
Appeal Decision

Site visit made on 19 May 2026

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 5th June 2026

Appeal Ref: APP/C3105/X/24/3354794

Manor House, Islip Road, Bletchingham, Oxfordshire, OX5 3DP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Steve Dunne against the decision of Cherwell District Council.
 - The application ref 24/01378/CLUP, dated 16 May 2024, was refused by notice dated 16 July 2024.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which a certificate of lawful use or development is sought is erection of incidental outbuilding under Class E to Part 1 of the Town and Country Planning (General Permitted Development) Order 2015.
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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 operation which is found to be lawful.

Preliminary Matters and Background

2. The description of the use for which an LDC is sought is generally taken from the application form. However, the relevant section of that form states “Please see Planning Statement”. The front page of the Planning Statement indicates that the application relates to *‘erection of incidental outbuilding under Class E to Part 1 of the Town and Country Planning (General Permitted Development) Order 2015’*. That description has also been used by the appellant when completing their appeal form. Therefore, I have used that description in the banner heading above.
3. The appellant has stated that the groundworks associated with the proposed outbuilding were undertaken in September 2023. On 11 October 2023 planning permission¹ for *“demolition of existing dwelling and ancillary buildings and replacement with new dwelling and garage building, associated landscaping and alterations to access”* was granted subject to conditions. A Section 106 legal agreement was associated with that planning permission.
4. On 1 July 2025 planning permission² (the 2025 permission) was granted on appeal³ for *“variation of condition 2 (plans) of 22/03088/F – alterations to design of main house and garage to include amended chimney design, the use of different construction materials, removal of porch, provision of fire escapes, installation of doors, erection of external stairs to garage, alteration of garage roof from hipped to pitched style roof, insertion of rooflights and addition of solar panels”* subject to conditions.

¹ Ref No: 22/03088/F

² Ref No: 24/00519/F

³ Appeal Ref: APP/C3105/W/24/3357698

5. At my site visit I noted that a replacement dwelling and garage have been constructed and that this dwelling is occupied. There is no dispute that the 2025 permission was begun by the construction of this replacement dwelling and garage. Moreover, the pre-existing dwelling is still present on the site, but it appears to be unoccupied. Additionally, an outbuilding is under construction in a similar location to the outbuilding that is the subject of this appeal.
6. The Planning Practice Guidance (PPG) makes it clear that the decision maker needs to ask: if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes? As such, I have determined the appeal based on the submitted plans of the proposed outbuilding and whether that outbuilding would have been lawful for planning purposes if it had been commenced on the date of the LDC application. Therefore, whether, the proposed outbuilding would be required to be demolished as a result of the conditions attached to the 2025 permission cannot form part of the determination of this appeal.
7. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.

Main Issue

8. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

9. Manor House (the pre-existing dwelling) comprises a substantial detached dwelling in spacious grounds. Outbuildings were associated with that dwelling. There is now another large, detached dwelling (the replacement dwelling) that has been constructed in close proximity to the pre-existing dwelling and there is a garage block associated with that dwelling. Yet, on 16 May 2024 it is more likely than not, on the balance of probability, that the pre-existing dwelling was the only dwelling within the appeal site.
10. The Council considers that the LDC application should have been submitted under section 191(1)(b) of the 1990 Act rather than section 192(1)(b) and it has cited other appeal decisions⁴ in support of that argument. However, in this case at the date of the LDC application only the ground works had been carried out so the erection of the outbuilding was an operation proposed to be carried out on land as stated within section 192(1)(b). Therefore, 2 of the appeal decisions are not comparable to the case before me as the outbuilding had not been substantially completed at that date. In relation to the third decision, regarding Gransden House, I do not agree with the Inspector's findings for the reason given above. Moreover, section 191(1)(b) relates to '*any operations which have been carried out in, on, over or under land*' and in this case, in my judgement, that would only have applied to the groundworks.
11. The proposed operations involve the erection of a freestanding single storey outbuilding, situated on an area approximately north of the pre-existing dwelling.

⁴ Appeal Refs: APP/N5660/X/10/2127582; APP/E5330/X/24/3342171 and APP/R4408/X/21/3288717

The outbuilding would contain a swimming pool and seating area, WC, shower and changing room, family yoga room, together with a plant room.

12. Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for development within the curtilage of a dwellinghouse. Class E(a) of Part 1 allows for the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure (Class E).
13. There is no dispute between the parties that the development falls to be considered under Class E. The Council's delegated report contains 'Appendix 1' which is a checklist for 'householder permitted development under Part 1 of Schedule 2 of the GPDO'. That checklist indicates that the proposed outbuilding would meet the criteria within E1, E2 and E3 of Class E and I have no reason to disagree with those findings. What is at issue is if the proposed outbuilding had been commenced on the date of the LDC application would it have been for a purpose incidental to the enjoyment of the pre-existing dwellinghouse as such, and whether it would have been reasonably required for that use.
14. In the context of a dwelling, an incidental purpose is generally regarded as being a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it. The Government's Technical Guidance (TG) advises that a large range of buildings can fall within Class E, including garden sheds, other storage buildings and garages, as long as they can properly be described as having a purpose incidental to the enjoyment of the dwelling. The TG goes on to advise that the term 'incidental' does not cover normal residential uses such as separate self-contained accommodation, or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.⁵
15. Relevant case law has established that in Class E, 'required' for an incidental purpose should be interpreted as 'reasonably required' and does not rest on the unrestrained whim of a householder. The physical size of an outbuilding, alone or in relation to a dwelling, is not conclusive; it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose.
16. The appellant has stated that his client and his wife have four children with the youngest being 5 years old. The largest portion of the outbuilding would be taken up by a swimming pool. On one side of the pool there would be a seating area and on the floor plan a few sun beds are indicated. I acknowledge that this seating area is likely to be a little greater in size than in cases where sun beds are not utilised and that seating areas can form part of the primary accommodation within a dwelling. However, there is no room for circulation space on the other three sides of the pool, and a portion of the seating area would be required to provide safe circulation space given that floor surfaces may well be wet at times, and young children would need to be supervised in that environment. To my mind, none of this suggests that the pool and its seating area would be excessive for its

