Residential Annexes

Supplementary Planning Document

Adopted February 2021

Published February 2021©

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Designed and produced by the Peak District National Park Authority

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1. Introduction

1.1 Residential annexes, also known as 'granny' annexes and ancillary residential accommodation, are a common form of development that allows relatives to live with their family but with a degree of independence.

1.2 As an Authority we support residential annexes in principle. We recognise that some families want or need ancillary accommodation, for example, due to:

- the need/desire to care for relatives unable to remain in their own home, but who do not want to move into a care home; or
- to make space for younger generations to remain at home or return home (e.g. to assist or take on a family-run business) but who want their own space to live their own lives, near to, but out from under the feet of their parents; or
- to provide accommodation for an employee where the pattern of work is part-time or seasonal and therefore would not justify a worker's dwelling.

1.3 This Supplementary Planning Document (SPD) seeks to:

- outline the legal complexities surrounding ancillary residential accommodation and how it differs from incidental accommodation;
- provide further detail on the interpretation and intent of Development Management Policy (DMP) policies DMC5, DMC10, DMH5, DMH7 and DMH8; and
- outline when a condition or a Section 106 Agreement should be used to prevent the severance of the ancillary accommodation from the existing dwellinghouse.

1.4 This SPD is intended for applicants and/or agents that have a good level of planning knowledge.

1.5 Residential annexes is a complex area of planning, largely due to the high level of Case Law involved. It is therefore advised that those seeking to erect a new build residential annex or convert an existing building into a residential annex should discuss their proposals with the Authority via the pre-application advice service[1] prior to submitting a planning application or starting work.

[1] https://www.peakdistrict.gov.uk/planning/advice/pre-application-advice

2. Terminology

2.1 The DMP, alongside other aspects of Case Law and planning law (such as the General Permitted Development Order[2]) contain a range of terms that require careful definition. This chapter clarifies these terms.

'Planning Unit'

2.2 A *'planning unit'* is a fundamental principle of planning law. It is defined by historical occupation, boundaries and ownership.

2.3 Within a parcel of ownership there may be a number of different planning units. New planning units can be created where, for example, part of the original is occupied separately or a planning permission creates a new planning unit(s) by subdivision.

2.4 Defining the *'planning unit'* is a well-known formula that was outlined in the case of *Burdle*[3] *as*:

> *'The unit of occupation, until or unless some other unit is identified which is physically and/or functionally separate from it'.*

'Primary Use'

2.5 Each *'planning unit'* will have a *'primary use'*. In the case of dwellinghouses, the primary use will be the main/existing/original dwellinghouse and any associated garden (Use Class C3a). It can also include one or more *'ancillary'* or *'incidental'* uses that do not alter the primary use of the land, providing they are closely linked and subservient to it.

2.6 There are certain circumstances therefore where additional living accommodation can be *'ancillary'* or *'incidental'* to the primary use of a dwellinghouse and remain within the same planning unit. For example a dwellinghouse (the primary use) with a detached garage (incidental use) and a detached granny annex occupied by a family member (ancillary use) can all remain within the same planning unit and Use Class C3(a).

'Ancillary' and 'Incidental' Uses

2.7 A building used for additional living accommodation purposes will be described as *'ancillary'*, *'incidental'* or a mix of the two depending on its use.

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[2] Town and Country Planning (General Permitted Development) (England) Order 2015
http://www.legislation.gov.uk/uksi/2015/596/pdfs/uksi_20150596_en.pdf

[3] Burdle and Another v SSE and Another [1972] 24 P.&C.R. 174

Ancillary Use

2.8 A building used for ancillary purposes will generally contain such accommodation as a bedroom(s), a kitchen, a bathroom(s) and/or a living room (those uses that are usually found within a standard dwellinghouse). These uses are known as *'primary living accommodation'*.

2.9 An ancillary residential annex can provide all the primary living accommodation that would allow it to be self-contained. However self-contained living accommodation would normally create a new planning unit (i.e. a new dwellinghouse).

2.10 In order for the primary living accommodation to be regarded as *'ancillary'* to an existing dwellinghouse is dependent on who occupies the accommodation and the reliance of those occupants on the existing dwellinghouse for their day-to-day needs.

2.11 The ancillary primary living accommodation together with the existing dwellinghouse must still fall under the definition of a Class C3(a) dwellinghouse, as outlined in the Use Classes Order[4] and therefore it must be occupied as a whole by:

> *'a single person or family (a couple, whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.'*

2.12 There are a number of other criteria that ancillary residential accommodation must comply with for it to be *'ancillary'* to the main dwellinghouse (e.g. scale). This is discussed in detail in subsequent chapters, particularly Chapter 5.

Incidental Use

2.13 A building used as incidental residential accommodation will generally contain uses that do not comprise bedrooms, kitchens, bathrooms or living rooms (e.g. a garage, swimming pool, bowling alley, gym, art studio or something that can be classed as a hobby).

2.14 An incidental use is parasitic on the main dwellinghouse - it cannot exist without it (e.g. a swimming pool has to be used by the occupants of the dwellinghouse).

2.15 An incidental use can contain an element of living accommodation usually found within an ancillary use (i.e. primary living accommodation) as long as it is subordinate to or associated with the incidental use (e.g. a shower room to serve a gym or swimming pool).

[4] Town & Country Planning (Use Classes) Order 1987 (as amended)

'Residential Curtilage' and 'Garden'

2.16 In respect of outbuildings erected under Class E of the General Permitted Development Order[5] and the change of use of buildings under Section 55 of the Town & Country Planning Act 1990, the building must be located within the *'residential curtilage'* of the dwellinghouse. This is not the same as *'garden'*.

