The Planning Inspectorate

Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 December 2021

Appeal Ref: APP/Y0435/X/21/3279878
Caldecote Mill, Caldecote Lane, Newport Pagnell MK16 0HA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr N Russel against the decision of Milton Keynes Council.
- The application Ref 21/01143/CLUE, dated 8 April 2021, was refused by notice dated 7 July 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is: use of the building as a dwellinghouse.
- **Application for Costs:** An application for Costs has been made by Mr N Russell against Milton Keynes Council. This is the subject of a separate decision.

Decision

The appeal is dismissed.

Matters of clarification

1. Further to the case officer's letters to the parties, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on all of the submissions and all of the submitted photographs. The appellant and the Council have agreed to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice is caused.

2. The application form refers to the LDC being applied for '*an existing use'.* That is, the existing use of the appeal building ('*The Annexe*') as a separate Class C3 dwellinghouse, from the appellant's dwellinghouse at Caldecote Mill. It is stated, on behalf of the appellant, that what has taken place is a '*the material change of use of a former agricultural building to a dwelling house'.*

3. The appellant's basic argument is that this former agricultural building has been in a separate planning unit of its own since the Victorian mill was re-built. It is contended that the LDC application evidence demonstrates, on the balance of probability, that the

building has been used as a separate dwellinghouse (in Use Class C3) for a continuous period of 4 years prior to the submission of the application.

4. It is contended that the LPA wrongly assessed the LDC application in that its starting point was that the appeal building was within the same planning unit of Caldecote Mill and that the building had been used 'originally' as incidental or ancillary residential accommodation. It is argued that the assessment by the Council should have been made on the basis of a judgement which, as a matter of fact and degree, found whether or not a material change of use had occurred to create a separate planning unit. These arguments are repeated in relation to the costs application.

5. In reaching my conclusions in this appeal, I have taken into account all of the application submissions and all of the matters raised in both the appeal and costs application submissions by both parties. This clearly includes the submissions relating to what constitutes the planning unit or units and whether it has been demonstrated that that a material change of use has occurred and/or that the appeal building had been used originally as ancillary incidental or ancillary residential accommodation.

Introduction and background information

6. The LDC application was submitted on 8 April 2021 for a Certificate of lawfulness for an existing use of the outbuilding as a separate 2 bed dwellinghouse (Use Class C3). It was refused consent by the Council under delegated powers on 7 July 2021 for the following reason:

1. *The Council is not satisfied that on the balance of probabilities, when assessing the evidence submitted by the applicant, that the building known as Annexe at Caldecote Mill, Caldecote Lane, Newport Pagnell MK16 0HA, as shown and outlined in red on the attached plan, has been occupied as an independent dwelling for a period in excess of 4 years (continuously). Indeed, the evidence suggests that the application building (and its occupants) have some dependency on the host dwelling, and therefore cannot be considered as a separate independent planning unit in this regard. A Certificate of lawfulness cannot therefore be issued on that basis.*

7. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered and the relevant test, relating to the submitted evidence, is *'the balance of probability'*.

8. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information (my underlining), a LPA may be justified in refusing to grant a certificate. However, PPG also indicates that if an LPA has no contrary evidence

itself and there is none from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.

9. The L-shaped appeal building, known as *'The Annexe'* is situated to the west of the entrance to Caldecote Mill. There is an area of land close to the building and a yard area associated with Caldecote Mill. The main element of the building fronts onto Caldecote Lane with the return alongside the main entrance to Caldecote Mill. Caldecote Mill is a large Victorian property which encompasses a dwellinghouse, mill buildings and former agricultural buildings. The land in the appellant's ownership is shown on the submitted Land Registry document.

10. The submitted application drawings indicate that *'The Annexe'* comprises a bedroom, storage room, dressing room, boiler room, kitchen/lounge area, WC and a playroom on the ground floor. On the first floor there are three storage rooms, one bedroom and one en-suite bedroom. The plans do not show any other separate bathrooms or shower rooms. Nevertheless the *'The Annexe'* does provide all of the necessary day-to-day facilities of a dwellinghouse.

