



Appeal Decision

by V Goldberg BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2026

Appeal Ref: APP/U5930/X/25/3370472

41 Lister Road, Leytonstone E11 3DS

- 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 Ms Laura Logan against the decision of the Council of the London Borough of Waltham Forest.
 - The application ref 250085, dated 16 January 2025, was refused by notice dated 7 March 2025.
 - The application was made under section 192(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 'Incidental use of 41 Lister Road, Leytonstone, London, E11 as a location for limited and controlled photoshoots and product branding activities for up to 90 days per calendar year, with associated vehicle and personnel restrictions'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the evidence indicates that the proposed use is already taking place, the appellant confirmed that the appeal should proceed under section 192 of the 1990 Act as a proposed use. I have therefore determined the appeal on that basis.
3. 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.
4. 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

5. The main issue is whether the Council's decision to refuse the application for an LDC was well-founded, with particular regard to whether limited and controlled photoshoots and product branding activities for up to 90 days per calendar year, would be incidental to the enjoyment of the dwelling house with associated vehicle and personnel restrictions.

Reasons

6. The appellant states that the LDC seeks to allow photoshoots and product branding activities at the property for up to 90 days per calendar year, as incidental and subordinate to its residential use. The proposed photography is described as comprising formal still photography, informal still photography and product placement photography. These range from shoots booked through an agency, involving external personnel and around six to eight people, to short-form videos or photographs usually undertaken by the appellant. The appellant's legal advice¹ also explains that product branding activities would usually involve brands sending furniture and home accessories to the appellant, which she would be entitled to keep in exchange for photographing herself using those items in her home.
7. Case law establishes that whether a use is incidental must be assessed by reference to objective reasonableness, rather than solely the occupier's preferences or intentions. An incidental use is one which is functionally related to the primary use. It must take place within the same planning unit as the primary use and 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.
8. Although formal, informal and product placement photography, together with product branding activities, would differ in character from the residential use of the property, they would not be carried out as a function of the enjoyment of the dwellinghouse. Nor is the asserted functional relationship one that would be commonly expected in connection with such a residential use.
9. In my view, the use of an agency, external personnel, products brought to the property, and formal arrangements governing access, vehicles and conduct indicate a planned and organised use of the property. These activities and arrangements would not normally be associated with the ordinary enjoyment of a dwellinghouse as a home. The relationship between the activities and the residential use therefore arises from the appellant's business or promotional arrangements, rather than from a function commonly or ordinarily expected in connection with residential occupation.
10. I acknowledge that the proposed activities would be limited to weekdays and daytime hours, that bookings would often last only a few hours, that the property would not be used as a film studio, and that the appellant would remain present with the property retaining its residential character and function. I have also considered the 90-day annual limit, the encouragement of public transport, vehicle controls, house rules, terms and conditions, supervised access, recent logbook data, and the appellant's evidence that vehicles would not generally be parked outside the home and that activities would usually be confined to small parts of the dwelling. However, these matters go to the scale, management and intensity of the proposed use. They do not change its essential character, nor do they demonstrate that the use would be incidental to the enjoyment of the dwellinghouse.
11. The appellant says that the low frequency, downward trend in use² and limited scale of the activities would not alter the character of the property, require physical

¹ Appendix 9

² As detailed in the logbook data at Appendix 23

alterations, undermine its primary residential use, or dominate that use. I accept that these matters are relevant to whether the activities would remain subordinate. However, subordination is not the same as incidental. A primarily residential use does not show that the proposed photography, content creation and product branding activities would be ordinarily or commonly expected in connection with the enjoyment of a dwellinghouse.

