



Appeal Decision

Site visit made on 22 April 2026

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th May 2026

Appeal Ref: APP/K0235/X/24/3336965

The Mansion House, Northampton Road, Bromham, BEDFORD, MK43 8HQ

- 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 P Garcha against the decision of Bedford Borough Council.
 - The application ref 23/02256/LDP, dated 12 October 2023, was refused by notice dated 1 December 2023.
 - 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 was described on the application form as: The proposal to utilise the building as an annex would not breach condition 5 of 20/00012/FUL as it will be solely used as accommodation ancillary to the main dwellinghouse.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr P Garcha against Bedford Borough Council. That application is the subject of a separate decision.

Preliminary Matters

3. The proposed use for which a Certificate of Lawful Use (CLOPUD) is sought was described on the application form as set out in the banner heading above. However, given the way in which the questions on the application form are structured, I can understand why the precise description was difficult to portray within the form alone.
4. Having regard to the form and the associated Planning Statement it is clear that the appellant was seeking confirmation that it would be lawful to use the outbuilding approved under application 20/00012/FUL (the 2020 permission) to provide residential accommodation within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended), as an annex, ancillary to Parklands Mansion.
5. The outbuilding has yet to be constructed and the application is made on the basis that it would first be constructed and completed in line with the approved permission and subsequently part of the building would be converted and utilised to provide residential accommodation.
6. That is the basis on which the application was made and that is how I shall consider the appeal.

Reasons

7. An application for a CLOPUD is not an application for planning permission. As such my decision makes no comment on the planning merits of the development. The main issue is whether the Council's decision to refuse to grant a CLOPUD was well-founded. The onus rests with an appellant to make their case, on the balance of probability.
8. A single reason for refusal was given in the decision notice which was that the use would not be lawful because it would result in the creation of a new independent dwelling which would constitute a material change of use and require planning permission.
9. Before addressing that point it is worth stating that I have reservations as to whether I could issue a CLOPUD as requested by the appellant. Section 192(2) of the Town and Country Planning Act 1990 (the Act), states that:

*If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful **if instituted or begun at the time of the application**, they shall issue a certificate to that effect; and in any other case they shall refuse the application.*
10. As I have emphasised in bold, the relevant date for considering whether a proposed use would be lawful is the date of the application. In this case, that was 01 December 2023. At that point in time the building in question had not been erected. It still hadn't at the time of my recent site visit. In other words, it would simply not have been possible to institute or begin the use of the building as a residential annex on the date of the application.
11. It seems to me that the words "if instituted or begun at the time of the application" are inserted for a specific reason. A use needs to be lawful at that point in time. A CLOPUD does not specify that the use would be lawful at any point thereafter. Things may change, permitted development rights may alter, the Planning Act or Use Classes Order may be amended for example.
12. In effect, the appellant does not wish to confirm whether the use of the building as an annex would have been lawful as of the date of the application. Rather, he seeks a CLOPUD to confirm that if he did build it, in line with the 2020 permission at some point in future, it would then be lawful to convert it to a residential annex. I could not grant such a certificate on such terms because of the uncertainties involved and the way in which s192(2) is framed.
13. Trying to assess whether the future use of buildings which had not yet been constructed would be lawful would become a wild goose chase of ifs, buts and maybes. For that reason alone, I am not satisfied that I could grant a CLOPUD in the manner sought.
14. However, it is worth stressing that the proposed use would not be lawful in any event, even if I were in a position to grant a CLOPUD. The 2020 permission was for an outbuilding containing a swimming pool, games room, sauna and changing rooms. Condition 5 of that permission states: 'The accommodation hereby permitted shall be used as accommodation ancillary to the main dwellinghouse known as Parklands Mansion House, Northampton Road, Bromham'.

15. The parties have focussed on whether the use of the building as a residential annex would amount to a material change of use on account of the creation of a separate, independent, dwellinghouse. Numerous appeals have been referred to, as well as caselaw, including *Uttlesford*¹ which is an oft referred to judgment in such appeals.
16. In that case, the annex, within a partially converted garage, was intended to be occupied by the appellant's mother-in-law who it was said would spend time with the family in the main dwelling. Although the building contained a bedroom, small living space, a bathroom and small kitchen, the judge found no reason in law to conclude that it should automatically be considered a separate planning unit or that a material change of use had occurred.
17. That is not to say that a building with all of the facilities required for day to day living within the garden of a residential property will never amount to a separate planning unit – whether that is so will be fact sensitive, depending on the circumstances of any given case.
18. However, whilst it is possible for an annex containing the facilities for day to day living to be occupied in a manner that does not result in a separate unit of occupation, the Uttlesford judgment does not support the appellant's case that such a use would be 'ancillary' to the use of the main dwelling, as would be required to comply with condition 5 of the 2020 permission.
19. Relevant passages of an appeal decision covering the question of 'incidental' uses in respect of permitted development rights are set out in the judgment. As is now well-established, additions to the normal domestic living accommodation of a dwellinghouse, for example, the provision of bedrooms, a living room, kitchen and the like would represent additional 'primary' accommodation. In other words, such accommodation is essentially part and parcel of the ordinary residential use, as opposed to being incidental to it.
20. Incidental uses are distinct from the ordinary accommodation provided in a dwelling but connected to the running of the dwelling or leisure activities of the person living in it. For example, greenhouses, summerhouses, gyms and games rooms and the like.
21. In the context of the present appeal I see no particular distinction between the word 'incidental' and the word 'ancillary'. In my view an ancillary use is one that is not part of the primary or ordinary accommodation offered within a dwelling; it would be ancillary to the main use in the same way as the incidental uses described in Uttlesford.
22. Although no plans are provided, the proposal is that the building would have all the facilities required for day to day living and would be occupied by one of the appellant's sons and his wife. In essence, what the appellant is suggesting is that the accommodation would function as an extension to the primary living space available in the dwelling. One wouldn't describe an attached extension providing additional living rooms, bedrooms etc as 'ancillary' living space, it would simply be an extension to the dwelling. The same principle applies in my view, notwithstanding that the building would be detached.