2.17 *'Residential curtilage'* is the boundary of a private garden or the extent of the land surrounding premises normally defined on the ground by some physical features. This is usually quite easy to determine. However, particularly in rural areas and areas of sporadic or low density housing development, there may be difficulties in determining the residential curtilage if parts are detached, if there is no physical definition at all, or if there are adjoining paddocks or small fields.

2.18 To fall within the *'curtilage'* of a building the Courts have held that:

- the land should serve the purpose of the building in some reasonably necessary or useful manner[6];
- there must be an intimate association with the building[7];
- it is a small area forming part and parcel with the house or building which it contained or to which it was attached[8]; and
- it is a small area about a building, it must be intimately associated with the building, and the size of the area of ground is a matter of fact and degree.[9]

2.19 Farmhouses present a particular problem when it comes to defining 'residential curtilage' as the farmyard and buildings can be used for both residential and farm related uses (e.g. the parking of vehicles, storage, drying of clothes etc.) and the garden area can sometimes not be formally defined. However the GPDO excludes any dwelling or garden from the definition of agricultural land and therefore the curtilage of a farmhouse should be considered as narrowly as for any other dwelling.

2.20 *'Garden'* on the other hand relates to the use of a piece of land. In most cases, particularly in built up areas, the garden associated with a dwellinghouse will usually be contained within the *'residential curtilage'*. However this is not always true. For example if a property has subsequently used the surrounding land as their garden the dwellinghouse would have a large *'garden'* but only a small part of it would comprise the *'residential curtilage'*.

2.21 To recap, *'residential curtilage'* is not the same as *'garden'* and therefore the terms are not interchangeable:

- *'Residential curtilage'* defines an area of land in relation to a dwelling.
- *'Garden'* relates to the use of the land.

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[5] Town and Country Planning (General Permitted Development) (England) Order 2015 http://www.legislation.gov.uk/uksi/2015/596/pdfs/uksi_20150596_en.pdf
[6] Sinclair-Lockhart's Trustees v Central Land Board [1950] S.L.T. 283
[7] Methuen-Campbell v Walters [1979] 2 W.L.R. 113
[8] Alan Dyer v Dorset County Council [1988] WL 622738
[9] McAlpine (David) v SSE [1994] 11 WLUK 178

3. Does a Residential Annex require Planning Permission?

3.1 Some residential annexes can be built as permitted development, some require planning permission and some don't comprise development at all.

Not Development

Change of Use of an Existing Building within a Residential Curtilage

3.2 If there is an existing outbuilding within the residential curtilage of a dwellinghouse and the building is already lawfully *'residential'* in use (e.g. incidental), a change of use to an ancillary *'residential'* use is not deemed to be development under Section 55 of the Town & Country Planning Act 1990 (the Planning Act).[10]

3.3 Section 55[11](2)(d) of the Act states:

> *'The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land:*
>
> *(d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such'.*

3.4 Contrary to the definition of *'incidental'* that the Courts have ruled in respect of Class E of the GPDO (i.e. no primary/ancillary living accommodation) the Courts have interpreted the use of *'incidental'* more generously in respect of Section 55 of the Act.

3.5 They have determined that the creation of an annex via the change of use of an existing outbuilding used for incidental purposes and located within the curtilage of a dwellinghouse would not comprise development (providing it doesn't result in the creation of a separate planning unit) as it would still fall within the primary use as a dwellinghouse.

3.6 In *Rambridge v SSE & E Herts DC (1997)*[12] the QC stated:

> *'Miss Leven…rightly concedes that planning permission is not required for change of use from incidental residential use to primary residential use* [annex]*…if the owner really did build the building for a purpose which was incidental and if he or his successor later had a change of mind and wished to make a change of use to primary residential use* [an annex] [this would be acceptable].*'*

3.7 In *Uttlesford DC v SSE & White (1992)*[13] the QC concluded that if an existing building within the residential curtilage of the dwellinghouse was occupied by a family member it would not comprise a material change of use as it would not create a separate planning unit:

> *'So long as the planning unit remained in single family occupation, no material change of use was involved'.*

[10] If the building is listed or curtilage listed, Listed Building Consent could still be required prior to the commencement of development.
[11] http://www.legislation.gov.uk/ukpga/1990/8/section/55
[12] Rambridge v SSE & E Herts DC (1997) 74 P&CR 126
[13] Uttlesford DC v SSE & White (1992) JPL 171

3.8 The conversion of an existing incidental outbuilding (e.g. a garage) to a granny annex would therefore not comprise development, providing:

- a separate planning unit[14] isn't created (i.e. the separateness and independence of the building and its occupants will need to be considered);
- the building is located within the residential curtilage of the dwellinghouse; and
- any existing planning conditions would not be breached (e.g. if the outbuilding has been restricted for the parking of motor vehicles, or if a condition restricts the insertion/alteration of existing windows or doors).

Siting of a Caravan within a Residential Curtilage

3.9 Case Law has established that the stationing of a caravan within the curtilage of a dwellinghouse does not comprise a material change of use for planning purposes; it would comply with Section 55(1) of the Planning Act.

3.10 Whether the caravan can then be used as ancillary accommodation without requiring planning permission turns primarily on how the caravan is to be used and by whom.

Permitted Development

Extension to an Existing Dwellinghouse

3.11 If an annex is to be attached to the existing dwellinghouse, the extension could be permitted development if it is occupied by a family member[15] and it meets the criteria and conditions outlined within Schedule 2, Part 1, Class A of the GPDO[16].