11. The appellant has submitted photographs, some of which the LPA claimed had not been submitted with the LDC application. However, it is clear that they were and I have taken them all into account in reaching my decision. Reference is made specifically to the garden area around the appeal building; parking and access to it and the entrance from the lane.

The gist of the case for the appellant

12. It is indicated that the application was made on 8 April 2021 and an update was requested on 29 June 2021. The LPA responded on 5 July 2021, indicating a concern with the Council Tax bill records which were submitted as part of the supporting evidence. The agent responded on 5 July 2021 contending that the submitted Council Tax bills indicate that '*The Annexe'* had been occupied as a separate dwelling house for a continuous period of at least 4 years prior to the application submission.

13. On 6 July 2021 the appellant indicated that an extension of time, to allow the LPA to reassess the submitted evidence, would be acceptable. At the same time it was stressed that the submitted evidence included an e-mail from the council tax department confirming that the appellant has been paying council tax for the periods shown.

14. With regard to the submitted evidence being considered 'on the balance of probability' the case of *Miller v Minister of Pensions [1947] 2 ALL ER 372* is quoted, whereby it was found that '*If the evidence is such that the tribunal can say 'we think it more probable than not' the burden is discharged, but if the probabilities are equal it is not'.* Reference is also made to the court finding, in the case of *Gabbitas v SSE and Newham LBC [1985] JPL 630,* that an applicant's own evidence does not need to be corroborated by *'independent'* evidence in order to be accepted.

15. As evidence, the submitted Statutory Declaration, the Council Tax Notices, the Land Registry document, communication from the Council's Revenue Department and Electoral Role reminder, are all considered to demonstrate a separate residential occupation of 'The Annexe'.

16. It is indicated that in the delegated report (in referring to the planning history), the three applications dated 2014 and 2015 do not relate to the appeal building, but to a separate parcel of land around 100m away from the appeal building and outside the ownership of the appellant. It is stressed that the appeal building is not connected to the main dwelling and is detached. The fact that it is named '*The Annexe'* has no bearing on whether the appeal building has changed its use to a dwelling house.

17. In terms of Council Tax, it is contended that the LPA is wrong to suggest that Council Tax relates to the main dwelling house and not the appeal building. It is indicated that the documents supplied include a letter from the Council's Revenues Department confirming Council Tax has been paid in relation to the appeal building.

18. Reference is made to the enforcement case which was opened in 2018 for the use of the barn as a single dwelling. It is argued that the LPA itself alleged that there had been a breach of control in the form of a use of the appeal building as a separate dwelling house and there is no evidence to show that the case has been closed.

19. In referring to the appeal building being used by family; it being considered to be an 'ancillary' building to the main house and being connected to utility services via the main house, it is contended that the LPA has tackled the assessment incorrectly. It is stressed that it has failed to consider the question of what constitutes the *'planning unit'* with regard to '*The Annexe'.*

20. The case of *Burdle v Secretary of State for the Environment [1972]* is referred to and the 3 broad categories of distinction to help to determine the planning unit are set out. With reference to the history of Caldecote Mill, it is indicated that following a fire, around 1842 and the re-building in the 20th century, a new chapter in the history of the main building had begun. It is argued that the appeal building is a separate and independent planning unit from the main house at Caldecote Mill.

21. In support of this contention it is indicated that the appeal building was originally a Victorian agricultural building which '*visually pre-dates'* the current Caldecote Mill dwelling. It is argued that it lies outside of the curtilage of Caldecote Mill and that it has undergone a material change of use to a separate dwellinghouse, thereby forming its own planning unit.

22. It is further indicated that the appeal building is occupied by persons other than the occupiers of Caldecote Mill and that the current occupiers of the mill have never resided there. It is stressed that '*The Annexe*' is the primary accommodation of the current occupants and that it has been occupied as a family home (a married couple with children) during the relevant time period.

23. Although it is accepted that the occupants are related to the owners and occupiers of Caldecote Mill, nevertheless, their relationship is not wholly relevant to the submission. The occupiers are not reliant on any of the facilities of the other dwelling house for day-to-day living such as cooking, sleeping, outside enjoyment, vehicle or pedestrian access and washing.