¹ Uttlesford District Council v SSE & another [1991] 2 PLR 76

23. Accordingly, unlike the approved pool, sauna, games room and changing rooms which would be ancillary to the use of the dwellinghouse, the proposed living accommodation would not. Thus, the provision of primary living space would amount to a breach of condition 5 of the 2020 permission which limits the use of the building for ancillary purposes. It would not be lawful as a result.
24. As to whether it would also represent a material change of use would depend on the nature of that use. Limited information is provided in that respect. It is said that it would be occupied by the appellant's son who is a member of the extended family residing in the main house, together with his wife. Beyond that, little information is provided as to how old the occupants are; whether they would work from home or elsewhere; whether they would live at the site as their main accommodation or also reside elsewhere; or whether anyone else would live with them. Given that the building is yet to be constructed it could be that children may arrive before that time.
25. Without more information it is quite difficult to determine how independent the use of the annex would be or to what extent the occupants would be likely to share facilities with the main dwelling. Simply being related to the other occupants does not dictate, of itself, that there would be any notable interaction. I have dealt with a similar case in the past where a son was living in an outbuilding on the basis that he had fallen out with his parents and had very little to do with them. To all intents and purposes he led an independent life, separate from the main dwelling.
26. If the appellant's son and his wife led an independent existence, coming and going to work, social engagements etc separate from those living in the main dwelling it may well be that their occupation would be largely separate from the main dwelling, much like family members residing in the same street but in separate houses.
27. Furthermore, no plans of the proposed layout are before me. I understand that the intention is that the building would have independent facilities but a previous planning application for an annex in the same space contained three bedrooms which would be akin to a substantial bungalow.
28. The distance from the main dwelling may not be decisive of itself but a large outbuilding with potentially multiple bedrooms, some distance from the main dwelling decreases the likelihood of regular interaction, especially in a context where little information is known about the potential occupant(s).
29. It would appear that no private garden space would be provided and the building would be set within the grounds of the main dwelling. That may be one indicator that it would be part of the same planning unit but there are many open plan estates where different dwellings sit within shared grounds. As such, it is not decisive.
30. Overall, I find the lack of precise information is such that I cannot conclude, on the balance of probability, that the intended use would not amount to the creation of an independent dwellinghouse or result in a material change of use.
31. The parties have referred to various appeal decisions but the circumstances appear subtly different. The extent of information provided to the respective Inspectors in respect of the people involved, their circumstances and precisely

how they would occupy the buildings in question is unclear. Consequently, it is hard to draw direct comparison with any of the cases.

32. Moreover, the appeal relating to 287 Hitchin Road involved a smaller building to be occupied by an elderly mother. There does not appear to have been a condition restricting the use of the building. The wording of the condition in question in the appeal relating to 4 Marks Cottage did not require the building to be used for ancillary purposes.
33. The cases at Higher Way, Holsworthy and Ampthill Road, Bedford were notably different in that they involved applications for planning permission for an annex as opposed to being for a CLOPUD. Neither case involved a building where the use was controlled by condition. The Inspectors allowed the appeals and attached a condition to the effect that the residential annex should be used for purposes ancillary to the use of the main dwelling. Given my comments above, I think the wording of the condition was contradictory with the nature of the use for which permission was being granted.
34. The Mudhall Cottage appeal was also a planning application as opposed to the CLOPUD application and there was no condition which limited the use of the existing outbuilding. Similarly, the Shems Barn appeal was also against the refusal to grant planning permission and no condition limiting the use of the outbuilding was in place.
35. Therefore, none of the cases cited by the appellant are directly comparable and none of them address the specific concerns identified above. For the reasons set out, I conclude, on the balance of probability, that the Council's refusal to grant a certificate of lawful use was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Chris Preston

INSPECTOR