Class E of the GPDO (2015)

3.12 The erection of a detached outbuilding within the residential curtilage of a dwellinghouse under Schedule 2, Part 1, Class E of the GPDO can only contain uses that are *'required for a purpose incidental to the enjoyment of the dwellinghouse'*.

3.13 In respect of the GPDO, the phrase *'incidental to the enjoyment of the dwellinghouse'* has been given a restrictive interpretation by the Courts. This is supported by the

[14] Uttlesford DC v SSE & White (1992) JPL 171
[15] Class C3(a) outlines that a 'dwellinghouse' covers use 'by a single person or family (a couple, whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.
[16] Town and Country Planning (General Permitted Development) (England) Order 2015 http://www.legislation.gov.uk/uksi/2015/596/pdfs/uksi_20150596_en.pdf

Government's *'Permitted Development Rights for Householders: Technical Guidance (2017)*[17] which states on page 42:

> *'a purpose incidental to a house would not…cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen'*.

3.14 The Courts have held that the tests[18] to be applied to determine whether a building would be *'incidental to the enjoyment of the dwellinghouse'* are:

1. Whether the use(s) of the building would remain subordinate to the main use of the property as a dwelling; and
2. Whether the proposed building(s) are genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.

3.15 In respect of the first test, the relative size of the proposed building can be a determining factor (*'its size should not be based on the unrestrained whim of an occupier'*[19]). However the *Emin* case determined that whether the building is of a reasonable size for its intended use is a matter of fact and degree based on the particular circumstances of each case (*'a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner so long as they are sensibly related to the enjoyment of the dwelling'*[20]).

3.16 In respect of the second test, Class E(a) states that development is permitted development within the curtilage of a dwellinghouse for the provision of *'any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse…'* The word *'required'* in this provision is significant as it indicates that the building must be justified by more than simply a desire for additional space. The courts have held that the term *'required'* should be interpreted as meaning *'reasonably required'*.

3.17 In order to judge whether a Class E outbuilding would meet the two tests, an assessment of the proposal must be undertaken that includes such things as:

- the relative size of the building;
- the proposed use(s) within the building;
- the size of the building compared to the dwellinghouse and its curtilage;
- the size of individual rooms for their intended purpose;
- whether a room could be used for more than one use rather than each use being within a separate room;
- the number of people using the intended uses;
- whether the uses can be accommodated within existing buildings within the residential curtilage, or within the existing dwellinghouse; and
- whether the use(s) proposed are duplicating existing uses within the dwellinghouse.

[17] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/606669/170405_Householder_Technical_Guidance__-April_2017_FINAL.pdf
[18] Emin v SSE & Mid Sussex DC (1989) JPL 909
[19] Emin v SSE & Mid Sussex DC (1989) JPL 909
[20] Emin v SSE & Mid Sussex DC (1989) JPL 909

3.18 A detached building that is to be used as a granny annex could not be erected as permitted development under Class E of the GPDO as it would contain primary living accommodation which is defined as *'ancillary'* rather than *'incidental'*.

Buildings Erected Under Class E of the GPDO and Subsequently Changed to Ancillary Accommodation

3.19 Case law is well established and very clear that the distinction between ancillary and incidental purposes relates only to the justification for erecting an outbuilding in the first instance under Class E of the GPDO. It does not govern subsequent changes in the building's use (i.e. from incidental to ancillary).

3.20 The leading court case in respect of this issue is *Rambridge*[21] which involved the erection of a substantial building at the end of a garden under Class E of the GPDO. It was used for an incidental use for one day and then used for ancillary living accommodation the day after. The QC in this case said:

> *'Class E is concerned with operational development, namely building, and such building is only authorised if it is required for a purpose incidental to the enjoyment of the dwellinghouse. That involves considering the use which is proposed in the building, but no change of use of the building is involved.'*
>
> *'I am entirely unpersuaded by the argument that an owner could build his building for a purpose incidental to the enjoyment of the dwellinghouse and then a day later use it for ordinary or primary residential use* [an annex]*…If a sham of the kind suggested were in fact perpetrated then manifestly there would have been no genuine compliance with Class E. The purpose was in reality for primary residential use* [an annex]*, not a purpose which was incidental.'*

3.21 In this case the Court ruled that the building was not permitted development under Class E of the GPDO.

3.22 The key issue here is the timing involved in the change of use from incidental to ancillary and whether the accommodation was designed and ultimately intended for ancillary residential accommodation when it was first built. Both Planning Inspectors and the Courts have refused retrospective consent/Certificates of Lawful Existing Use or Development under these circumstances and have judged such developments a *'sham'* (i.e. effectively an abuse of the planning system).

Planning Permission

3.23 Planning permission would be required if:

- a new detached building erected within the residential curtilage of a dwellinghouse would contain primary living accommodation such as a living room, bedroom, bathroom or kitchen; or

[21] Rambridge v SSE & E Herts DC (1997) 74 P&CR 126

- the building (either via new build or the conversion of an existing building) would be self-contained with all the necessary day-to-day living facilities and would not be occupied by a family member[22]; or
- the building (either via new build or the conversion of an existing building) would result in the creation of a separate planning unit; or
- it would involve the change of use of an existing building or the erection of a new building that is not located within the residential curtilage of an existing dwellinghouse; or
- permitted development rights were removed by condition on a previous planning approval that restricted the use of the outbuilding/extension (e.g. a garage restricted for the parking of motor vehicles); or
- permitted development rights were removed by condition on a previous planning approval that prevented the erection of any future extensions to a dwellinghouse or any future outbuildings within the curtilage of a dwellinghouse.