24. It is stressed that the appeal building has all the facilities and typical characteristics of a dwelling house and that this can be seen from the submitted photographs. It is further indicated that the appeal building benefits from its own individual access off Caldecote Lane, as well as having its own courtyard, garden, and parking area. These are all identified on the location plan attached to the Statutory Declaration.

25. It is argued that, as a matter of fact, the previous use of the appeal building was neither ancillary nor incidental residential accommodation to Caldecote Mill, but rather an agricultural/barn. It is pointed out in the statutory declaration that there was only one dwellinghouse house on the site at the time the property was purchased. The appeal building has two bedrooms, a kitchen, bathroom, storage room, playroom, and boiler room. The appeal building is also connected to utilities. Apart from an oil tank (appendix GC-2, page 2) which provides heating and water, the other utilities are connected to the dwelling house.

26. It is argued that what has taken place is the material change of use of a former agricultural building to a dwelling house which is not ancillary residential accommodation to Caldecote Mill.

27. In line with the case of '*Burdle*' two propositions are set out. The first is that where there are a variety of activities, none of which are incidental or ancillary to another and which are not confined within separate and physically distinct areas of land, again the whole unit of occupation should normally be the planning unit (this is usually said to be a composite use.) Secondly, where within a single unit of occupation there are two or more physically separate and distinct areas occupied for substantially different and unrelated purposes, each area (together with its incidental and ancillary activities) should be a separate planning unit.

28. The appeal building forms a separate planning unit. And the evidence demonstrates that from 2010 Mr Toby Russel, Mrs Maryam Russel and their son Lucius Russel lived permanently at the property. Mr Toby Russel stopped living at the property in 2018; however, there was no breach in occupation as Mrs Russel and their son Lucius and second son remain in occupation.

29. The letter from the revenue department confirms that Council Tax has been registered for that building from 2014. The documents provide additional evidence building remains occupied by the same (part of) occupiers,and it has been continuous from 2010.

30. On the balance of probability and based on the case of *'Gabbitas',* it is contended that the appellant has demonstrated that the separate occupation of the appeal building has been continuous well before the relevant period of 23 February 2017 and is immune from enforcement action by virtue of the passage of time.

The gist of the case for the Council

31. The Council indicates that there have been numerous enforcement cases opened against various form of activities at the site. The most recent of these was opened in 2018 which relates to the use of the appeal building *('The Annexe')* as a single dwelling. The LPA acknowledges that the case does not make clear which part of the site it relates to and whether it is for the subject buildingor another. However, it is stressed that what is clear however, is that the landowner was made aware of the possible breach of planning control as a result of the alleged material change of use on site.

32. The LPA is aware that one could argue why the enforcement case cannot be used as evidence. This is because despite an enforcement case being opened in 2018, it does not confirm the continuous use of the building after the investigation. The case was closed following a letter to the landowner recommending the submission of a lawful development certificate application.

33. An application was duly submitted in May 2019 and it was refused in July 2019 due to the fact that there was no evidence to demonstrate that the building had been used continuously as a dwellinghouse for more than 4 years and therefore the lawful use of the building as a dwelling had not been established. It is indicated that there has been no submission between that refusal and the submission of this appeal application, and the LPA is unclear whether further changes have been made on site. The Council refers to s.195 of the Act and to PPG relating to the responsibility for providing sufficient information to support an application.

34. It also refers to the case of *'Burdle'* and sets out the three non-exhaustive, tests for determining a planning unit, namely:

1. *Single main purpose* - whenever it is possible to recognise a single main purpose ofan occupier's use of his/her land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.
2. *Composites uses* – even where there are two or more distinct uses (i.e. where one use is not incidental or ancillary to another), the whole unit of occupation will normally be the relevant planning unit, if the uses are not confined to physically separate areas and,
3. *Physical and functional separation* – where there are, within a single unit of occupation, two or more physically separate and distinct areas which are occupied for different purposes, then, each area used for a different purpose (together with anyincidental or ancillary activity) is to be considered as a separate planning unit.

35. The Council contends that in, applying the three tests above, *'The Annexe'*, has remained functionally related to the host dwelling since first constructed and its curtilage established. This curtilage is considered to include the appeal building and the land around it. Thus, in essence it is considered that the appeal building constitutes a 'Residential Annexe'.

