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## Appeal Decision

Inquiry held on 23 & 24 June 2026

Site visit made on 23 June 2026

**by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date 08 July 2026

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### Appeal Ref: APP/T3725/X/26/3378058

#### **The Annexe at Glenthorne, Five Ways Road, Hatton, Warwickshire, CV35 7HZ**

- 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 Richard O'Flynn against the decision of Warwick District Council.
  - The application ref W/25/1757, dated 18 December 2025, was refused by a notice dated 13 February 2026.
  - The application was made under section 191(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 use as a single dwellinghouse.
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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 existing use which is found to be lawful.

### Application for costs

2. An application for costs has been made by Mr Richard O'Flynn against Warwick District Council. This application is the subject of a separate decision.

### Procedural Matters

3. The Inquiry opened on 23 June 2026 and we sat for 2 days. The second day was a virtual session to hear closings. All evidence was heard under affirmation and through cross examination.
4. When considering the appellant's case, I have taken account of the fact that the appellant is unrepresented and not professionally qualified in matters of planning law<sup>1</sup>.

### Main Issue

5. Section 191 (4) of the Town and Country Planning Act, 1990 (as amended) (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them at the time of the application of the use, operations or other matters described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal, and the main issue is whether the Council's decision to

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<sup>1</sup> Richard O'Flynn v SSCLG and Anr [2016] EWHC 2894 (Admin)

refuse to grant a Certificate of Lawful Use or Development (LDC) was well-founded. In this case that turns on whether the appellant can demonstrate, on the balance of probability, that the use of the appeal site as a separate dwellinghouse occurred and has continued in use as a single dwellinghouse for a period of four years prior to 18 December 2025.

6. It is established case law that the appellant's evidence does not need to be corroborated by 'independent' evidence for it to be accepted. In the event that there is no evidence to contradict the appellant's version of events, an LDC should be issued. However, the appellant's own evidence must be sufficiently precise and unambiguous to justify a grant of an LDC, on the balance of probability.

## **Summary of Cases**

### *Appellant's Case*

7. It is the appellant's case that he began construction of the Annexe during the summer of 2018 after he had been granted a LDC for the proposed erection of 2no. detached outbuildings, siting of a caravan and formation of hardstanding within the curtilage of his residential property known as Glenthorne<sup>2</sup>. This appeal concerns the larger of the two outbuildings and is referred to as "the Annexe". Although the Annexe was not constructed in accordance with the submitted LDC plans, the Council does not dispute that it would meet the size limitations of Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (as amended) (GPDO). It is common ground that the Annexe was substantially complete at the end of 2018.
8. The appellant states that it was always his intention when first constructing the Annexe to utilise it for purposes incidental to the residential use of Glenthorne, i.e. for use as a gym, with a table tennis and pool table, darts board, dance studio, model railway track and space for him to carry out his woodworking hobby. However, shortly after the building was completed, and in response to a deterioration in the health of his mother-in-law and a request from his wife, during the latter half of 2019 he fitted out the Annexe with all the facilities it required for day-to-day private existence. His (by then estranged) wife then decided to take up residence in the Annexe and moved in on 14 November 2019. His estranged wife has continued to reside in the Annexe and her residence is a functionally separate household. She no longer resides nor utilises the residential property of Glenthorne and has minimal social interaction with the appellant, albeit he continues to mow her lawn. With the exception of the occasional holiday, she has lived continually in the Annexe since November 2019. Her mother moved in during 2023 for a short period but unfortunately died shortly afterwards.
9. In support of his application and appeal the appellant has provided statutory declarations from himself, his estranged wife and from his brother-in-law, all which confirm that the Annexe has been lived in as a separate dwellinghouse since November 2019. A detailed planning history of the site has been provided, including associated delegated officer reports, planning statements, decision notices and previous appeal documents and appeal decisions. Copies of utility bills for the property, Council Tax demands/correspondence have also been provided together with a letter from the nearest neighbour to the Annexe which included her assessment of the use of the Annexe. Evidence to confirm the

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<sup>2</sup> LPA ref: W/17/2164, granted 30 January 2018.

appellant's relationship with his new partner Mrs Crosby has also been submitted, and Mrs Crosby gave evidence at the Inquiry. The Appellant's son also gave evidence at the Inquiry on matters relating to the planning history of the site and the breakdown of his parents' marriage.