Holiday Accommodation

3.24 It is not unusual within the National Park for property owners to provide holiday accommodation within their residential curtilage or planning unit; whether as self-catering accommodation or as a B&B.

3.25 A residential annex is similar to holiday accommodation in respect of the accommodation it would contain, however Use Class C3 does not allow for the occupation of part of a dwellinghouse as self-contained accommodation by someone who is not related to, or employed by, the occupiers of the main dwellinghouse.

3.26 Bed & Breakfast (B&B) accommodation can fall within Use Class C3(a) if only a small proportion of the dwellinghouse is rented out as guest accommodation, the primary use of the property remains as a single dwellinghouse and the guests share the dwelling's other facilities (e.g. living room, dining room, bathroom etc.). The B&B use must be low key (usually no more than two bedrooms, depending on the overall size of the dwellinghouse) so that a material change of use does not occur. There is no legal or statutory definition of B&B accommodation and therefore it is a matter of *'fact and degree'* whether planning permission is required for such a use.

3.27 If the main dwelling is occupied by the family and an outbuilding or part of the main dwellinghouse is rented out as self-contained holiday accommodation, planning permission will be required. This is because the self-catering holiday accommodation would be considered a dwelling in its own right, independent of the main dwellinghouse as:

- the occupants of the accommodation would not be related to the occupants of the main dwellinghouse;

[22] Class C3(a) outlines that a 'dwellinghouse' covers use 'by a single person or family (a couple, whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child.

- the accommodation would have all the facilities for day-to-day living;
- the occupants of the self-catering accommodation would not have a degree of dependence/functional connection with the main dwellinghouse; and
- a new planning unit would have been created.

3.28 Planning applications involving an interchangeable mix of both ancillary accommodation and self-contained holiday accommodation need to be carefully controlled, as there can be difficulties in knowing whether the accommodation is being occupied as one or the other at any given point in time. A Section 106 Agreement, rather than a planning condition, may be preferable in these circumstances.

In All Cases

3.29 The legalities surrounding residential annexes are quite complex. Therefore it is advised that you discuss your proposals with the Authority at your earliest opportunity. This can be done via the pre-application advice service[23] prior to submitting a planning application or starting work.

[23] https://www.peakdistrict.gov.uk/planning/advice/pre-application-advice

4. Relevant Planning Policies

4.1 For those residential ancillary and incidental developments that require planning permission, this section outlines the relevant planning policies.

DMP Policy DMH5 – Ancillary Dwellings in Residential Curtilages

4.2 For ancillary residential annexes, the relevant planning policy is DMP policy DMH5.

Part A – Conversion of a Building Located within a Residential Curtilage

4.3 Part A of policy DMH5 relates to the conversion of an existing outbuilding to an ancillary residential use, providing the existing building is located within the residential curtilage of the dwellinghouse.

4.4 As discussed on page 9, if an existing incidental building is already in lawful residential use and located within the dwellinghouse's residential curtilage, planning permission is not usually required to change the use of the building to ancillary residential accommodation (as it would fall under Section 55 of the Act[24]). Part A of policy DMH5 is therefore likely to relate to the conversion of non-residential buildings located within a residential curtilage (e.g. an agricultural barn) to ancillary residential accommodation.

Part B – New Build Ancillary Residential Building within an Existing Building Group

4.5 Part B of policy DMH5 relates to the creation of a new build ancillary residential building.

4.6 Part B does not restrict the new building to be erected within the dwellinghouse's residential curtilage. Instead the building must be:

(i) located within the existing building group; and

(vii) contained within a single planning unit by condition.

Conversion of a Building Located Outside the Residential Curtilage

4.7 Policy DMH5 is not explicit in respect of the conversion of existing buildings (that aren't heritage assets[25]) that are located outside a residential curtilage but within the same planning unit or group of buildings as the dwellinghouse.

4.8 The opening sentence to Part B states: *'Where no buildings are suitable for conversion, a new build ancillary dwelling unit will be permitted…'* Therefore before a new building

[24] http://www.legislation.gov.uk/ukpga/1990/8/section/55

[25] A Listed Building or a non-designated heritage asset.

can be deemed acceptable under Part B, consideration must first be given to whether there are any existing buildings within the planning unit that could be converted into a residential annex.

4.9 This is reinforced by the supporting text to DMP policy DMH5 at paragraph 6.87, that states, *'it is generally preferable to re-use existing buildings rather than build new, but new ancillary buildings for residential use may be the only option'*.

4.10 Where it is proposed to convert such a building, the application should be considered against paragraph 5.1 of this SPD, as well as DMP policy DMC3 Siting, Design, Layout and Landscaping, and any other relevant Development Plan policies.

Conversion of a Heritage Asset

4.11 If the building comprises a heritage asset, its conversion will be assessed against DMP policies DMC5 and DMC10, and if the building is Listed, DMP policy DMC7. Further guidance is available at the Historic England Website[26]

DMP Policy DMH7 – Extensions and Alterations

4.12 Annexes do not have to involve the conversion or construction of a detached building; they can also comprise an extension to an existing dwellinghouse. For these proposals, the application will be considered against DMP policy DMH7: Extensions and Alterations.

DMP Policy DMH8 – New Outbuildings and Alterations and Extensions to Existing Outbuildings in the Curtilage of a Dwellinghouse

4.13 This policy is to be applied solely to outbuildings located within the residential curtilage of an existing dwellinghouse that are to be used for an incidental purpose (e.g. a garage, a greenhouse, a shed, a swimming pool etc.).

