



Appeal Decision

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2026

Appeal Ref: APP/A1720/X/25/3372146

Rivermead, Spurlings Road, Fareham, Hampshire PO17 6AA

- 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 Kahan against the decision of Fareham Borough Council.
 - The application ref P/25/1043/LP, dated 6 August 2025, was refused by notice dated 21 August 2025.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is outbuilding for use as 3 single bedrooms ancillary to the enjoyment of the main dwelling (HMO).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the purposes of obtaining a LDC the burden of proof lies with the appellant, and the standard of proof is the balance of probabilities. The relevant date for ascertaining whether the proposed development would be lawful is the date of the application. Consequently, the planning merits of the case are not relevant.
3. Section 192(2) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that 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.

Main Issue

4. The main issue is whether the LPA's decision to refuse the application for an LDC was well-founded, with particular regard to whether the proposal would be incidental to the enjoyment of the dwelling house.

Reasons

5. The appellant asserts that the non-self-contained nature of the rooms, and their reliance on the main dwelling for essential facilities, means that the use would remain ancillary to the dwellinghouse and therefore constitute permitted development. Reference has also been made to several court judgments concerning ancillary uses¹. However, the relevant test in this case is not whether the accommodation is ancillary to the main dwelling, but whether the proposed use is incidental to the enjoyment of the dwellinghouse. The concepts of ancillary and

¹ Rambridge v Secretary of State for the Environment [1997] JPL 171, Uttlesford DC v Secretary of State for the Environment [1992] JPL 171, Gravesham BC v SSE & O'Brien [1982] 47 P&CR 142

incidental are not synonymous, and a use may be ancillary to a dwellinghouse without necessarily being incidental to its enjoyment. Accordingly, the key issue is whether the proposed use of the outbuilding for three single bedrooms constitutes a function that is incidental to the residential enjoyment of the dwellinghouse.

6. Case law establishes that whether a use is “incidental” must be assessed by reference to objective reasonableness rather than solely by the preferences or intentions of the occupier. Further guidance is provided in Permitted Development Rights for Householders: Technical Guidance (2019), which states that a purpose incidental to a dwellinghouse does not include normal residential uses, such as separate self-contained accommodation, or the use of an outbuilding for primary living accommodation, including a bedroom, bathroom, or kitchen.
7. Whilst the size, massing and siting of the outbuilding have been demonstrated to be lawful under application P/25/0530/LP, that conclusion was reached on the basis that the outbuilding would be used as a gymnasium and swimming pool. Such uses are commonly accepted as being incidental to the enjoyment of the dwellinghouse. The current proposal, by contrast, involves a normal residential use comprising three single bedrooms. The provision of sleeping accommodation is a primary residential function rather than a use incidental to the enjoyment of the dwellinghouse.
8. In summary, I am not persuaded that the proposed use can reasonably be regarded as incidental to the enjoyment of the dwellinghouse. The proposed use comprises sleeping accommodation, which is a normal residential function rather than an incidental domestic use. Accordingly, on the balance of probabilities, I conclude that the proposal would not fall within the scope of permitted development rights under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). It follows that the proposed development would not have been lawful at the date of the application.

Conclusion

9. For the reasons given above, I conclude that the Council’s refusal to grant a certificate of lawful use or development for the outbuilding for use as 3 single bedrooms ancillary to the enjoyment of the main dwelling (HMO) is 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). The appeal is dismissed.

V Goldberg

INSPECTOR