36. It is also contended that there is insufficient evidence to show any physical separation of amenity space or subdivision of the garden. It is stated that both buildings appear to have been intimately related to each other since another since the main building was constructed.

37. Reference is also made to the facts that in both LDC applications there is no evidence of tenancy agreements in place and that the services for the appeal building are all connected to the main dwelling 'Caldecote Mill', despite a photograph showing more than one gas meter. It is stressed that '*The Annexe*' is occupied by family members and is considered to be functionally reliant on the main dwelling in this regard.

38. Despite the new photographic evidence submitted at this appeal stage, the LPA still has many doubts over the use of the *'The Annexe'.* The LPA questions why two separate gas meters were installed but only one has been used. The Appellant's claim that *'The Annexe'* is a separate dwelling, despite the fact that it shares the same utility meter as the main dwelling. The LPA questions whether the second meter was installed but not used as a way to overcome enforcement matters or whether it was installed recently.

39. The Council contends that its position is further supported by the judgement in *Uttlesford District Council v Secretary of State for the Environment & White [1992].* In that case it is indicated that the LPA served an enforcement notice against an alleged creation of a living unit within a garden building. This structure was a log cabin that had formerly been a games room and store. In that case the Inspector found that it contained all the facilities for day-to-day domestic existence and was capable of being used as a separate dwelling. However, the Inspector also stated that this did not mean that it had been so used.

40. The Council refers to factors which were significant in that case, including the lack of separate postal addresses; insufficient or lack of information relating to separate curtilages and the lack of access arrangements. In that case it is indicated that the Inspector concluded that the cabin was still used in connection with the house and there had been no material change in the character of the use.

41. The LPA contends that there are distinct similarities with this appeal. It equally questions the probability that the current appeal building has been used as an independent planning unit for the time specified. It is indicated that the confirmation letters from the Council Tax team at MKC did not confirm continuous use of the building as a separate dwelling.

42. It is contended that if it was a separate dwelling and planning unit it would have its own utility supplies, rather than being reliant on the host dwelling in physical terms, as well as on occupants of the host dwelling paying bills to enable the occupants of '*The Annexe'* the application building to have utility services.

43. The Council also contends that the lack of any tenancy agreements, again, suggests that the building has been used as an ancillary annexe (subsidiary residential accommodation) to Caldecote Mill. In addition, an email from the Council Tax Team confirmed that the council tax account was set up following information from a Planning Enforcement officer and a telephone call between the Officer and the appellant in order to confirm the occupants. No further checks were carried out by the Council Tax team to establish the use of the building at the point of setting up the account. Again, the information is considered to shed further doubts as to the use of the building as a completely separate dwelling.

44. The LPA considers that there is dependency on the host dwelling. It is acknowledged that the '*The Annexe' i*s located to the side of the Caldecote Mill, and as such can be accessed without the need to pass through the dwelling on site. However, given its functional link and the level of physical dependency on Caldecote Mill, the main dwelling on site, the LPA is not fully satisfied that, on the balance of probabilities, the subject building has been used as an independent dwelling continuously.

45. Furthermore, the delegated report highlighted that there are gaps in the information. In conclusion it is considered that the information submitted is not sufficient to support the granting of a LDC. Again, the LPA stresses that there is no tenancy agreement in place; that clearly no payments have been made and that there are no separate utility connections.

46. It is argued that even if the building has been used by close members of the family, it does not automatically make that a separate dwelling. As such, it is not considered that the building, known as *'The Annexe* ', has been used continuously and uninterrupted as a single independent dwelling in Class C3 for the necessary 4-year period.

My Assessment

Introduction

47. The main issue is whether or not the appellant has demonstrated, on the balance of probability, that a material change of use of '*The Annexe'* (a former agricultural building) to use as a separate dwellinghouse in Class C3 has taken place. For this to be the case the onus is on the appellant to demonstrate that the appeal building has been used as such for a continuous 4-year period and that it was, therefore, immune from enforcement action on 8 April 2021.

48. There is no dispute that *'The Annexe'* has all of the necessary facilities for day-to-day living. The LPA had made reference to only one en-suite bathroom, but it has been confirmed that there is a bath in the ground floor WC shown on the submitted plans. It is also clear that the appellant lived in it for a short time just after purchasing Caldecote Mill and its associated buildings.