4.14 When an applicant proposes both ancillary and incidental accommodation within one building, DMP policy DMH8 should be used in combination with DMP policy DMH5.

Appendix A of this SPD

4.15 Appendix A outlines a number of different possible development scenarios for an ancillary or incidental residential use that could be submitted as a planning application to the Authority. It outlines which policies would be applicable to the development or if the proposal would, in principle, be contrary to the policies contained in the DMP.

[26] https://historicengland.org.uk/images-books/publications/gpa4-enabling-development-heritage-assets/

5. Criteria for the Consideration of Ancillary Residential Accommodation

5.1 DMP policy DMH5 outlines the criteria ancillary residential accommodation development must meet in order for it to be acceptable. The following paragraph outlines these requirements but also includes those criteria that have been established through Case Law.

5.2 In determining a planning application for ancillary residential accommodation (either by conversion or new build), the Authority will expect the proposed development to:

- be subordinate in scale to the main dwellinghouse in the case of new development;
- share a vehicular access with the main dwellinghouse;
- be in the same ownership as the main dwellinghouse;
- share utilities with the main dwellinghouse;
- be located within the residential curtilage or building group associated with the main dwellinghouse as well as within the same planning unit (see DMP policy DMH5);
- be sited so as not to have a detrimental impact on:
    - valued landscape character and/or
    - cultural heritage significance as defined in the Landscape Strategy
    - Conservation Area appraisals
    - Farmstead Heritage Assessments
    - Non designated heritage assets as determined by the Authority in line with Historic England guidance for buildings not currently recognised as heritage assets or neighbouring amenity;
- have a functional connection/degree of dependence with the main dwellinghouse (e.g. the occupant should be a dependent relative of the residents of the main dwellinghouse, a carer or be employed at the main dwelling as an au pair, servant, nanny etc.);
- contain a level and scale of accommodation that can be justified for its intended occupants;
- have no boundary demarcation or sub-division of the garden areas between the main dwellinghouse and the annex;
- conserve and enhance the heritage significance/setting of:
    - the existing building/building group
    - main dwellinghouse
    - Conservation Area
    - Listed Building

And, where applicable, also;

- comply with the Authority's design standards
- maintain adequate space within the planning unit to contain the required level of car parking (as determined by the Authority's Parking Standards[27])
- respect neighbour amenity

5.3 Planning applications should always be accompanied by supporting information clearly setting out the justification for the proposed development, including who the intended occupant(s) of the ancillary residential annex will be.

5.4 If more than one bedroom is proposed within the ancillary residential accommodation, clear justification must be provided as to why each bedroom is required.

5.5 In some farmsteads for example, the range of traditional outbuildings are extensive and may also be larger than the existing farmhouse. There are no strict size limits for what may constitute an ancillary dwelling in these circumstances, as the scheme should be conservation-led. Although it is sometimes possible to leave part of an outbuilding unconverted, the subdivision of a building to ensure that the ancillary dwelling remains subordinate, or only has a single bedroom, may harm the character of the building. Consequently, there may be occasions when the size of the building to be converted will exceed what may reasonably be considered to be ancillary. In these cases proposed annexes that are tantamount to new independent dwellings will be treated as such under relevant housing and design policies.

[27] Appendix 9 of the Development Management Policies DPD (May 2019) https://www.peakdistrict.gov.uk/__data/assets/pdf_file/0008/1574621/Webpage-Final-Branded-DMP-Doc-Copy.pdf

6. Section 106 Agreements and Planning Conditions

6.1 The National Park Vision and Circular[28] states that *'the Government recognises that the Parks are not suitable locations for unrestricted housing*' and *'the expectation is that new housing will be focused on meeting affordable housing requirements'.* The National Park Authority therefore has a housing policy that strictly controls new housing (Core Strategy policy HC1: New Housing).

6.2 The National Park Authority is supportive of ancillary residential accommodation through DMP policy DMH5, but we are concerned that these buildings could become independent self-contained dwellinghouses (in conflict with Core Strategy policy HC1) if they are not appropriately controlled. Therefore in most cases, an anti-severance condition or legal agreement is imposed on ancillary residential accommodation.

6.3 DMP policy DMH11 (F) outlines when a legal agreement should be applied to ancillary accommodation, as well as the means by which such a legal agreement can be removed, if desired. (It should be clarified that whilst DMP policy DMH11 refers solely to legal agreements, the tests for removing an occupancy restriction also relate to those secured by planning condition, as indicated by paragraphs 6.78, 6.84, 6.87 of the DMP's supporting text).

Planning Condition and Legal Agreement Tests

6.4 National planning policy on planning conditions and Section 106 Agreements is set out within Chapter 4 of the NPPF (2019)[29]. It outlines that Planning Officers need to consider different tests when deciding whether to attach a planning condition or a legal agreement to a grant of planning permission.

6.5 Paragraph 55 of the NPPF (2019) states that *'planning conditions should be kept to a minimum and only imposed where they are:*

- *necessary;*
- *relevant to planning and to the development to be permitted;*
- *enforceable;*
- *precise; and*
- *reasonable in all other respects.'*

6.6 Paragraph 56 of the NPPF (2019) states that *'planning obligations must only be sought where they meet all of the following tests:*

- *necessary to make the development acceptable in planning terms;*
- *directly related to the development; and*

[28] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221086/pb13387-vision-circular2010.pdf paragraphs 78 and 79

[29] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810197/NPPF_Feb_2019_revised.pdf

- *fairly and reasonably related in scale and kind to the development.'*

When to apply a Condition or a Section 106 Agreement

6.7 In the majority of cases, it is likely that the Authority will include a condition to tie the new ancillary accommodation to the existing dwellinghouse in order to prevent its subdivision and use as an independent dwelling. However there may be times when a condition is not necessary (e.g. when the additional accommodation is provided as an extension to the existing dwellinghouse).