10. In addition to the appellant's contention that the building has been in use as a single dwellinghouse since November 2019, he also asserts that the building is lawful for reasons of natural justice. He considers that the Council mistakenly authorised the construction of the Annexe under the provisions of the GPDO. He believes that approval was responsible for the creation of a separate planning unit due to the building's lack of close physical association and total absence of any functional subservience to the dwellinghouse of Glenthorne. Consequently, he asserts that the unauthorised use of the dwellinghouse would have immunity from enforcement action for reasons of natural justice, i.e. because any enforcement action on the part of the Council would have represented conspicuous unfairness amounting to an unlawful abuse of power.

### *The Local Planning Authority's (LPA) Case*

11. The LPA consider that the appellant has failed to meet his burden of proving that, continuously for the four years preceding the date of the application, the Annexe was used independently to the main dwelling of Glenthorne. That conclusion, in substance is, in the view of the LPA, the same conclusion as that reached in the 2025 Appeal Decision<sup>3</sup>, albeit that decision dealt with a different time period. The reasoning in the 2025 Appeal decision was upheld in the High Court, subject to an arguable error of law which was held not to be critical to the outcome. Nothing the appellant has provided in this appeal justifies a departure<sup>4</sup>.
12. Evidence in support of the LPA case includes details of the planning history of the site, including responses to the Planning Contravention Notice (PCN)<sup>5</sup> and notes from the Council's Enforcement Case File relating to monitoring of the site by Council Officers<sup>6</sup>.

### **Assessment of the Evidence**

13. The Annexe is a substantial detached "H" shaped brick building, situated in a generous plot to the south of Glenthorne, and with a separate vehicular access, drive and parking off Five Ways Road. Fencing and a more recently planted beech hedge, delineates the appeal plot and the adjacent property, Glenthorne. A wooden gate enables access between the two areas of land.
14. Having regard to *Burdle*<sup>7</sup>, it is necessary to assess both the physical and functional links between the use of the Annexe and Glenthorne and consider whether a separate planning unit has been created as a matter of fact and degree. Having regard to the physical layout of the appeal property, including the land outlined in red on the application plans, the appeal site is physically separate from Glenthorne, having its own vehicular access, driveway and parking area as well as an enclosed lawned garden area and private patio. However, it is the Council's view that there remains a functional link between the two properties, such that a

<sup>3</sup> APP/T3725/X/24/3339528 & APP/T3725/X/24/3343915, dated 17 February 2025.

<sup>4</sup> The LPA's Case, LPA Closing Submissions.

<sup>5</sup> Document 1 at Inquiry.

<sup>6</sup> Appendix 3, LPA Proof of Evidence Delegated Decision Worksheet, LPA Ref W23/1648.

<sup>7</sup> *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

material change of use to a separate dwellinghouse has not occurred and a new planning unit has not been created.

15. The Council's Witness, Mr Walker, confirmed to the Inquiry that the LPA do not dispute that the appellant's estranged wife has been residing in the property since November 2019. They also accept that her residence has been continual, albeit short absences for holidays. Indeed, I note that it was the Council who first raised concerns that the property was being used as a separate dwellinghouse following observations from a neighbour and following a site visit in December 2019. That visit was followed up by the LPA issuing a PCN, dated 5 June 2020. The Officer's Report considering the appellant's subsequent application for a LDC for use of the Annexe as a separate dwellinghouse in July 2020, concluded that a new residential planning unit had been created and in use as a separate dwelling. However, at that time it was concluded that the use was unlawful because it had not been continuing for the requisite four year period<sup>8</sup> and the application for a LDC was refused.
16. The Council's decision to refuse the 2020 LDC was appealed by the appellant, and the appeal was subsequently dismissed<sup>9</sup>. The Inspector in that case considered that having regard to the appellant's planning statement<sup>10</sup> and his responses to the PCN<sup>11</sup>, where the appellant had confirmed that since 2018 he had regularly undertaken woodwork projects in the two south facing rooms as part of his own DIY requirements and hobby activities, there appeared to be a functional link between the use of Glenthorne and the Annexe. Furthermore, it had not been in use as a single dwelling for the requisite 4 year time period.
17. In support of the application the subject of this appeal, the appellant prepared a planning statement where he clarified his use of the building for woodworking activities. He states that from September 2018 he made some temporary window and door frames for the building and fabricated window boards. He made a coat, hat and separate boot rack and fitted out the utility, kitchen and bathroom units and bedroom wardrobes. He explained that those woodworking activities had all ceased before his estranged wife moved into the Annexe in November 2019. In support of the appeal the appellant has submitted a Statutory Declaration stating that he has not used any part of the Annexe for woodwork activities or any other purposes since his estranged wife moved into the building on 14 November 2019<sup>12</sup>. Furthermore, an objector to the LDC, who is the closest neighbour to the Annexe, states in a letter to the Council, dated 27 May 2024, that she has a good view of the Annexe and its driveway and that she has never seen any of the activities, including workshop, hobby or games room, etc take place at the property. She further states: *"Mrs Carol O'Flynn lives in the Annex, with the 2 family dogs, a short time with her elderly mother, her grandchildren also visit on some weekends and school holidays. The annex has been occupied and used as a separate private residence since the latter half of 2019."*<sup>13</sup>
18. The Council do not have any evidence that would suggest that the appellant has been undertaking woodwork projects or indeed any other activities in the Annexe since the relevant date of 18 December 2021. However, Mr Walker told the

