



Appeal Decision

Site visit made on 13 June 2026

by **A U Ghafoor BSc (Hons) MA MRTPI FCMi fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 13th July 2026

Appeal ref: APP/G5180/X/24/3352279

2 Oakdene Avenue, Chislehurst BR7 6EA

- 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 (LDC).
- The appeal is made by Mr Antony Holts against the Council of the London Borough of Bromley.
- The application ref DC/24/00410/ELUD, dated 1 February 2024, was refused by notice dated 16 August 2024.
- The application was made under section 191(1)(a) of the Act.
- The use for which a certificate of lawful use or development is described as follows: *the building is currently used as a dwelling which is connected to the main house.*

Decision

1. The appeal is dismissed.

Preliminary matters

2. Firstly, it is necessary to understand the purpose of a s191 LDC application. The Act explains that if any person wishes to ascertain, amongst other things, whether any existing use of a building is lawful, they may make an application for the purpose to the local planning authority (LPA) specifying the land and describing the use, operations or other matter. As the Planning Practice Guidance (PPG) explains an application needs to describe precisely what is being applied for and the land to which the application relates. Without sufficient or precise information, the LPA may be justified in refusing a certificate. The LPA may choose to issue a LDC for a different description from that applied for on the facts of a case, as an alternative to refusing a certificate altogether.
3. Secondly, the word "lawful" has a specific meaning. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. Finally, as the PPG states, a decision-maker needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits, including personal and health circumstances, are not relevant at any stage in this application or appeal process.
4. The evidence refers to the outbuilding as a cottage, but I refer to it as the former for consistency. Given the need for precision in the terms of any certificate, the description of the existing use in the application form reads as a statement. The LPA describe the existing use of the outbuilding at the rear of the property currently being used as a dwelling connected to the main house. It is unclear as to what is exactly meant by "...connected to the main house" and that lack of clarity affected the way in which the LPA approached the appellant's case, which is demonstrated in its officer report. I have reviewed all the evidence, and it seems to

me that the appellant sought an LDC for the outbuilding's existing use as a dwellinghouse. I proceed on that basis.

Reasons

5. Starting with the relevant unit of occupation, no. 2 is a dwellinghouse with residential garden and constitutes a planning unit in primary residential use. On 3 October 2012, planning permission was granted for the single storey detached outbuilding to rear subject to condition 3), which states that it shall only be used for purposes incidental to the residential use of the main house and for no other purpose. Condition 4) requires the development be carried out in complete accordance with the plans approved under the planning permission. I refer to this permission as "the 2012 Permission".
6. It is important to keep in mind that an incidental use is one which is functionally related to the primary use. An incidental use must take place within the same planning unit as the primary use, and it cannot be the same as, integral to or part and parcel of the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Where for example an outbuilding permitted within the same residential planning unit is used for the provision of additional living space, it will not be in incidental use. It will be in the same use as the house. It will be in residential use and not a use that is incidental to residential use. Even if the outbuilding itself is described as 'ancillary' to the house, its use will not be. The outbuilding will either be used for residential purposes that are integral to the residential use of the main house, or there will have been a material change in the use of the planning unit through residential subdivision.
7. The plans approved by the 2012 Permission are attached to the Council's statement. These include a site layout plan and elevations. In the LDC application, similar layout drawings were submitted. I saw that the outbuilding's external elevations are broadly consistent with the 2012 Permission and LDC application plans. However, internally the outbuilding includes an open-plan style kitchen and living room, bedroom and washroom. It contains the necessary facilities for day-to-day private domestic existence and is characterised as a dwelling the use of which would not fall within the scope of the 2012 Permission. For these kinds of buildings express planning permission would be required as they cannot be treated as being incidental¹ to the primary residential use of the planning unit.
8. The appellant's bundle includes several electronic communication and statements from witnesses, but these do not appear as sworn declarations. In any event, I have reviewed all the bundle but, unfortunately for the appellant, the quantum of evidence presented does not support the claim that the incidental outbuilding became a dwellinghouse on or before 1 February 2020 and that it has been continuously occupied and used as such without any significant interruption. Here is why.
9. The appellant says that outbuilding has been used as a separate dwelling since at least 2018/2019 following a change in personal circumstances. Before then it had been occupied by their parents but there is also mention of a storage use. In any event, the evidence does not explain in any detail the sequence of the events. The supporting information does not demonstrate when the outbuilding possessed necessary facilities for day-to-day domestic existence. For example, there is a lack of evidence showing the internal layout of the outbuilding following the grant of the 2012 Permission. Apart from broad statements that it

¹ Article 3, schedule 2, part 1 class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

was occupied by family, it is unclear as to how the outbuilding was used following its substantial completion. Additionally, the evidence presented does not clearly show when a full functioning kitchen or washroom were installed. Further, the evidence is that the outbuilding became dilapidated and in 2022/2023 it was completely refurbished, but there is lack of detail as to the nature and scale of the work.

10. Similarly, there is a distinctive lack of evidence showing how the outbuilding has been occupied and used as a self-contained dwellinghouse. The occupation and use by family may have been connected or linked to the use of no. 2, although there is insufficient detail showing how lives were shared. In any event, this claim is contradicted by supporting evidence which alleges the main dwellinghouse had occasionally been occupied by work colleagues. This suggests that the use of the main dwelling might have been unconnected with the appellant's residential use of the outbuilding and any functional link was severed.
11. It seems to me that the unit of occupation has been subdivided given the outbuilding forms a physically and functionally separate dwellinghouse. However, the available evidence does not conclusively show, on the balance of probabilities, that the outbuilding became a dwellinghouse on or before the relevant date and that it has been occupied and used as such for a period of 4 years without significant interruption. This is because the quantum of evidence presented is lacking in specificity, detail and it is incomplete. The timeline does not support the appellant's version of the events. For these reasons, I cannot firmly conclude that the outbuilding's use as a dwellinghouse is immune from enforcement action.
12. Even if an alternative view prevails and the argument is that the residential use of the outbuilding is connected to the main house, the evidence presented does not clearly demonstrate any functional link. I cannot conclude the outbuilding's residential use was, or is, integral to the residential use of the main dwellinghouse.
13. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me having regard to the facts and case law. There is insufficient evidence to substantiate the appellant's claims. As the PPG says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented: that is certainly applicable in this case.

Conclusion

14. Drawing all the above threads together, I find that the onus of proof has not been discharged because insufficient and imprecise evidence has been submitted. The Council's refusal to grant an LDC in respect of the existing use claimed was well-founded albeit for different reasons.
15. Having regard to all other matters raised, I conclude that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the Act.

A U Ghafoor

INSPECTOR

