Planning Inspectorate

Appeal Decisions

Hearing held on 25 November 2025

Site visit made on 25 November 2025

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 26 January 2026

Appeal A: APP/L5810/X/25/3370284
48 Berwyn Road, Richmond Upon Thames TW10 5BS

- 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 BHPD Limited against the decision of London Borough of Richmond Upon Thames.
- The application ref PA25/1971, dated 10 June 2025, was refused by notice dated 28 July 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 LDC is sought is described on the Council's decision notice as confirmation that planning permission 24/0851/HOT as amended by PA25/1543 and 24/0852/HOT as amended by PA25/1532, can lawfully be constructed concurrently. In addition, the erection of an outbuilding incidental to the main dwellinghouse.

Appeal B: APP/L5810/X/25/3367200
48 Berwyn Road, Richmond Upon Thames TW10 5BS

- 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 BHPD Limited against the decision of London Borough of Richmond Upon Thames.
- The application ref PA25/0721, dated 17 March 2025, was refused by notice dated 6 May 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 LDC is sought is described on the Council's decision notice as erection of outbuilding in rear garden. Confirmation that planning permission 24/0851/HOT (as amended under 24/0851/NMA) and 24/0852/HOT (as amended by PA25/0224) can be lawfully constructed concurrently.

Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed with respect to confirmation that planning permission 24/0851/HOT (as amended under 24/0851/NMA) and 24/0852/HIOT (as amended by PA25/0224) can be lawfully constructed concurrently. With respect to the erection of an outbuilding in the rear garden 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.

Main Issue

Appeal A

3. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on:

   i. whether in accordance with the provisions of case law the developments granted by planning permission 24/0851/HOT (as amended by PA25/1543) and 24/0852/HOT (as amended by PA25/1532) can be lawfully constructed concurrently; and

   ii. whether the proposed outbuilding would constitute permitted development by virtue of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Appeal B

4. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on:

   iii. whether in accordance with the provisions of case law the developments granted by planning permission 24/0851/HOT (as amended by 24/0851/NMA) and 24/0852/HOT (as amended by PA25/0224) can be lawfully constructed concurrently; and

   iv. whether the erection of an outbuilding in the rear garden would constitute permitted development by virtue of Class E of Part 1 of Schedule 2 of the GPDO.

Reasons

Concurrent construction

5. There are two pairs of separate planning permissions for first floor extension and ground floor extension of the property. The appellant's case is that each planning permission can be implemented independently or concurrently, that the development is clearly identifiable as being authorised by the combination of those permissions and that this principle is grounded in the *Pilkington* case. They state that there would be no fundamental conflict between the concurrent implementation of the permissions and there would be no material inconsistency or mutual exclusivity in implementing both. It is also argued that there would be certain planning merits associated with concurrent implementation but with cases such as these the planning merits do not fall into consideration.

6. The key question with respect to the concurrent implementation of the rear extensions is whether a planning permission has been or can be lawfully implemented where there are or may be inconsistent planning permissions. The issue of overlapping planning permissions is not defined in the Act, but there is case law. The appellant's argument regarding these appeals is that the first floor part of each planning permission the subject of the LDCs is severable and therefore he is entitled to benefit from both planning permissions, implementing both concurrently.

7. In *Pioneer*[1] it was held that a planning permission which is capable of being implemented cannot be abandoned. Where there are two mutually inconsistent

[1] Pioneer Aggregates (UK) Ltd v SSE [1984] 2 All ER 358

permissions, implementation of one prevents the other. It was held in Pilkington v SSE & Lancashire CC [1973] 1 WLR 1527 that there may be any number of planning permissions covering the same area but if the implementation of the first one in accordance with its terms and conditions would make it physically impossible to implement a second in accordance with its terms and conditions, then the second cannot be lawfully implemented.

