

DELEGATED DECISION

- Please select each of the categories that enables this application to be determined under delegated powers

- Criteria 1 to 5 or criteria 7 to 9 must be addressed for all categories of application, except for applications for Certificates of Lawfulness, etc.

APPROVAL RECOMMENDED: GENERAL

Select an Option

1.	No valid planning application objection in the form of a petition of 20 or more signatures, has been received	☐
2.	Application complies with all relevant planning policies and is acceptable on planning grounds	☐
3.	There is no Committee resolution for the enforcement action	☐
4.	There is no effect on listed buildings or their settings	☐
5.	The site is not in the Green Belt (but see 11 below)	☐

REFUSAL RECOMMENDED: GENERAL

6.	Application is contrary to relevant planning policies/standards	☐
7.	No petition of 20 or more signatures has been received	☐
8.	Application has not been supported independently by a person/s	☐
9.	The site is not in Green Belt (but see 11 below)	☐

RESIDENTIAL DEVELOPMENT

10.	Single dwelling or less than 10 dwelling units and/or a site of less than 0.5 ha	☐
11.	Householder application in the Green Belt	☐

COMMERCIAL, INDUSTRIAL AND RETAIL DEVELOPMENT

12.	Change of use of retail units on site less than 1 ha or with less than 1000 sq. m other than a change involving a loss of A1 uses	☐
13.	Refusal of change of use from retail class A1 to any other use	☐
14.	Change of use of industrial units on site less than 1 ha or with less than 1000sq.m. of floor space other than to a retail use.	☐

CERTIFICATE OF LAWFULNESS

15.	Certificate of Lawfulness (for proposed use or Development)	☐
16.	Certificate of Lawfulness (for existing use or Development)	☐
17.	Certificate of Appropriate Alternative Development	☐

CERTIFICATE OF LAWFULNESS

18.	ADVERTISEMENT CONSENT (excluding Hoardings)	☐
19.	PRIOR APPROVAL APPLICATION	☐
20.	OUT-OF-BOROUGH OBSERVATIONS	☐
21.	CIRCULAR 18/84 APPLICATION	☐
22.	CORPSEWOOD COVENANT APPLICATION	☐
23.	APPROVAL OF DETAILS	☐
24.	ANCILLARY PLANNING AGREEMENT (S.106 or S.278) where the Heads of Terms have already received Committee approval	☐
25.	WORKS TO TREES	☐
26.	OTHER (please specify)	☐

The delegation powers schedule has been changed. Interim Director of Planning, Regeneration & Public Realm can determine this application

Case Officer:

Signature:

Date:

A delegated decision is appropriate and the recommendation, conditions/reasons for refusal and informative's are satisfactory.

Team Manager:

Signature:

Date:

The decision notice for this application can be issued.

Director / Member of Senior Management Team:

Signature:

Date:

NONE OF THE ABOVE DETAILS SHOULD BE USED IN THE PS2 RETURNS ODPM

Report of the Head of Development Management and Building Control

Address: 11A HAMILTON ROAD HAYES

Development: Confirmation of continuous use of a rear annexe as a self-contained residential studio unit (Use Class C3)(Application for a Certificate of Lawful Development for an Existing Development)

LBH Ref Nos: 15437/APP/2025/1206

Drawing Nos: Location Plan
Council Tax Bill, 2024-2025, Annex at 11A Hamilton Road, dated 20-Sep-2024
Assured Shorthold Tenancy Agreement, dated 29 March 2021, Galaxy Real Estate
Landlord Statement, dated 28/04/2025

Date Plans received: 29-04-25 **Date(s) of Amendments(s):**

Date Application valid 29-04-25

1. RECOMMENDATIONS

1.1 Recommendations

That a certificate of lawful use or development be **REFUSED** for the existing development described above in respect of the land edged red on the attached plans for the following reasons:

The development does not constitute Lawful Development under Section 191 of Town and Country Planning Act 1990, Section 191 as amended by Section 10 of the Planning and Compensation Act 1991 as the Applicant has not demonstrated that, on the balance of probability, the use has existed and been continuous for at least a period of four years, prior to the date of this application.

This determination is based on your submitted plans. All measurements are taken from existing ground level.

INFORMATIVES

2.0 APPRAISAL OF EVIDENCE SUBMITTED

The application seeks a Lawful Development Certificate for confirmation of continuous use of a rear annexe as a self-contained residential studio unit (Use Class C3).

The outbuilding is located in the rear garden of the residential dwelling No.11A Hamilton Road, Hayes, along the north boundary shared with Nos.12 and 14 Stirling Road. The site is located in a residential area.

This is an application made under Section 191(1)(a) of the Town and Country Planning Act 1990 to ascertain if any existing operations that have been carried out on the land are lawful. The Act states that the operations are lawful if no enforcement action may be taken against them or because they did not require planning permission.

RELEVANT PLANNING HISTORY:

Certificate of Lawfulness ref: 15437/APP/2018/2920 approved the erection of a single storey outbuilding to rear for use as a gym/games room/store.

