

Incidental and Ancillary Accommodation Guidance

Note for Applicants

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1. Introduction

Incidental uses and ancillary accommodation are common types of development associated with an existing dwellinghouse and enquiries have increased considerably in recent years in response to changes in working patterns and multi-generational living.

This non-statutory guidance applies only to proposals within an existing domestic curtilage or garden. It will explain how the Planning Service will interpret the relevant legislation to achieve consistency for applicants and agents but cannot cover every scenario. Pre-application advice is strongly encouraged, or completion of a 'Do I need planning permission' form.

In preparing this guidance, reference has been made to:

- Section 26 of [Town and Country Planning \(Scotland\) Act 1997](#) as amended by the Planning etc (Scotland) Act 2006
- Classes 1A – 1D and 3A – 3B of [The Town and Country Planning \(General Permitted Development\) \(Scotland\) Order 1992](#)
- Section 29 of [Caravan Sites and Control of Development Act 1960](#)

Definitions for terms underlined are in Appendix 1. However, the following definitions are important to aid understanding of this guidance:

- *Ancillary accommodation* – the provision of extra, additional primary accommodation to the main accommodation already provided within the principal dwelling.
- *Incidental Use* – provision of a complementary but different use that does not fall within the definition of development under subsection 26(2)(d) of the 1997 Act.
- *Primary accommodation* – spaces used as living rooms, kitchens, bedrooms and bath / shower rooms.

2. Proposals for the use of an existing building

For the purposes of this guidance, the use of existing buildings (either attached or detached) within the curtilage of a dwellinghouse for an incidental or ancillary purpose will not constitute a change of use. All will be a Class 9 use unless the planning history confirms otherwise. Class 9 buildings in this scenario will benefit from the same Permitted Development (PD) rights as the principal dwelling. As such the *use* of these buildings is not considered to be development and any alterations should be subject to the same considerations as other domestic PD situations. Where such alterations or an extension requires planning permission, the description will reflect the limited development proposed.

In all cases, the starting point must be to consider 'what development is proposed'. Matters the Planning Service will consider include:

- the planning history;

- whether the building is entirely within the established curtilage of the principal dwellinghouse and is not a separate planning unit;
- ensuring that the proposed use is incidental or ancillary;
- confirmation that no separate curtilage will be formed; and
- whether any operational development, such as alterations, are proposed.

Decisions on the use of an existing building for business purposes will be based on individual circumstances. If the use is deemed to be incidental to the enjoyment of the principal dwellinghouse (typically a low intensity home worker / sole tradesperson), there will be no change of use required, and the proposal will not constitute development. Matters the Planning Service will consider include:

- type, nature and intensity of the business;
- days / hours of operation;
- whether there are any employed staff based there;
- whether there will be customers or clients regularly attending the premises;
- frequency of deliveries, collections or general 'comings and goings' to and from the premises, etc.
- childcare proposals will be based on established practices.

Changes to, or the intensification of, a business proposal may result in the use no longer being considered as incidental and requiring planning permission. Where it is concluded that a proposed business use within an existing building is of a type or scale that is not incidental or ancillary to the principal dwellinghouse, this will be considered as the creation of a new planning unit and planning permission for a change of use will be required. Depending on individual circumstances, such applications may not be acceptable due to their impacts, but they will be subject to the usual consultations and if acceptable may be conditioned to minimise impacts.

3. Proposals extending a dwellinghouse

An existing dwellinghouse may be extended within its PD rights and this may be for further primary accommodation or another complementary or incidental use (including a business use as outlined in the previous section). No distinction will be made between proposals that are integral or physically linked, or those that are self-contained.

The scale of any extension requiring planning permission will not usually be a key determining factor in whether a use is incidental or ancillary, but will be subject to the usual siting, design and amenity considerations where planning permission is required. The inclusion of all primary accommodation allowing for independent living from the principal dwellinghouse is also acceptable. In the majority of cases, there should be no distinction between accommodation for family members and visitors / tourists in a proposed extension. Proposals requiring permission will be a householder application for alterations and / or extension.

It must be remembered that the extension granted will be part of the original planning unit and the subdivision of a dwellinghouse to create two or more physically and functionally separate dwellings or flats is development requiring approval.

4. Proposals for a standalone building or structure (incidental uses)

Householder PD rights allow for a building for any purpose incidental to the enjoyment of that dwellinghouse within its curtilage subject to the exceptions in Class 3A. Acceptable incidental uses include those that add a complementary but different use to what is found in the principal dwellinghouse. This could be additional space for the main residents to use as a garden or sunroom, home office, gym, hobby / playroom, outdoor bar etc.

A building purely for business use for home working, such as a hairdresser, physical instructor, dog groomer etc. may also be acceptable as an incidental use and benefit from PD rights. Whether it is accepted by the Planning Service will depend on the factors outlined in section 2 and the applicant must be aware of the implications of intensifying the use to the point where planning permission is required.