8. In such cases, it is not enough for the two planning permissions to be 'incompatible'; the planning permissions must be so inconsistent that implementation of the first would make it physically impossible to implement the second. On that basis, *Pilkington* holds and was endorsed in Hillside Parks Ltd v Snowdonia National Park Authority [2022] UKSC 30.

9. The Court in *Hillside* also held in relation to the current appeals that:

- express words in the master permission can make individual components of the development severable;
- if implementing a later permission renders any of the earlier permissions physically impossible, the earlier permission would then become unlawful for further development (unless the incompatibility is not material in the context of the scheme as a whole);
- permission which departed in a material way from that scheme would make it physically impossible and unlawful to carry out any further development; and
- the later permission can be seen as authorising a variation of an earlier permission.

10. In the case of the appeals before me planning permissions have been granted by the Council for part single and part two storey rear extension or part two storey side/rear extension and those permissions are specifically defined in each permission by approved sets of drawings. However, these appeals effectively seek approval for a single much larger development comprising of ground floor extension, first floor side extensions and first floor rear extensions to be constructed concurrently with significant amounts of physical attachment to each other.

11. There is no evidence that in granting planning permission for the different developments on this site the decision-maker allowed the developer to choose parts of both and combine them to form a much larger development which is different from and inconsistent with the approved scheme on a different part of the appeal site, extending a different part of the original building.

12. Each planning permission was approved independently, inconsistent with one another and therefore incapable of being combined as proposed by the appellant in these cases. Indeed, as a single operation either all of it benefits from a single planning permission or none of the combined development benefits. In Sage v SSETR & Maidstone BC [2003] UKHL 22, it was accepted that *"If a building operation is not carried out, both internally and externally, fully in accordance with the planning permission, the whole operation is unlawful."* Consequently, should both planning permissions be combined as suggested by the LDCs the subject of these appeals, the operation will not have been carried out both internally and externally in accordance with the respective planning permission.

13. I accept that *Hillside* related to a very different type of development, but the principle remains established that a planning permission should be considered as a whole and not as separate elements or fragmented parts. Furthermore, the concurrent implementation of the building operations would result in extensions to the host building which are incompatible with the description of the developments that were approved. If a developer wishes to implement something materially different from the development that benefits from planning permission it cannot be lawful to implement as a single building operation something that conflicts with approved drawings under each planning permission and also conflicts with the description of what has been approved.

14. *Hillside* held that a holistic approach should be taken, and it is important to look at the totality of the approved developments and the operations which the implementation of the original planning permissions envisaged. In the light of this, it is reasonable to conclude that it is not appropriate to use overlapping planning applications as a means of picking and choosing which parts of a scheme a developer wants to implement or indeed which elements to combine as a hybrid development.

15. The two first floor extensions in question for both appeals are not independent or standalone but are dependent on the implementation of the ground floor part. The two elements have been designed to be built together and the two different applications the subject of the appeals overlap at ground floor and, in the case of Appeal A, at first floor. The interdependency on one another means they are mutually exclusive and cannot be implemented concurrently.

16. Furthermore, for each development there are two different sets of approved drawings; one with the first floor extension to the right and the other to the left. Should both schemes be implemented concurrently, the resultant development would not comply with either approved set of drawings and the development would be materially different to those approved.

17. With respect to Appeal A, the first floor extensions would not physically touch, but it looks to me that completion of the proposed roof and the roof lights approved on the ground floor would be obstructed, meaning it would not be possible to complete each different planning permission fully in accordance with the respective requirements covered by conditions. In addition, the extensions the subject of Appeal B physically overlap at first floor which means the elevations could not be completed in accordance with approved drawings. Therefore, contrary to case law the resultant development would be inconsistent with the description of development granted and the earlier development must be capable of being completed as a whole. If another permission means that cannot be achieved, other development pursuant to the previous permission will be unlawful. Therefore, in both cases the subject of these appeals, concurrent implementation as a single operation would be unlawful.

