



Appeal Decision

Site visit made on 30 March 2026

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 April 2026

Appeal Ref: APP/P0119/X/25/3372259

40A Conygre Grove, Filton, South Gloucestershire BS34 7DP

- 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 G Hampson against the decision of South Gloucestershire Council.
 - The application ref P25/0186/CLP, dated 30 April 2025, was refused by notice dated 4 July 2025.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is '*change of storage to rear garden of existing 5-bedroom HMO to provide a sixth bedroom to the current C4 use. All facilities within the existing property to be utilised by sixth bedroom.*'
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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 Matter

2. The description of the proposal in the banner heading is taken from the application form. After obtaining the appellant's agreement, for the Certificate I have used the description found on the Council's decision notice, as that more accurately reflects the matter for which an LDC is sought.

Background & Main Issue

3. The appeal property contains a two-storey residential building, used as a small House in Multiple Occupation (HMO) within Class C4.¹ The proposal entails converting part of a freestanding outbuilding in the rear garden to provide an extra bedroom associated with the use as a small HMO.
4. The main issue in this appeal is whether the use applied for would be lawful for planning purposes. This depends firstly on whether planning permission was granted to erect the outbuilding by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). If my assessment concludes in the affirmative in that respect, it is then necessary to consider whether the proposal falls within the definition of development set out in s55(1) of the Act.

Reasons

5. The burden of proving that the appeal should succeed rests firmly on the appellant, the relevant test of the evidence being on the balance of probability. Whether an LDC should be issued is strictly a matter of fact and law. Therefore, planning merits considerations cannot form part of my deliberations.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended)

Whether the outbuilding was granted planning permission by the GPDO

6. Article 3, Schedule 2, Part 1 of the GPDO grants planning permission in Class E at paragraph E.(a) for the provision within the curtilage of a dwelling of any building or enclosure, swimming or other pool where it is required for a purpose incidental to the enjoyment of the dwelling as such, provided the size and locational limitations in paragraphs E.1 to E.3 of Class E are also satisfied, where relevant. It is well-established that a small HMO can benefit from permitted development rights in the GPDO Part 1.
7. In the context of a dwelling, 'incidental' relates to subordinate activities connected with the running of the dwelling or with the domestic or leisure activities of the occupiers. Something which is 'incidental' cannot itself be a dwelling; nor, therefore, can it involve the provision of primary living accommodation, such as a bedroom or kitchen. The Government's Technical Guidance² confirms that in relation to Class E a purpose incidental to a dwelling would not cover normal residential uses, such as the use of an outbuilding for primary living accommodation. As a result, Class E cannot be used to erect an outbuilding to provide living accommodation.
8. The outbuilding was constructed following the grant by the Council of an LDC under s192 of the Act to erect garaging and a workshop at the property in early 2024.³ In granting an LDC, the Council confirmed that a structure with a footprint, height to eaves, overall height and siting corresponding to that of the outbuilding in this appeal benefits from the planning permission granted by Class E.
9. According to the appellant, the outbuilding was substantially completed during February 2025; there is little firm evidence to indicate otherwise. The 'as built' elevations differ slightly from the granted LDC; there is a pedestrian door in each side, a two-light window in one side and a similar window replacing French doors at the rear. The internal layout also differs slightly from the granted LDC, which had garaging at the front with a workshop at the rear. Instead, there is a room smaller than a garage described as a store at the front, with a larger room described as a workshop at the rear.
10. The workshop has shelving along two of the walls and is currently used for storing various items including household electrical appliances, gardening equipment and domestic paraphernalia, while the store is currently empty. Use as a domestic workshop and/or for household storage by occupiers of the main building could reasonably be regarded as incidental to the primary use of the property as a small HMO. Neither of the rooms has an unusually or unreasonably large floor area, having regard to those incidental uses. Moreover, the workshop floor area is slightly smaller than that shown in the granted LDC.
11. The workshop, where the proposed extra bedroom would be located, is currently finished to a basic standard internally. The standard of the internal finishes do not reflect what might perhaps be expected if the workshop had really been intended for use as living accommodation all along. Also, there are no household fixtures and fittings and no obvious presence of the services, including electric, water and drainage, or the connections to provide such services, required to facilitate a use as living accommodation. Nor is there any firm evidence to suggest that the outbuilding was not in use for incidental purposes at the time of the application. The elevational changes from the granted LDC are more likely to reflect the incidental uses which the appellant originally wished to put the outbuilding to when erecting it, as opposed to an intention to use part as living accommodation. Therefore, there is little firm evidence to suggest the outbuilding was erected other than for purposes falling within Class E.