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<sup>8</sup> CD 13: Officer Report, LPA Ref: W/20/0940, Conclusions.

<sup>9</sup> CD 17, :PP/T3725/X/20/3257925.

<sup>10</sup> CD 45, Planning Statement LPA Ref: W/20/0940

<sup>11</sup> Document 1 at inquiry.

<sup>12</sup> CD 20: Appellants Statutory Declaration dated January 2026.

<sup>13</sup> CD 25: Letter from Greystone Cottage, dated may 2024.

Inquiry that there are two rooms which remain undecorated in the property which **could** be used for that purpose<sup>14</sup>. He also confirmed that he had never been inside the Annexe. “Could be used” is not evidence of actual use, and at the time of my site visit those rooms were used for Mrs O’Flynn’s domestic storage. Thus, whilst in 2020 an Inspector found that on the balance of probability the building still had a functional relationship with Glenthorne, by reason of the appellant’s wood working activity during 2018/19, there is no evidence of such activities during the relevant time period in this appeal. Furthermore, the evidence of a close neighbour supports the appellant’s case in that regard.

19. The LPA also seek to rely on the Inspector’s decisions dated 17 February 2025, which were in respect of two separate applications for an LDC for use of the Annexe as a single dwellinghouse submitted by the appellant on 25 October 2023 (APP/T3725/X/24/3339528) and on 16 February 2024 (APP/T3725/X/24/3343915). The Inspector in that case again refers to Mr O’Flynn’s response to the PCN in June 2020 where he refers to his previous use of the Annexe for woodworking activities and three rooms which at that time were vacant and thus could be used for incidental activities associated with Glenthorne. The appellant’s 2020 response to the PCN was made within the relevant 4 year time period for the October 2023 and February 2024 LDC applications, and thus a material consideration for the Inspector in those appeals. However, the relevance of those responses is significantly reduced when considering the application in this appeal, as they are outside of the relevant time period, i.e. 18 December 2021 – 18 December 2025.
20. The LPA refer to case notes made by their Officers who were monitoring the use of the appeal site<sup>6</sup>. The following case notes were made during the relevant time period for this appeal:
  - 22/03/2022 - *“Passed this site today, en route to another case. Nothing on site to suggest that the building is independently occupied”* – Enforcement Officer
  - 22/03/2022 – *“Discussed at case review with GF. Suggest continuing watching brief pending further use of building”* – Enforcement Officer
  - 05/05/2022 – *“Passed this site today, en route to another case. Nothing on site to suggest that the building is independently occupied”* – Enforcement Officer
  - 20/05/2022 – Final Outcome - *“Site has been monitored on multiple occasions with no breach being identified. Content that we have enough evidence to prove that there is no continual use and will close the case pending new information. It was visited by myself on this date too and no change appeared to have occurred. Council Tax check also carried out and not registered”* – Enforcement Manager.
21. There is no evidence in those notes to indicate that Officers had entered the appeal site or the Annexe to assess its actual use. In addition, the appellant confirmed he was unaware of those visits. The property has a gated entrance, a long driveway and is set back some distance from the road. On my questioning, Mr Walker accepted at the Inquiry that it would be very difficult to assess how the building was being used by simply driving past it. Furthermore, none of those Officers who had driven past were available to give evidence to the Inquiry. I therefore give those written notes little weight as evidence of actual use.
22. The appellant has provided copies of utility bills (water and electricity) for the Annexe between 2019 -2025/26. Those services are separate from Glenthorne,