Informative 2 states -

The use of the outbuilding hereby approved shall be for the purpose(s) stated on the application form and drawing/s. Use of the outbuilding for purposes such as a living room, bedroom, kitchen, or as a separate unit of accommodation or for business purposes constitutes a primary use that is not incidental and likely to invalidate this certificate. Furthermore, the Local Planning Authority may pursue enforcement against breaches of planning control, which may involve legal action through the Courts.

The development proposed under this certificate application would contravene the above mentioned approved certificate of lawfulness. It is well established in case law that the provision of sleeping accommodation is a primary residential use and is not categorised as an incidental purpose under Class E of the order.

The application form describes the outbuilding as an 'annexe' however it is noted that there is no record in the planning history that permitted use of the outbuilding as ancillary accommodation.

PLANNING LAW:

Section 55 of the Town and Country Planning Act 1990 provides as follows:

(1) Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

Further:

3) For the avoidance of doubt it is hereby declared that for the purposes of this section- (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;

Thus, the creation of two separate dwellings from a single dwelling requires planning permission. This is an application in respect of the use of an outbuilding as a separate dwelling.

Section 191(1)(b) of the TCPA 1990 states that a certificate should be issued where the LPA are provided with information to satisfy them of the lawfulness of the application and the test is upon the balance of probabilities.

The Act is prescriptive in terms of what must be submitted with the application, and the criteria is addressed below:

(5) A certificate under this section shall-

(a) specify the land to which it relates;

- a location plan has been provided. It is however noted that the red line site boundary includes the entirety of the rear garden of No.11A and the full extent of a shared driveway with the adjacent neighbour No.15. The red line shown on the location plan is therefore likely to be inaccurate and includes areas which are not subject of this certificate application and outside the applicants ownership.

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class); - the operations have been described as follows:

'The annexe has been continuously occupied as an independent dwelling for a period of over four years (since at least March 2021) without interruption. The unit comprises an open-plan kitchen/living/sleeping area and a separate bathroom. Access to the annexe is via a side alleyway and a portion of the rear garden, as shown in the submitted site plan. The application relates solely to the rear annexe and the associated access/garden land outlined in the red line boundary'.

Please refer to the assessment below.

(c) give the reasons for determining the use, operations, or other matter to be lawful; - The applicant has stated the annexe has been continuously occupied as an independent dwelling for a period of over four years (since at least April 2021) without interruption.

Please refer to the assessment below.

and,

(d) specify the date of the application for the certificate. - The application has been accepted by the Council as valid on 29/04/2025. The application form is dated 28/04/2025.

(6) The lawfulness of any use, operations, or other matter for which a certificate is in force under this section shall be conclusively presumed.

Section 171 of the Town and Country Planning Act 1990 states that where there has been a breach of planning control consisting of the change of use of a building to a single dwellinghouse then no enforcement action may be taken after four years beginning with the date of the breach.

"Time limits.

(1)Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining, or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2)Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach".

The relevant case law for dwellings is set out in Gravesham and the relevant principles are as follows:

i) "A dwellinghouse is a unit of residential accommodation which provides the facilities needed for day-to-day private domestic existence (see further *Innovia at -*; *Rectory Homes Ltd v Secretary of State for Communities and Local Government* EWHC 2098 at , per Holgate J);

- ii) Whether any building is or is not a dwellinghouse is a question of fact; and
- iii) a factual assessment of whether something is a "dwellinghouse" may require consideration not only of whether it provides the facilities needed for day-to-day private domestic existence, but also consideration of the actual use to which it is being put.

Thus, a building which, although possessing all those facilities, was in mixed use by an occupier who lived in the upper part of the house while operating an estate agent in two rooms on the ground floor, was held on the facts not to be a dwellinghouse in *Scurlock v Secretary of State for Wales* (1976) 33 P&CR 202.

Equally, a dwellinghouse converted for use as (for Judgment Approved by the court for handing down (subject to editorial corrections) *London Borough of Brent v SSLHC and Rothchild CO/3240/2021* example) a hostel or a hotel would no longer be a dwellinghouse, as it would no longer allow for "private domestic" existence".

The starting point is to ascertain the correct planning unit, which is usually the unit of occupation. There may be primary, and ancillary uses and interdependency between separate planning units. An ancillary use does not require planning permission as it is not development.

"In *Harrods Ltd v Secretary of State for the Environment, Transport and the Regions* 11 EG 154 the Court of Appeal upheld the High Court decision that using the roof of a department store as a helipad was not ancillary to the primary use of the building (see Legal update, Court of Appeal upholds ancillary use decision)".

The application submitted is for a self-contained residential studio unit. As such it is expected to see that it is functioning as its own unit of accommodation and has been operating and occupied independently for a period of four years.

EVIDENCE SUBMITTED:

- Location Plan
- Council Tax Bill, 2024-2025, Annex at 11A Hamilton Road, dated 20-Sep-2024
- Assured Shorthold Tenancy Agreement, dated 29 March 2021, Galaxy Real Estate
- Landlord Statement, dated 28/04/2025

Notably, no photographic evidence or floor plans showing the internal layout of the building have been submitted.