² Permitted development rights for householders: Technical Guidance MHCLG 2019

³ Council Ref: P23/03391/CLP

12. The main parties referred to established case law⁴ which concerned LDCs sought in respect of use of a partially completed building as a residential annexe, immediately on completion or one day afterwards. However, the facts and circumstances of this appeal are markedly different from in that case. Notably, there is little firm evidence that the outbuilding was other than substantially complete and in use for incidental purposes at the time of the application. The 2023 planning application to erect a structure at the property which included some living accommodation⁵ does not necessarily mean the appellant intended to use part of the outbuilding as an extra bedroom from the outset. Besides, that application involved a different form of development and predates use of the property as a small HMO.
13. Moreover, there are many legitimate reasons why the appellant's intentions could have changed between erecting the outbuilding for incidental purposes and pursuing the proposal. For example, it is entirely possible that, since erecting the outbuilding the appellant's circumstances have altered or that they now simply wish to use a part of the outbuilding as extra living accommodation instead. There is little firm evidence to suggest that this was not the case. Accordingly, on the balance of probability the outbuilding was genuinely erected in compliance with Class E.

Whether the proposal involves development

14. The distinction between primary and incidental purposes relates only to whether erection of the outbuilding complied with Class E. It does not govern subsequent changes of use; an outbuilding in the curtilage of a dwelling may be put to any use which is either part of a primary residential use or incidental to such a use. Use as an extra bedroom would merely constitute an integral part of the main use of the planning unit as a small HMO and provided the unit remains in single occupation, would not therefore involve any material change of use.
15. As a result, based on the available evidence, as a matter of fact and degree and in the particular circumstances of this case, the use applied for would not involve a material change of use and so would not fall within the definition of development. It follows that the appellant has satisfied the burden on them to show that the proposal is lawful for planning purposes.

Conclusion

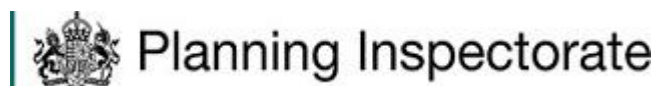
16. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for change of the outbuilding to form a sixth bedroom ancillary to the existing five-bedroom HMO is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Stephen Hawkins

INSPECTOR

⁴ *Rambridge v Secretary of State for the Environment and East Herts DC* QBD 22.11.96 CO-593-96

⁵ Council Ref: P23/02735/HH



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 30 April 2025 the use 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:

On the balance of probability, planning permission was granted for the outbuilding (as shown on drawing reference 4216.PL.02.D & 4216.PL.03B) by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Therefore, the proposal (as shown on drawing reference 4216.PL.04) would not involve a material change of use and so would not fall within the definition of development in s55(1) of the Act.

Signed

Stephen Hawkins

Inspector

Date: **10 April 2026**

Reference: APP/P0119/X/25/3372259

First Schedule

Change of outbuilding to form a sixth bedroom ancillary to the existing five-bedroom HMO

Second Schedule

Land at 40A Conygre Grove, Filton, South Gloucestershire BS34 7DP

IMPORTANT NOTES – SEE OVER

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 /operations 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, was /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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in this decision dated: **10 April 2026**

by **Stephen Hawkins**

Land at: 40A Conygre Grove, Filton, South Gloucestershire BS34 7DP

Reference: APP/P0119/X/25/3372259

Scale: Not to Scale

