incidental to the use of the dwellinghouse as such. I therefore conclude that both the home office and the home gym would constitute incidental uses within the scope of section 55(2)(d). Accordingly, the proposed change of use would not constitute development for the purposes of the Act.

Physical alterations to the appeal building

13. Section 55(2)(a)(i) and (ii) of the Act provides that the carrying out of works for the maintenance, improvement or other alteration of any building shall not be taken to involve development if those works affect only the interior of the building, or if they do not materially affect its external appearance. As part of the proposal for the change of use of the garage, external works consisting of the replacement of one garage door with a window and brick infill are proposed. The Council did not fully address these matters at application stage.
14. However, at appeal stage, the Council considered that the external works would materially alter the appearance of the garage due to its visibility from the street, and that replacing the garage door would create a functionally and visually different structure. On this basis, the Council considered the works to constitute development as defined by the Act.
15. The Council refers to an appeal decision in which it considers there are similarities. In that case it was considered that there would be a material change of use of the building due to its proposed use for self-contained primary independent residential accommodation. However, this appeal also addressed whether the alterations to the detached outbuilding, including the removal of two garage doors and their replacement with brickwork and fenestration, constituted development under section 55 of the Act. The Inspector concluded that since the external works would be an integral part of the conversion, the proposal was development for which planning permission was required. While I am not aware of to the full facts of the case, there are circumstances that can be distinguished from those before me.
16. There is no statutory definition of 'material effect' on external appearance. The accepted principle is that to be material, an alteration must result in a substantial or significant change. In this case, the proposed external works would be minor, limited to the removal of one garage door and installing a window of a matching style to the host dwelling, together with brick infill using materials similar in appearance to the existing dwellinghouse. The works would be flush or slightly recessed, relative to the existing façade. No extension to the building or increase in height is proposed. As such, the works would reflect the character of the host dwelling and preserve the overall domestic appearance of the property. I am therefore content that the proposed alteration would not materially affect the external appearance of the building for the purposes of section 55 of the Act.

Conclusion

17. Overall, I am satisfied that the proposed change of use and external works as sought by the LDC application would not amount to development as defined by section 55 of the Act. Accordingly, planning permission is not required. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant an LDC for the conversion of one bay of the extant double garage into a private home office and gym with the removal and bricking up of the existing garage doorway, was not well-founded. The appeal therefore succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.

S A Hanson

INSPECTOR



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 21 September 2024 the development described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development as proposed would be incidental to the primary use of the land as a single dwellinghouse and would not give rise to a material change of use of the planning unit, and the associated physical works would not materially affect the external appearance of the building. Accordingly, the proposal does not amount to development, as defined by section 55 of the Act.

Signed

S A Hanson

INSPECTOR

Date: 18 March 2026

Reference: APP/J1860/X/25/3369829

First Schedule

Proposed conversion of one bay of the extant double garage into a private home office and gym with the removal and bricking up of the existing garage doorway.

Second Schedule

Land at: 13 Callows Orchard, Rushwick, Worcester WR2 5GU

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 use described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were 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: 18 March 2026

by **S A Hanson BA(Hons) BTP MRTPI**

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Scale: Not to scale

