



Appeal Decision

Site visit made on 18 May 2026

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date 02 June 2026

Appeal Ref: APP/W1905/X/25/3369160

42 Bury Green Road, Cheshunt, Hertfordshire EN7 5AA

- 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.
 - The appeal is made by JJE Portfolio Property Ltd against the decision of Broxbourne Borough Council.
 - The application ref 07/25/0434/LDP, dated 14 May 2025, was refused by notice dated 10 July 2025.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a certificate of lawful use or development is sought was described as 'erection of a flat roof outbuilding to the rear garden, ancillary use to the main dwelling'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 13 May 2025, the Council granted a lawful development certificate for a proposed change of use of No.42 Bury Green Road from a C3 dwellinghouse to a C4, 6-person house in multiple occupation (HMO)¹. The appeal application was made the next day, on 14 May 2025 (the relevant date). The application form states the existing use of No.42 was as a C3 dwellinghouse and this was confirmed by the appellant's agent prior to the Council's decision. I have, therefore, determined the appeal on this same basis.

Main Issue

3. The main issue is whether the Council's decision to refuse the application for a lawful development certificate was well founded.

Reasons

4. The application seeks to establish whether the proposed outbuilding would have been lawful if the development began on the relevant date. For the appeal to succeed, the onus is on the appellant to demonstrate, on the balance of probabilities, that the outbuilding was lawful. This turns on whether it was granted planning permission by Article 3(1) and Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).
5. Buildings erected as permitted development under Class E must be 'within the curtilage of the dwellinghouse' and in paragraph E.(a) built as 'required for a purpose incidental to the enjoyment of the dwellinghouse as such'. Neither phrase

¹ Ref 07/25/0243/LDP

is defined for planning purposes. It is largely a judgement informed by matters of fact and degree. The nub of the dispute is whether the outbuilding would have been within the curtilage of No.42 and used by the occupants of No.42 for a purpose incidental to the enjoyment of this house as such.

Curtilage

6. The plans show the outbuilding to be located at the bottom of the rear garden of No.42 with no internal dividing fence (I saw no such fence at my site visit). On the relevant date a tall fence with concrete posts and no interconnecting gate partly or wholly subdivided the rear garden into two parts across the plot width. The bottom part included access via a gate from an adjacent track and the top part included access through the house.
7. The purpose of the fence is not clear. However, considering relevant caselaw, there is little evidence that this physical layout and enclosure meant there was no longer a single residential property. Nor that these constituent parts of this plot were in separate ownerships or that each parcel of land was functionally anything other than for residential purposes with a single planning unit and primary residential use. There is, therefore, little to suggest that the bottom of the garden was no longer used for the comfortable enjoyment of No.42 or did not continue to serve the purpose of this house in some necessary or reasonably useful way.
8. On this basis, the land was still so intimately associated with No.42 that it formed part and parcel of No.42, such that the outbuilding would have been within the curtilage of this dwellinghouse.

Incidental purpose

9. The application form states that the outbuilding would be used for 'storage/office/ purposes ancillary to the main dwelling'. The plans show three rooms labelled 'office space ancillary to the main dwelling', 'toilet' and 'kitchenette (no cooking facilities)'. The office is said to be for parents of a family to work from home and the toilet and kitchenette for convenience and comfort during such use, providing basic facilities (small fridge for drinks, kettle and sink to wash cups). The Council considers that the application (made by the appellant, not the occupant of No.42) was speculative or for an ulterior motive – such as to establish a commercial premises or a self-contained unit of living accommodation, or for the future benefit of a tenant of the HMO.
10. I saw that No.42 is now internally arranged as a 6-person HMO, though not yet occupied as such. This house was, though, large enough to have been occupied by a small family, including with two upstairs bedrooms and a bath or shower room with toilet and wash hand basin; then enough rooms downstairs for a lounge, a dining room, a kitchen and, for instance, a small home office.
11. A building erected under the GPDO to provide a home office is not regarded as primary living accommodation in relevant guidance². It is generally accepted as for a purpose incidental to the enjoyment of a dwellinghouse as such, so not in breach of paragraph E.4 because this is not a closed list of incidental uses for the domestic needs or personal enjoyment of the occupants of a dwellinghouse. It is not unusual or uncommon for a home office to be (or be part of) the need for an outbuilding.

² Permitted development rights for householders - Technical Guidance, September 2019

Considering relevant caselaw, whether the home office in this case is required (or 'genuine', as the Council also put it) is largely a matter for the occupant(s) to determine; but it is subject to reasonableness and the circumstances of a particular case, not the whim of any individual occupant.

12. I accept that occupant(s) of No.42 could prefer a large home office in the outbuilding, especially if two parents both needed to work from home. The internal floor area would be conducive for this, including sufficient desk, seating and storage space. In these terms, and with regard to curtilage, the home office could have been ancillary or subordinate to the main use of No.42 as a dwellinghouse.
13. However, there is little evidence that the home office met the reasonable needs of the occupant(s) of No.42 on the relevant date or even that the house was occupied then, including by a family with two parents. Furthermore, the outbuilding would not be so distant from the house for it to be unduly inconvenient or uncomfortable to use a toilet or kitchen in the house. There is no apparent reason why a toilet for the home office would need such a large room, even with a wash hand basin. A sink, which could also be used for this purpose, was intended in the kitchenette opposite the toilet. But even excluding circulation space, it is not clear why the kitchenette would need to be so large if it is only for a small fridge, kettle and sink or have such long worktops and be in a dedicated room. These facilities could more conveniently be provided in a corner of the home office.
14. In any event, the guidance sets out that for a building erected under the GPDO, a purpose incidental to a dwellinghouse would not cover normal residential uses such as a bedroom, bathroom or kitchen. The kitchenette is a small kitchen so the outbuilding (the development as a whole) would not be for a purpose incidental to the dwellinghouse.

Conclusion

15. As a matter of fact and degree, although the proposed outbuilding would have been within the curtilage of No.42, and that it is common ground that it complied with the other limitations of Class E; it did not fully comply with paragraph E.(a) or therefore Class E of the GPDO. The appellant has not, therefore, demonstrated on the balance of probabilities that it would have been lawful.
16. For the reasons set out above, and on the evidence now available, I am satisfied that the Council's decision to refuse to grant a lawful development certificate was well founded. Accordingly, the appeal does not succeed and I will exercise the powers transferred to me in section 195(3) of the Act.

Robin Buchanan

INSPECTOR