18. In my judgement the absence of planning conditions preventing concurrent implementation is an irrelevant argument because the Council has correctly considered each development proposal on its own merits and it is not part of their duty to relate one planning application to another; instead they should consider each planning application separately as independent developments.

19. Therefore, with respect to Appeal A I conclude that the developments granted by planning permission 24/0851/HOT (as amended by PA25/1543) and 24/0852/HOT (as amended by PA25/1532) cannot be lawfully constructed concurrently. With respect to Appeal B, I conclude that the developments granted by planning permission 24/0851/HOT (as amended by 24/0851/NMA) and 24/0852/HOT (as amended by PA25/0224) cannot be lawfully constructed concurrently.

Outbuilding

20. With respect to the outbuilding the subject of Appeal A the appellant confirmed that the Plan to be considered is Drawing Number 240-8014A dated March 2025 submitted as an appeal document. This plan is materially different to Drawing Number 240-8014 which was originally submitted with LDC reference PA25/1971. The amended Plan shows a single storey flat-roofed outbuilding with a height of 2.5 metres and positioned within 2 metres of the boundary of the dwellinghouse. It is important to note that this latest drawing does not show any details of how the internal space is to be used.

21. The relevant plans submitted with respect to Appeal B are Drawing Numbers 240-8004, 240-8014 and 240-8016 which show a single storey pitched roof summer house with an eaves height of 2.5 metres and a ridge height of 4.0 metres. It would be situated more than 2.0 metres from the boundary of the property and covers an area of 6.5 metres by 5.5 metres. The proposed internal layout shows a seating area with wood burner and television, kitchenette and WC with a toilet and hand basin.

22. According to s192 of the Act, the key question with reference to revised plans is whether the proposed operation would be lawful if instituted or begun on that date i.e. the date the LDC is determined. Therefore, there is scope for a change of plans to be submitted at appeal. In dealing with an LDC appeal S195 refers to the 'refusal' being well-founded – meaning the Council's decision, not the reasons for the decision. Moreover, the application being appealed is made to ascertain what is or would be lawful. If the evidence taken as a whole suggests that the matter in question is not lawful, it would be wrong to grant an LDC, even if the Council had different (and misplaced) reasons for reaching the same conclusion.

23. Additionally, the courts have held[2] that the Secretary of State cannot be compelled to issue a certificate when they are of the opinion that one should not be granted. An Inspector should consider any relevant fresh evidence advanced at the appeal, including where this evidence was not advanced at application stage. The purpose of the LDC provisions is to enable the making of an objective decision based on the best facts and evidence available when the decision is taken.

24. Class E, Part 1 of Schedule 2 of the GPDO relates to "buildings etc incidental to the enjoyment of a dwellinghouse". Subject to various conditions, permitted development includes:

> " The provision within the curtilage of the dwellinghouse of-
>
> a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the

[2] Cottrell v SSE & Tonbridge and Malling BC [1982] JPL 443

maintenance, improvement or other alteration of such a building or enclosure;"

Outbuilding - Appeal A

25. With respect to Appeal A, the Council now acknowledges that Drawing Number 240-8016 is sufficient to demonstrate compliance with Class E.1(c) and E.1(e). However, concerns regarding the incidental use of the outbuilding remain. The appellant contends that the outbuilding is a garden room intended for leisure use of the occupants of the main house. An outbuilding such as this must be required for some incidental purpose to be permitted development under Class E. The onus of proof is on the appellant who must clearly demonstrate the lawfulness of the development being proposed. In this case, in the light of the revised drawing submitted there is insufficient information to identify the precise purposes for which the building is being built and its incidental quality in respect of the enjoyment of the dwellinghouse. As such it has not been satisfactorily demonstrated that the building is genuinely required to accommodate the use for which it is being sought.

26. Consequently, I conclude with respect to the outbuilding the subject of Ground A that the evidence submitted is not sufficiently precise and unambiguous to establish the proposed use for purposes incidental to the enjoyment of the dwellinghouse on the balance of probability.