<sup>14</sup> Bold used for my emphasis.

which as noted by an Inspector in previous appeals, is not surprising given the separation and distance between the Annexe and Glenthorne. It is also evident that when the Annexe was initially constructed and in use incidental to the residential use of Glenthorne, the bills were addressed to Mr Richard O'Flynn at the Annexe. However, once occupation was taken up by the appellant's estranged wife, and from the middle of 2020, the bills are addressed to Carole O'Flynn, which would support the appellant's version of events.

23. The appellant provided evidence in support of this appeal from the Valuation Office Agency (VOA) in relation to Council Tax in respect of the Annexe. The evidence included a letter dated 7 August 2024 in which the VOA suggested that they had evidence that the Annexe was tenanted and should be brought into a separate Council Tax Band from Glenthorne. Council Tax demands were back dated to 2019/20 and a single person occupancy discount applied. However, email correspondence between the Council's Planning Department and their Revenue's Officer, obtained recently via a Freedom of Information Request by the appellant<sup>15</sup> reversed that decision and determined that the Annexe should be considered as ancillary to the residential occupation of Glenthorne.
24. In the absence of any of the relevant Officers from either the finance or planning department able to give direct evidence, nor any other evidence available to shed light on the decisions relating to Council Tax Banding, the correspondence before me does not provide any evidence of actual occupation or use of the Annexe. Mr Walker confirmed at Inquiry that the Council does not believe that the appellant has at any time tried to conceal the use of the Annexe and had not himself been involved in any of the decisions regarding how the property was assessed by the VOA. I therefore give the evidence before me in relation to Council Tax banding for the Annexe, little weight.
25. Mrs Crosby told the Inquiry that she had been in a relationship with the appellant since 2019 and that she was fully aware that his estranged wife lives a separate life in the Annexe. She advised that she did not visit Glenthorne and that the appellant always stayed at her property. They continue to have a relationship and go on holidays, and cruises together. She has no reason to dispute the appellant's assertion that his estranged wife and her use of the Annexe do not form part of the functional residential use of Glenthorne.
26. The appellant's son also gave evidence to the Inquiry. His oral evidence and answers to my questions about the construction and use of the Annexe supported his father's version of events. He explained the breakdown of his parents marriage from 2017 onwards, his mother's health issues, his initial use of the Annex as a gym and subsequent moving into the Annexe by his mother in November 2019. He advised that he visited her probably twice a month and she often visited his house. Occasions when his father and mother were ever in the same room together was rare due to the breakdown of their relationship. His evidence was clear and unambiguous.

## **Conclusion**

27. Considering all the evidence available and what I heard at the Inquiry, the evidence is sufficiently precise and unambiguous to establish on the balance of probability, and with no evidence from the Council that would contradict or

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<sup>15</sup> Document 3 at Inquiry.

otherwise make the appellant's version of events less than probable, the Annexe and land edged red on the submitted plans is a separate planning unit and has been in continual use as a separate dwellinghouse for a period of four years prior to 18 December 2025 and its use as such is therefore lawful.

28. Thus, for the reasons given above, I conclude on the evidence available, that the Council's reason for refusal to grant a LDC in respect of the use of the Annexe at Glenthorne, Five Ways Road, Hatton, Warwickshire, CV35 7HZ as a dwellinghouse was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195 (2) of the 1990 Act as amended.
29. In view of my finding above, the appellant's case that the Annexe should be considered lawful for reasons of natural justice do not fall to be considered.

*Elizabeth Pleasant*

INSPECTOR

## **APPEARANCES**

FOR THE APPELLANT:

Mr Richard O'Flynn                      The Appellant

He called:

Mr Ryan O'Flynn                      Appellant's Son

Mrs Hilary Crosby                      Appellant's Partner

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jackson Sirica, of Counsel

He called:

Mr Adam Walker, Principal Planning Officer, Warwick District Council.