6.8 There may also be circumstances when the use of a Section 106 Agreement, rather than a condition, will be necessary and appropriate.

6.9 Paragraph 54 of the NPPF (2019) states that legal agreements *'should only be used where it is not possible to address unacceptable impacts through a planning condition'* and therefore the Authority will justify why a Section 106 Agreement is required, with reference to the three tests (outlined above).

6.10 In some scenarios it will be easy for Planning Officers to determine whether to attach a planning condition or a legal agreement to a grant of planning permission, or whether it isn't necessary to attach either. However there will be times when a level of judgement will need to be applied. In accordance with the criteria and policy intent of policy DMH5 the authority will have regard to the following:

- How close is the proposed accommodation to the existing dwellinghouse?
- Is the building located within the residential curtilage of the existing dwellinghouse?
- Is the building located within the planning unit of the existing dwellinghouse?
- What accommodation will be provided? Does it provide all the day-to-day facilities usually found within an independent dwellinghouse and, if so, are they of a scale that is commensurate with the ancillary nature of the use?
- How big is the building relative to the size of the existing dwellinghouse?
- Who will occupy/use the accommodation?
- What is the functional link to the existing dwellinghouse (i.e. will the occupants of the annex have a degree of dependence on the existing dwellinghouse for their day-to-day needs)?
- Could the accommodation be easily split from the dwellinghouse at a future date and create a self-contained dwellinghouse, contrary to Core Strategy policy HC1 (i.e. could it have its own garden, access/shared access)?
- What is the risk of independent occupation (i.e. could a condition be easily breached without the Local Planning Authority knowing)?

6.11 Appendix B of this SPD outlines a variety of development scenarios involving ancillary residential dwellings and incidental buildings and states whether the Authority is likely to impose a planning condition or a Section 106 Agreement, or if neither is required. (It should be noted that these are guidelines only. There may be times when the Authority

deviates from these guidelines due to the particular circumstances of the planning application).

7. Standard Condition

7.1 Circular 11/95: *'The Use of conditions in planning permission'*[30] was revoked on 6th March 2014 and replaced by the Planning Practice Guidance. However Annex A to the Circular, *'Suggested Models of Acceptable Conditions for Use in Appropriate Circumstances'* was not revoked and is still relevant today.

7.2 Annex A of the Circular recommends the use of a model condition for *'granny annexes'* that is quite succinct:

> *'The extension/building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as [….]*

7.3 Planning Inspectors tend to use this condition in their decisions for ancillary residential accommodation. However we consider that the following wording is more explicit and helpful to applicants as it describes those uses that are prohibited (i.e. they do not fall within the scope of ancillary residential accommodation) and therefore this is the Authority's standard condition for residential annexes:

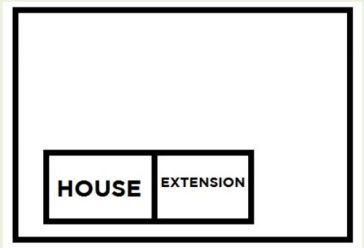
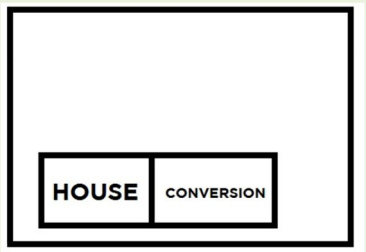
> *'The accommodation hereby permitted shall be ancillary to the dwellinghouse known as XXX and shall not be occupied as an independent dwellinghouse. It shall be maintained within the same planning unit as the dwellinghouse known as XXXX and shall not otherwise be occupied independently as holiday accommodation during the lifetime of the development.'*

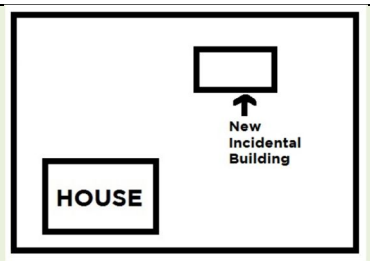
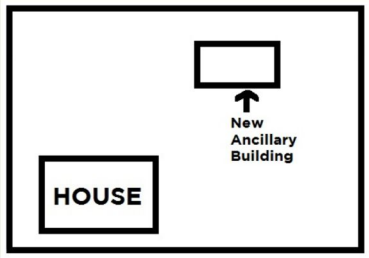
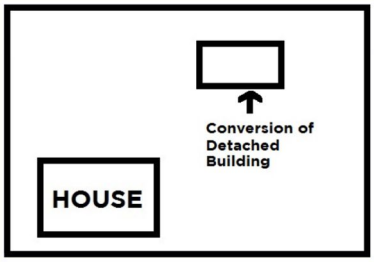
[30] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7715/324923.pdf

Appendix A: Which Policies should be used to assess an application for an Incidental or an Ancillary use to a Dwellinghouse?