⁵ Permitted development rights for householders: Technical Guidance MHCLG 2019.

purpose or that the seating area would not be subordinate to the incidental use of the swimming pool.

17. The yoga room would be of a size to provide space for up to 6 mats with space in between the mats to ensure ease of movement whilst exercising. The appellant has stated that “the client’s family practice different types of yoga regularly, from Vinyasa, Acroyoga to Iyengar with ropes.” Therefore, it is not unreasonable to consider that the family of 6 would regularly undertake yoga together. It is also stated that the yoga room would have a sprung floor to enable it to be used as a dance space. The space shown for the yoga room would therefore not appear excessive.
18. It is not unreasonable to regard the undertaking of exercise such as swimming and more passive activity like enjoying yoga or dance, as falling within the wide range of day-to-day domestic leisure and recreational activities that occupants of a dwelling might participate in. As such those activities would have been subordinate to and connected with the running of the pre-existing dwelling and the domestic or leisure activities of the persons living in it.
19. Whilst the outbuilding would contain a WC, shower and changing room, I am satisfied that these facilities would be incidental to the activities in the swimming pool and yoga room, particularly given that the appellant has young children. I acknowledge that the outbuilding is only a short distance from the pre-existing dwelling. Nevertheless, it would clearly have been more convenient for the occupiers of the pre-existing dwelling to be able to access a facility in the outbuilding in which to freshen up and change after using the pool/yoga room and to be able to use a WC, rather than walking outside to access facilities in the dwelling, possibly during hours of darkness or in periods of inclement weather.
20. As a result, I am satisfied that the WC, shower and changing room would not constitute primary living accommodation. They would occupy a modest proportion of the outbuilding’s overall floor space and there would not be excessive floor space left over after the fitting of a toilet, hand basin and shower, whilst allowing reasonable room for circulation. The facilities provided would not exceed the minimum provision that might reasonably be expected in a WC, shower room and changing room in these circumstances.
21. There is no requirement in Class E to show that existing floorspace in the pre-existing dwelling is incapable of use for accommodating some or all of the purposes the outbuilding would serve. Besides, the plans of the pre-existing house indicate that at the time of the LDC application all of the rooms appear to have been utilised on a day-to-day basis.
22. For the reasons set out above, the outbuilding would not have an unusually or unreasonably large floor area, having regard to its intended uses. This strongly suggests that the nature and scale of the proposed activities would not go beyond purposes that would have been incidental to the enjoyment of the pre-existing dwelling at the date of the LDC application. It points towards the outbuilding not being excessive in size, having regard to the secondary or incidental role in relation to the pre-existing dwelling that it was proposed to serve.
23. Accordingly, on the balance of probability, the proposed outbuilding would have been lawful for planning purposes if it had been commenced on the date of the LDC application. This is because on that date, based on the submitted evidence, it

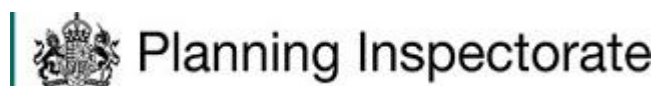
would have been permitted development by virtue of the rights conveyed by Article 3, Schedule 2, Part 1, Class E of the GPDO. However, this finding does not prevent the Council from exercising its powers of enforcement if the Council considers that there is/has been a material change as cited under section 192(4) of the 1990 Act. It would also be open to the appellant to apply for an LDC under section 191(1)(b) of the 1990 Act in relation to the outbuilding that is currently under construction on the site.

Conclusion

24. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for erection of incidental outbuilding under Class E to Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 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.

D Boffin

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 16 May 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red and hatched in black 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, the proposed outbuilding would have been lawful for planning purposes if it had been commenced on the date of the LDC application. This is because on that date, based on the submitted evidence, it would have been permitted development by virtue of the rights conveyed by Article 3, Schedule 2, Part 1, Class E of the GPDO.

Signed

D Boffin

Inspector

Date: 5th June 2026

Reference: APP/C3105/X/24/3354794

First Schedule

Erection of incidental outbuilding under Class E to Part 1 of the Town and Country Planning (General Permitted Development) Order 2015 as shown on Drawing Numbers: 1006, 1007, 1008 and 1009.

Second Schedule

Land at Manor House, Bletchingdon, OX5 3DP

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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 the Lawful Development Certificate dated: 5th June 2026

by D Boffin

Land at: Manor House, Bletchingdon, OX5 3DP

Reference: APP/C3105/X/24/3354794

Scale: Not to Scale