Where a proposed development requires planning permission, this will be a householder application but may involve relevant consultees. In such cases, material planning considerations will include matters such as access, parking, residential amenity and the impact on the character of the area.

5. Proposals for a standalone building or structure (ancillary uses)

Householder PD rights (Class 3A) for separate buildings or structures within a domestic curtilage only apply to incidental uses (as outlined above). The provision of extra primary accommodation to that already provided in the principal dwellinghouse are deemed to be ancillary uses requiring planning permission. This can be used for permanent living, for occasional use or as holiday accommodation. The occupants (family, friends, paying guests) are largely irrelevant to the determination of any application; it is the elements inside and the nature of the ancillary use that is important.

In some instances, people occupying a separate building will be wholly dependent on the main dwellinghouse for cooking, washing and toilet facilities. These proposals are relatively straightforward and should always be considered as ancillary and part of the same planning unit. More commonly, proposals will have some or all elements for living, sleeping, cooking and washing / bathing (primary accommodation) allowing the occupants to live completely independently of the principal dwelling with no dependency on it. Appeal decisions and case law has established that it is “not reasonable to conclude in every instance that development that can be independently lived in creates a second dwellinghouse” and a separate planning unit.

A determination will be made by the Planning Service at the validation stage if the proposal is ancillary accommodation or a separate dwellinghouse and planning unit. To do this, a number of 'fact and degree' criteria will be considered including:

- relevant planning history, applications or enquiries
- scale and design of the building, which should be subordinate to the principal dwelling
- relationship with the principal dwellinghouse and degree of connectedness
- privacy and amenity considerations
- information offered in support of the proposal

The Planning Service may seek to establish the intended use of the building or space within it to provide the best possible advice on whether a proposal is not development, is PD or requires a planning application. Any confirmation in writing will be retained on file for future reference.

6. Proposals deemed to be a new dwellinghouse

Having concluded that a proposed development is not incidental to the enjoyment of the principal dwellinghouse and cannot be accepted as ancillary residential accommodation, an application must be lodged as a separate dwellinghouse in the normal manner and assessed as such.

7. Short-term lets (STL)

The term 'short-term let' will not be used in the description of any application, and for proposals within the curtilage of an existing dwellinghouse, tourist accommodation will always be a Class 9 use. Lettable space will most likely require a STL licence for secondary letting, which is a matter for Environmental Health.

When a STL licence requires renewal and the Planning Service is consulted on this, the position will be that as an existing building or structure with that established use, no planning permission will be required.

8. Caravans within an existing curtilage

Caravans that fall within the definitions and dimensions of the Caravan Sites and Control of Development Act 1960 and are proposed to be sited within the domestic curtilage of a dwellinghouse will not automatically require planning permission. The reason for this is primarily that a caravan is not a building and the siting of such a unit does not constitute operational development with a degree of permanence.

The Planning Service will assess any enquiry for a caravan against the criteria within Class 3B as an 'other operation within the curtilage of a dwellinghouse' and the exclusions therein at (2) (a-e). Beyond that, the only consideration is if there will be a material change in the use of land. Whether the intended use is incidental or

ancillary, as with previous sections, this will be a Class 9 use and therefore a single caravan, is unlikely to ever represent a material change of use within existing garden ground.

Operational development associated with the siting of a caravan may include means of anchoring it in place, connecting it to services or decking. Either of these may involve works that constitute development and should be assessed under the usual criteria in Class 3C – 3E of the GPDO. For the avoidance of doubt, the caravan itself will never benefit from PD rights.

Appendix 1: Full Glossary

For the purposes of this Guidance only, the following definitions apply:

Ancillary accommodation – the provision of extra, additional primary accommodation to the main accommodation already provided within the principal dwelling.

Caravan – any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted. This can include pods or structures with component parts assembled on site. A chalet, lodge or wooden cabin may qualify as a caravan but are less likely to due to the size and nature of these structures.

Curtilage – generally the garden ground associated with a dwellinghouse, defined by boundaries or landscaping and can be informed by planning history.

Dwellinghouse – a separate planning unit with all the necessary accommodations for independent living and not deemed to be associated with another principal dwellinghouse.

Fact and degree – a judgement based on the known facts of the proposed use and facilities to be provided in the new accommodation and any relationship with the principal dwellinghouse.

Incidental Use – provision of a complementary but different use that does not fall within the definition of development under subsection 26(2)(d) of the 1997 Act.

Planning unit – a proposal deemed to be a separate entity as a result of its intended use, mix of accommodation and / or lack of relationship with an existing principal dwellinghouse.

Primary accommodation – spaces used as living rooms, kitchens, bedrooms and bath / shower rooms.