



Officer Report

Application Number:	HGY/2026/1500
Application Type:	Lawful development: Existing use
Address:	328 Alexandra Park Road, Wood Green, London, N22 7BD
Proposal:	Lawful development Existing use: Outbuilding used as residential use ancillary to main dwelling
Case Officer:	Sabelle Adjagboni
Valid Date:	28/05/2026
Applicant:	MS Jan Reid
Agent:	Mr Simon Boone

RECOMMENDATION

Refuse

PLANNING & ENFORCEMENT HISTORY

There is planning history in relation to this site is as follows

HGY/2024/1358

Address: 328 Alexandra Park Road, Wood Green, London, N22 7BD

Proposal: Erection of a single storey outbuilding with a shower room

Decision Date: 9 December 2024

Decision: Approve with Conditions

HGY/2023/3124

Address: 328 Alexandra Park Road, Wood Green, London, N22 7BD

Proposal: Erection of single storey extension which extends beyond the rear wall of the original house by 6m, for which the maximum height would be 3m and for which the height of the eaves would be 3m

Decision Date: 3 January 2024

Decision: Not Required

REPRESENTATIONS

Planning Practice Guidance (PPG) on Lawful Development Certificates, sets out that:

"There is no statutory requirement to consult third parties. It may, however, be reasonable for a Local Planning Authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application. Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application." (Paragraph: 008 Reference ID: 17c-008-2014030).

No representations have been received.

RELEVANT PLANNING LEGISLATION

The application has been made under Section 191 of the Town and Country Planning Act 1990 (as amended). This is not a planning application. Instead, the applicant seeks a Certificate of Lawfulness to confirm that the existing operational development is lawful for planning purposes. A Certificate may be granted where the Council is satisfied, on the balance of probabilities, that the development is lawful at the date of the application.

ANALYSIS / ASSESSMENT OF THE APPLICATION

The application seeks a Certificate of Lawfulness for the existing use of the outbuilding as residential accommodation ancillary to the main dwelling at 328 Alexandra Park Road.

Section 191 of the Town and Country Planning Act 1990 provides that a use is lawful only where no enforcement action may be taken against it. The burden of proof rests firmly with the applicant, who must demonstrate on the balance of probabilities that the use is lawful at the date of the application.

In this case, planning permission HGY/2024/1358 granted consent for the erection of the outbuilding subject to the following condition:

"The outbuilding hereby approved shall not be occupied at any time other than for purposes incidental to the residential use of the dwelling known as 328 Alexandra Park Road , Wood Green, London, N22 7BD. For the avoidance of doubt the structure shall not be utilised for any purposes which one would expect to be accommodated within the main dwelling such as sleeping or short-term let accommodation."

The wording of the condition is explicit. The approved use is restricted to purposes incidental to the enjoyment of the dwellinghouse. The condition specifically excludes uses associated with normal residential occupation, including sleeping accommodation.

The applicant describes the current use as "residential use ancillary to the main dwelling". However, the planning permission does not authorise ancillary residential occupation. It authorises only incidental use. There is a clear distinction in planning terms between uses that are incidental to a dwellinghouse and uses that provide accommodation and facilities normally associated with day-to-day residential living.

The fact that the main dwelling is lawfully occupied as a dwellinghouse does not automatically mean that an outbuilding within the curtilage can also be occupied for residential purposes. The residential use of the principal dwelling cannot be relied upon to override or negate a condition expressly restricting the use of the outbuilding. To conclude otherwise would render the condition ineffective.

Section 55(2)(d) of the Town and Country Planning Act 1990 confirms that the use of buildings within the curtilage of a dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse does not constitute development. However, where a building is used for purposes normally expected to be accommodated within the main dwelling, including sleeping accommodation and independent day-to-day living activities, the use may cease to be merely incidental and may amount to a material change of use requiring planning permission.

Furthermore, the outbuilding was granted permission only on 9 December 2024. Consequently, any breach of the condition restricting its use could only have commenced after that date. The

statutory immunity period for a breach of planning condition is ten years. On any view, the ten-year period has not elapsed. Therefore, even if the outbuilding has been occupied contrary to the condition, such occupation cannot presently benefit from immunity from enforcement action and cannot be certified as lawful.

Accordingly, the applicant has not demonstrated that the use now claimed is authorised by the planning permission, nor has sufficient time passed for any breach of condition to become lawful through the passage of time.

CONCLUSION

The outbuilding was approved solely for purposes incidental to the enjoyment of the main dwelling and subject to a condition expressly preventing its use for sleeping accommodation or other forms of residential occupation ordinarily expected within a dwellinghouse. The use now claimed exceeds the scope of the approved permission and there is no evidence that the ten-year immunity period for a breach of condition has accrued. As such, the applicant has failed to demonstrate, on the balance of probabilities, that the use is lawful for the purposes of Section 191 of the Town and Country Planning Act 1990. The Certificate of Lawfulness should therefore be refused.

Refusal Reasons:

The use described in the application is not lawful. Planning permission HGY/2024/1358 restricted the use of the outbuilding to purposes incidental to the enjoyment of the dwellinghouse and as such expressly prohibits sleeping accommodation and other residential uses ordinarily associated with the main dwelling. The use claimed therefore falls outside the scope of the approved permission and would require planning permission and accordingly, a Certificate of Lawfulness under Section 191 of the Town and Country Planning Act 1990 cannot be issued.