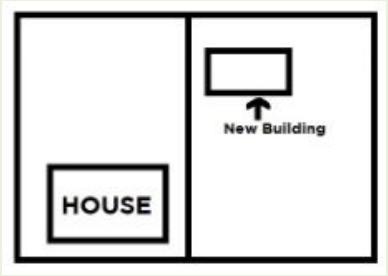
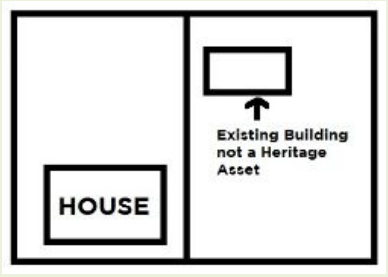
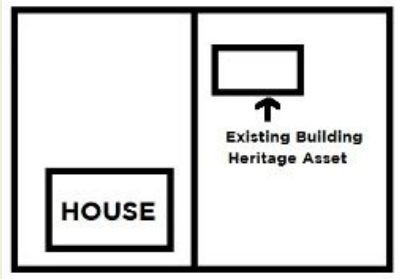
The following diagrams outline which DMP policies should be applied to a planning application for an ancillary or incidental use depending on the location of the building; its intended use; whether the building exists or is proposed; and whether the building comprises a heritage asset.

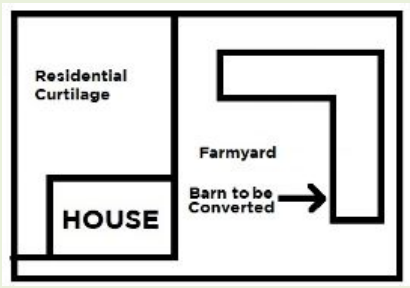
Within the Residential Curtilage

SCENARIO	POLICIES
	**1. Ancillary/Incidental use as an extension to a dwellinghouse located within the residential curtilage:** • DMP policy DMH7 Extensions and alterations.
	**2. Ancillary use through the conversion of an attached building located within the residential curtilage:** • DMP policy DMH5(A): Ancillary dwellings in the curtilages of existing dwellings by conversion or new build; and • DMP policy DMH7: Extensions and alterations. **3. Incidental use through the conversion of an attached building located within the residential curtilage:** • DMP policy DMH8 (B): New outbuildings and alterations and extensions to existing outbuildings in the curtilage of dwellinghouses. **NB:** If the building is a heritage asset: DMP policies DMC5 and DMC10 apply and if it is a Listed Building, DMP policy DMC7 also applies.

	**4. Incidental use in a new detached building located within the residential curtilage:** • DMP policy DMH8 (A): New outbuildings and alterations and extensions to existing outbuildings in the curtilage of dwellinghouses.
SCENARIO	**POLICIES**
	**5. Ancillary use in a new detached building located within the residential curtilage:** • DMP policy DMH5 (B): Ancillary dwellings in the curtilages of existing dwellings by conversion or new build, providing there are no other existing buildings that are suitable for conversion.
	**6. Ancillary use through the conversion of an existing building located within the residential curtilage:** • DMP policy DMH5 (A): Ancillary dwellings in the curtilages of existing dwellings by conversion or new build. • If any alterations are proposed, then also DMP policy DMH7: Extensions and alterations. • If the building is a heritage asset: DMP policies DMC5 and DMC10 apply and if it is a Listed Building, DMP policy DMC7 also applies.

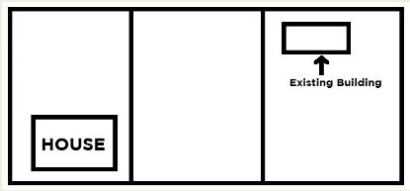
Outside the Residential Curtilage

SCENARIO	POLICIES
	**1. New building for an ancillary/incidental use located outside the residential curtilage but not within a building group:** • The proposed building would be contrary to DMP policies DMH5 (B) and DMH8 (A) as the building would be outside the residential curtilage and not within a building group. The application would be refused.
	**2. Conversion of a building (not a heritage asset) located outside the residential curtilage, building group and planning unit, to an ancillary use:** • An ancillary use in these circumstances would be tantamount to a new dwellinghouse and therefore would be refused. • Conversion to other uses could be sought in exceptional circumstances (see DMP paragraphs 3.107 & 3.110).
SCENARIO	POLICIES
	**3. Conversion of a heritage asset located outside the residential curtilage and building group but within the same planning unit, to an ancillary/incidental use:** • The acceptability of the proposal would be dependent on the siting of the building relative to the dwellinghouse and the functional connection between the two. The more remote the building is from the dwellinghouse, the less likely it would be acceptable as an ancillary/incidental use. • As the building is a heritage asset, other uses could be explored (e.g. a holiday let, open-market dwelling etc.). DMP policies DMC5 and DMC10 would apply and if it is a Listed Building, also DMP policy DMC7.



4. **Conversion of a building located within a group of buildings and within the same planning unit as the dwellinghouse, to an ancillary/incidental use:**

   - If the building is a heritage asset, then DMP policies DMC5 and DMC10 apply and if it is Listed, DMP policy DMC7 also applies.
   - If the building is not a heritage asset but is located within the existing building group and planning unit, is the building suitable for conversion? If so, the criteria contained within paragraph 5.2 of this SPD and DMP policy DMC3: Siting, Design, Layout and Landscaping applies.
   - If the building is not deemed to be suitable for conversion, then a new building sited within the existing building group and planning unit may be acceptable under DMP policy DMH5 (B).