Outbuilding - Appeal B

27. The Council's refusal relies on their assertion that the outbuilding is required for ancillary purposes rather than for purposes incidental to the enjoyment of the dwellinghouse. In this regard the appellant acknowledges that their application was submitted on the basis of an "ancillary" use. The need for additional space is not the legal test in a case like this; it is for the decision-maker to determine whether the building in question is required for a purpose incidental to the enjoyment of the dwellinghouse.

28. There is no statutory definition of "incidental" in the GPDO. Case law provides guidance on how it should be interpreted by decision-makers. In the *Emin* case[3] it was held that the size of an outbuilding is not relevant for the purposes of Class E, but the building must be 'required for some incidental purpose' in relation to the dwellinghouse. When dealing with cases such as this it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose.

29. I find that the evidence before me illustrates that in cases such as this it is very much a matter of fact and degree based on the specific circumstances of each case. Furthermore, it seems to me that there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse. I see nothing in the *Emin* judgment that leads me to conclude that whether a building is incidental should turn to some extent on the size of the proposed building and the size of the dwellinghouse itself. Indeed, if

[3] Emin v SSE & Mid Sussex DC [1989] JPL 909

Class E sought to impose a limit on the size of an outbuilding or its relative size in relation to its host dwellinghouse, it could have done so.

30. In this case the appellant presents that the space proposed is genuinely and reasonably required by him and necessary to accommodate its intended use. However, the Council disputes this, stating that in accordance with case law some objectivity is required as to whether the building is reasonably incidental to the dwellinghouse. In order for a building to be considered as permitted development all of it must be required for incidental purposes. In land use terms I see no reason why the proposed outbuilding is not required for incidental purposes and indeed the appellant's clear evidence is that it is reasonably required for incidental land use purposes. It would accommodate facilities suitable for use as a summerhouse. Therefore, I am satisfied that with respect to Appeal B the proposed use is incidental to the enjoyment of the dwellinghouse and consequently it falls within Schedule 2, Part 1, Class E of the GPDO.

Conclusions

Appeal A

31. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of confirmation that planning permission 24/0851/HOT as amended by PA25/1543 and 24/0852/HOT as amended by PA25/1532, can lawfully be constructed concurrently. In addition, the refusal with respect to the erection of an outbuilding incidental to the main dwellinghouse was 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).

Appeal B

32. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of confirmation that planning permission 24/0851/HOT (as amended under 24/0851/NMA) and 24/0852/HOT (as amended by PA25/0224) can be lawfully constructed concurrently was 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).

33. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for the erection of an outbuilding in the rear garden 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 (as amended).

A A Phillips

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mandip Singh Sahota BA DipTP MRTPI of NTA Planning LLP
Andrew Gillick Director BHPD BSc Surveying MBS MSc
Shaun Knight BArch Architect

FOR DARTFORD BOROUGH COUNCIL

Kerry McLaughlin BA (Hons) Senior Planning Officer
Nicki Dale BA(Hons) DipTP MRTPI Team Manager
George Chesman MLB Legal Associate RTP South London Legal Partnership
Luca Pizzingrilli Enforcement Officer

INTERESTED PARTIES

Robert Davenport

Patricia Nissairi

Planning Inspectorate

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

IT IS HEREBY CERTIFIED that on 10 June 2025 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched 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:

The proposed outbuilding in the rear garden is incidental to the enjoyment of the dwellinghouse and consequently it falls within Schedule 2, Part 1, Class E of the GPDO.

Signed

A A Phillips

INSPECTOR

Date: **[ ]**
Reference: APP/L5810/X/25/3367200

First Schedule

The erection of an outbuilding in the rear garden.

Second Schedule

48 Berwyn Road, Richmond Upon Thames TW10 5BS

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.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **[ ]**

by A A Phillps

Land at 48 Berwyn Road, Richmond Upon Thames TW10 5BS

Reference: APP/L5810/X/25/3367200

Scale: Not to Scale