12. The appellant has raised concerns about the Council's handling of the LDC, including its decision to determine the application without giving the appellant an opportunity to address third-party representations, the absence of a site visit, the opportunity to submit a clarification statement, references to historic enforcement material, and the description of the proposed use. I have had regard to those matters. However, the appeal before me is not concerned with the Council's administrative handling of the application. Furthermore, the Council details that the application was determined on its own merits, by reference to the evidence provided at the point of submission. Having reviewed the Council's report, I have no reason to disagree. It addressed whether the proposed activities would be incidental to the residential use, based on the information submitted.
13. In any event, the appellant has had the opportunity to provide further evidence, including the logbook, house rules, vehicle controls, and submissions about the nature, frequency and scale of the activities. I have considered that evidence in reaching my conclusion. While I acknowledge the appellant's concerns about references to historic activity, third-party comments and alleged procedural unfairness, these matters do not alter my finding that the proposed use would not be incidental to the enjoyment of the dwellinghouse.
14. At paragraph 6.3.1 of the appellant's statement, it is asserted that the key question is whether the proposed use would be so frequent or intensive that it becomes the dominant use and fundamentally alters the character and function of the dwellinghouse, thereby amounting to a material change of use. However, that is not the basis on which the LDC is sought. The application seeks confirmation that the proposed activities would be incidental to the enjoyment of the dwellinghouse. As set out above, whether a use is incidental is not determined solely by whether it remains subordinate to, or less dominant than, the residential use.
15. The appellant has referred to multiple cases. Seven³ are not directly comparable to this appeal, as they do not address the question of whether a use is incidental to the enjoyment of a dwellinghouse. Reference was also made to *Gaskell v Secretary of State for the Environment* (2004), but the appellant has since confirmed that this was an error and that paragraph 5.3.2 of the appellant's statement should instead refer to *Sage v Secretary of State for Housing, Local Government and Communities* [2021] EWHC 2885 (Admin).
16. The *Sage* case concerned a building within the curtilage of a dwellinghouse which was used both by the occupiers and their family as a private gym, and for gym/personal training activities involving others. The issue was whether that use was incidental to the enjoyment of the dwellinghouse. It confirms that a use may

³ *Morris v Wrexham CBC* [2001] EWHC Admin 697; [2002] P & CR 7, *Marshall v Nottingham Corporation and East Barnet District Council v British Transport Commission* [1960] 1 All E.R. 666E; [1962] 2 Q.B.484, *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1027 at 121D, *Marshall v Nottingham Corporation and East Barnet Urban District Council v British Transport Commission* (1960), *Devonshire County Council v Allens Caravan (Estates) Limited* [1962] 61 LGR, *Wallington v Secretary of State for Wales* [1990] 11 WLUK 77 and *Hertfordshire County Council v Secretary of State for Communities and Local Government* [2012] EWHC 277 (Admin)

be secondary or subordinate to the residential use without necessarily being incidental. For the reasons given above, the proposed activities arise from the appellant's business or promotional arrangements, rather than from the enjoyment of the dwellinghouse. Sage therefore does not support the appellant's case that the proposed use would be incidental in the circumstances of this appeal.

17. The appellant also refers to *R v Secretary of State for the Environment, ex parte Newbury District Council [1981]*. Paragraph 6.2.5 of the appellant's statement suggests that the case supports the proposition that, for a use to be incidental, it must not be substantial or affect the character of the property. However, *Newbury* is concerned with the lawfulness of planning conditions, rather than whether a use is incidental to the enjoyment of a dwellinghouse. While I have taken account of the appellant's proposed limits and controls as part of the description of the proposed use, the appeal before me is not concerned with whether planning permission could be granted subject to conditions. The question is whether the proposed use described in the LDC would be lawful at the date of the application. As a result, it has not been demonstrated that this case assists the appellant.
18. In summary, on the balance of probability, the appellant has failed to show that the proposed development would have been incidental to the use of the dwelling house at the date of the application.

Conclusion

19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the incidental use of the property as a location for limited and controlled photoshoots and product branding activities for up to 90 days per calendar year, with associated vehicle and personnel restrictions 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).
20. The appeal is dismissed.

V Goldberg

INSPECTOR