5. **Conversion of an existing building (not a heritage asset) located outside the residential curtilage/ building group but within the planning unit of the dwellinghouse, to an ancillary/incidental use. The building is sited away from the dwellinghouse (in this example, separated by a field):**

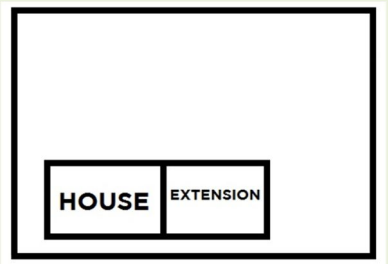
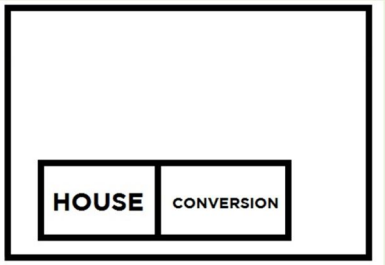
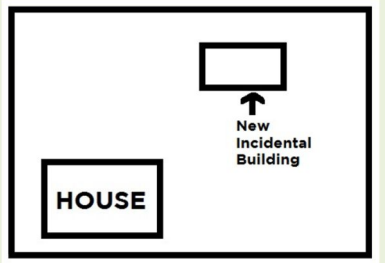
   - The acceptability of the proposal would be dependent on the siting of the building relative to the dwellinghouse and the functional connection between the two. The more remote the building is from the dwellinghouse, the less likely it would be acceptable as an ancillary/incidental use. Conversion to other uses could be sought in exceptional circumstances (see DMP paragraphs 3.107 & 3.110).

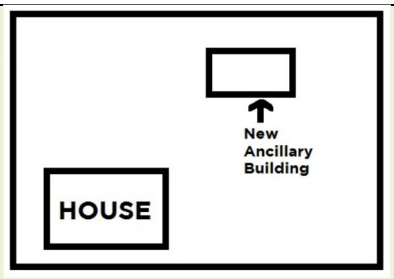
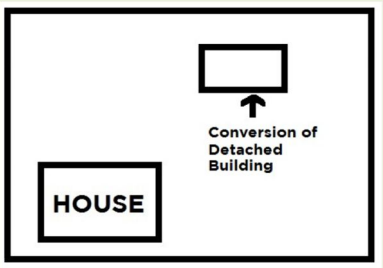
Appendix B: Section 106 Agreement or Condition?

The following diagrams outline the different scenarios for both ancillary and incidental uses and whether a condition or a Section 106 Agreement (or neither) will be applied as part of a planning approval.

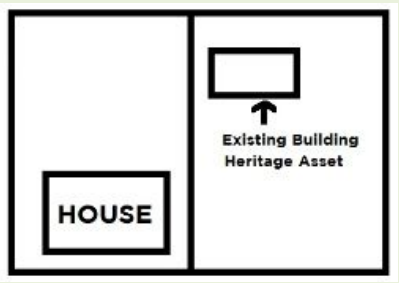
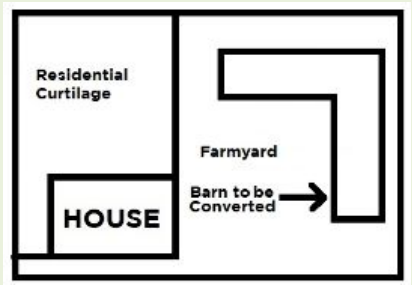
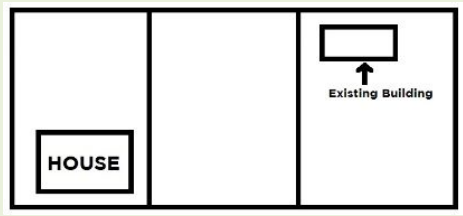
Please note that in some cases, it may be expedient for us to deviate from this advice due to the particular circumstances of a site/application and therefore these scenarios should only be treated as a guide.

Within the Residential Curtilage

SCENARIO	CONDITION OR SECTION 106 AGREEMENT?
	**1. Ancillary/Incidental use as an extension to a dwellinghouse located within the residential curtilage:** • No Condition or Section 106 Agreement needed.
	**2. Ancillary/Incidental use through the conversion of an attached building located within the residential curtilage:** • No Condition or Section 106 Agreement needed.
	**3. Incidental use in a new detached building located within the residential curtilage:** • No Condition or Section 106 Agreement needed as the building will be for an incidental rather than ancillary use (e.g. garage, gym, swimming pool etc.) • If there is a mix of incidental and ancillary uses proposed (e.g. a garage with bedroom above) then either no Condition/Section 106 Agreement or just a Condition to control the ancillary accommodation.
SCENARIO	CONDITION OR SECTION 106 AGREEMENT?
	4. Ancillary use in a new detached building located within the residential curtilage:

	• The majority of applications should use a Condition but there may be times when a Section 106 Agreement is required (see paragraph 6.10).
	**5. Ancillary use through the conversion of an existing building located within the residential curtilage:** • The majority of applications should use a Condition, however there may be times when a Section 106 Agreement is required (see paragraph 6.10).

Outside the Residential Curtilage

SCENARIO	CONDITION OR SECTION 106 AGREEMENT?
	**1. Conversion of a heritage asset located outside the residential curtilage and building group but within the same planning unit, to an ancillary/ incidental use:** • It would depend on the proximity of the heritage asset from the existing dwellinghouse whether a Condition or a Section 106 Agreement is required (see paragraph 6.10).
	**2. Conversion of a building located outside the residential curtilage but within a group of buildings and the same planning unit as the dwellinghouse, to an ancillary/incidental use** • The majority of applications should use a Condition but there may be times when a Section 106 Agreement is required (see paragraph 6.10).
SCENARIO	**CONDITION OR SECTION 106 AGREEMENT?**
	**3. Conversion of an existing building (not a heritage asset) located outside the residential curtilage/ building group but within the planning unit of the dwellinghouse, to an ancillary/incidental use. The building is sited away from the dwellinghouse (in this example, separated by a field):** • It would depend on the proximity of the building from the existing dwellinghouse whether a Condition or a Section 106 Agreement is required (see paragraph 6.10).