ASSESSMENT:

Having reviewed the evidence against the case law, the following is concluded:

- (i) Does it have all the facilities required for day-to-day living and meet the test in *Gravesham*?

- No

No floor plan has been submitted to show the layout of the outbuilding.

At the time of the case officer's site visit, it was observed that the outbuilding lies within the rear garden towards the rear garden of No.11A as shown on the submitted location plan. Access to the outbuilding is provided through the rear garden. There was no separate access to the outbuilding. There was also no separation by way of enclosure between the outbuilding and the rear garden

area and the outbuilding was viewed in the context of residential use at No.11A and appeared to be a domestic part of the curtilage. Adjacent to the outbuilding was a store that was used by occupiers of the main dwelling. In front of the outbuilding in the garden area is a pergola.

The outbuilding comprises a door and two windows in the elevation facing towards the dwelling.

The outbuilding comprised a kitchenette area located on the right hand side of the entrance door which included a washing machine, boiler and sink. A microwave and plug-in hob were visible above the cabinet worktops. A compact shower room with toilet and hand wash basin were provided to the rear of the kitchenette. A fridge, coffee table, bed, bedside table and wardrobe were observed in the main section of the outbuilding.

There is no cooker in the kitchenette. There is no living or dining room within the outbuilding. In the absence of these domestic facilities along with separate independent access to the outbuilding, it is considered that the outbuilding would not have all the facilities to function independently as a separate unit.

(ii) Has it been continuously occupied as an independent dwelling for 4 or more years?

- No

There is insufficient evidence submitted to support the claim that the outbuilding has been used as an independent dwelling for a period of at least 4 years.

The evidence submitted includes a tenancy agreement that covers a period of 1 year from 29 March 2021 to 28 March 2022. It is noted that the tenancy agreement was inclusive of all bills, tv licence and council tax which indicates that the landlord (the applicant) was responsible for paying these expenses.

Notwithstanding, the Council tax bill refers to 'Annex' and is addressed to the tenant named on the 2021 tenancy agreement. The Council tax bill is dated 20 September 2024 and details a new provisional property charge which is backdated to 29 March 2021 as the amount due covers the period from 29 March 2021 to 31 March 2025. This is not considered to represent substantive evidence as it demonstrates that neither the tenant or the landlord 7 been paying council tax during the relevant four year period.

At the time of the case officer's visit (June 2025), it was evident that the outbuilding was not in occupation. Whilst a four year old tenancy agreement has been submitted in support of the application, it is unclear whether the tenant stayed beyond the 1 year term detailed in the tenancy agreement.

Evidence that would be required should cover the full four year period and ordinarily would include for example, bank statements showing monthly rental income, utility bills, tenancy agreements, statutory declarations from the tenant and the landlord, gas safety certificates, vehicle registration etc. The application is not accompanied by sufficient evidence to demonstrate that the outbuilding has been continuously occupied as an independent dwelling for 4 or more years.

Due to the insufficient corroborating evidence, the Landlord Statement is afforded limited weight.

(iii) Does the outbuilding form its own planning unit?

- No

On the evidence available to the Council, it doesn't. The outbuilding is not registered with the land registry as its own unit of accommodation. It has not been established whether it is separately registered for its own bills, nor does it appear to have its own post-box.

The outbuilding doesn't have independent access from the street, rather it is accessed via the shared driveway adjacent to the host dwelling and through its rear garden area. Thus the outbuilding, which is only accessible from the host dwelling through the rear garden, thereby retains a strong connection to the host dwelling.

Therefore, having regard to the evidence, as a matter of fact and degree, the outbuilding is not its own separate planning unit.

CONCLUSION:

Having reviewed the information provided, it has not been demonstrated that the outbuilding has been in continuous use as a separate independent dwelling for a period exceeding 4 years prior to the date of this application to warrant the granting of a certificate of lawful development.

In this case, the evidence does not clearly demonstrate, beyond reasonable doubt, that the site is or has been used for the purposes stated on the application form.

As such, the granting of the certificate cannot be supported and the application is therefore recommended for refusal.

3.0 Relevant Planning History

15437/APP/2018/2920 11A HAMILTON ROAD HAYES

Single storey outbuilding to rear for use as a gym/games room/store (Application for a Certificate of Lawful Development for a Proposed Development)

Decision Date: 07-09-2018 Approved

15437/APP/2018/2451 11A HAMILTON ROAD HAYES

Erection of a single storey rear extension, which would extend beyond the rear wall of the original house by 4 metres, for which the maximum height would be 2.9 metres, and for which the height of the eaves would be 2.9 metres

Decision Date: 08-08-2018 Prior Approval N/Req

15437/APP/2006/2607 11A HAMILTON ROAD HAYES

CONVERSION OF ROOF FROM HIP TO GABLE END AND ROOFSPACE TO HABITABLE ACCOMMODATION INCORPORATING INSTALLATION OF A REAR DORMER WINDOW (APPLICATION FOR A CERTIFICATE OF LAWFULNESS FOR A PROPOSED USE OR DEVELOPMENT).

Decision Date: 18-10-2006 General Perm.Devt.

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