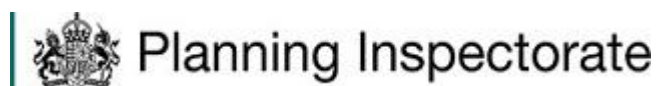
## **DOCUMENTS**

Document 1: Full copy of the Mr Flynn's Email, dated 22 June 2020 in response to the PCN dated 5 June 2020 and issued by Warwick DC.

Document 2: Copy of the Appellant's Cross Examination of WDC's witness for the Inquiry.

Document 3: Email correspondence from Revenues Officer, WDC in respect of Council Tax Banding/Classification for The Annex. Dated July, August and December 2024.





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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 18 December 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the evidence available and on the balance of probability, the use of the appeal site as a separate dwellinghouse occurred and has continued in use as a single dwellinghouse for a period of four years prior to 18 December 2025.

Signed

*Elizabeth Pleasant*

Inspector

Date: 08 July 2026

Reference: APP/T3725/X/26/3378058

### ***First Schedule***

Use of the Annexe as a single dwellinghouse

### ***Second Schedule***

Land at The Annexe at Glenthorne, Hatton, CV35 7HZ

IMPORTANT NOTES – SEE OVER

## NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.

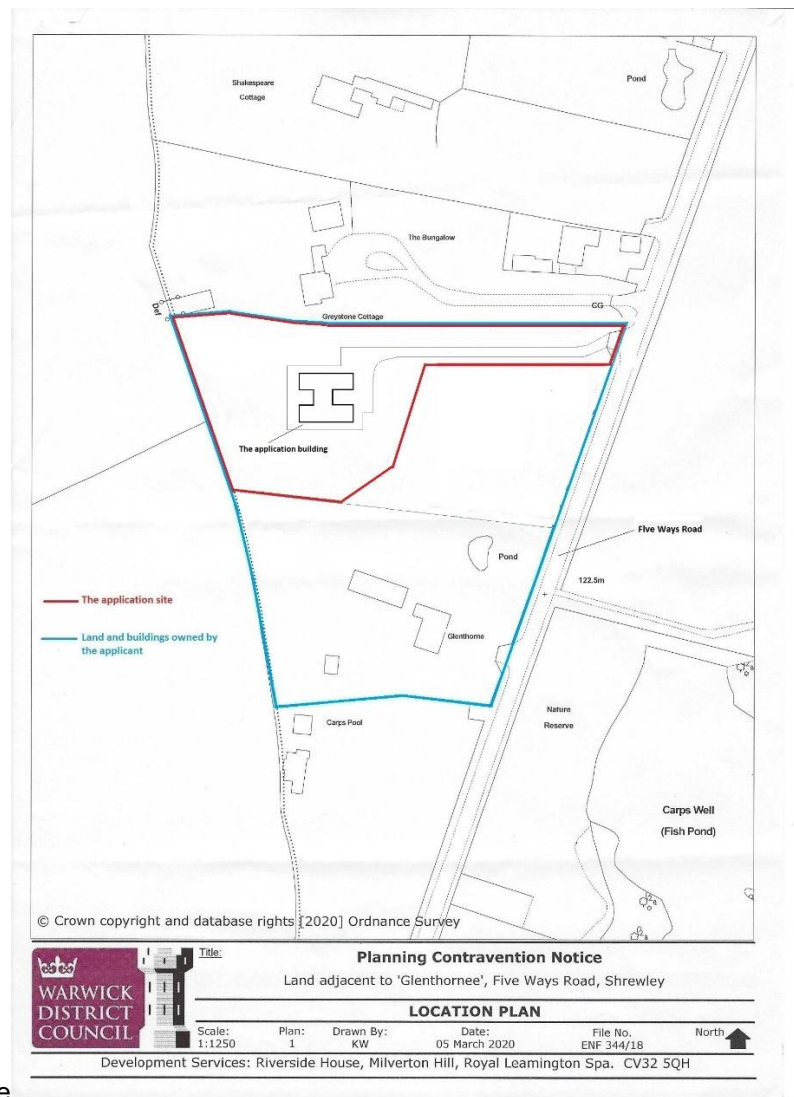
## Plan

This is the plan referred to in the Lawful Development Certificate dated: 08 July 2026

by Elizabeth Pleasant

Land at: The Annexe at Glenthorne, Hatton, CV35 7HZ

Reference: APP/T3725/X/26/3378058



Scale: Not to Scale.