49. Although the appeal statement sets out that there was only one dwelling on Caldecote Mill site in 1999 and that the appeal building was an agricultural building, *'The Annexe'* must have had residential facilities at that time. This is clear from the Statutory Declaration in which the appellant indicates that he lived in it for 6 months. It could not have been in use as an agricultural building, albeit this may well have been its lawful use at that time.

50. Thus, in 1999 it was already being used for residential purposes, whether that use was on a temporary basis or not and/or whether it was a lawful use or not. From the submissions it is not clear when the actual alterations to the appeal building, from an agricultural one, to one with residential facilities, took place. There is no information to this effect in the LDC application submissions.

The question of the planning unit

51. I do not accept the contention that the appeal building became a separate planning unit when the Victorian Caldecote Mill replaced the earlier mill building which had been destroyed in a fire. The new building at that time replaced the original mill and there is no evidence whatsoever to indicate that the surrounding buildings were separated from the new main dwelling or used in any way, other than in conjunction with the use of Caldecote Mill. In fact, it is referred to as an 'outbuilding' in the application.

52. The Land Registry details indicate that the land and surrounding buildings were purchased by the appellant in 1999. The contention that the appeal building (a former agricultural building) lies within its own planning unit, separate from the Caldecote Mill, is neither supported by any substantive evidence, nor, as indicated by the Council, is it fully consistent with the statutory declaration and the description of the LDC application proposal.

53. Since 1999, following a 6-month occupation by the appellant, the statutory declaration makes clear that the appeal building has been occupied *'intermittently',* since 2003, and '*permanently*', since 2010, by members of the appellant's family for residential purposes. If, between 2003 and 2010, it had only been used *'intermittently',* there must some question as to whether, during that period, there could have been a separate residential Class C3 use of the building for a continuous 4-year period. In my view this part of the evidence is ambiguous and, therefore, continues to suggest a continued basic functional relationship between the two buildings in terms of their residential use.

54. Having considered the application in detail and all of the submissions, I can understand why the LPA dealt with the LDC application in the manner it did. The supporting statement dated January 2021, did not refer to the former use of the building to which the original application relates. Neither did the previous 2019 LDC application refer to the former agricultural use of the building. It is clear that the appeal building was purchased as an outbuilding, together with the main dwellinghouse in 1999 and the application was for a LDC for a *'certificate of lawfulness for an existing use of the outbuilding as a 2 bed dwellinghouse (C3).'*

55. Whatever the lawful use of the appeal building in April 2021, the application had sought a certificate to confirm that *'The Annexe'* had become a separate and lawful dwellinghouse in Use Class C3. The onus was upon the appellant to submit precise and unambiguous evidence to demonstrate that this is the case and the LPA had to base its decision on that evidence. In dealing with a LDC application it is not incumbent upon a LPA to seek evidence of its own to counter that submitted.

56. The Council has referred to the ordinary meaning of an outbuilding as *'a building such as a shed or stable that is built near to, but separate from, a main building'.* I agree with the Council, therefore, that it was reasonable to consider the spatial and functional relationship between *'The Annexe'* and Caldecote Mill, before forming a view on whether the building (whether an agricultural building or not) had been used as a separate dwellinghouse from Caldecote Mill for the necessary continuous 4-year period.

57. At the time of the application there was no indication that the appeal building formed its own planning unit; no evidence to suggest when the building had last been used as an agricultural building and no evidence relating to when any alteration works had been carried out. The LPA could only rely on the submitted application details on which to base their decision.

58. From the submissions, I consider that, as a matter of fact and degree, the mill and the appeal building were in the same planning unit in 1999 and that *'The Annexe'* was initially used as family accommodation, whether that was being lawfully used or not. The appellant lived in it for a short time (6 months) followed by his son and family. There is no submitted evidence or documentation to support the contention that in 1999 *'The Annexe'* had already become a completely separate dwellinghouse in Use Class C3, by virtue of there having been a material change of use from the former agricultural use. The evidence relating to this application all post-dates 1999.

59. The question at this stage, therefore, is whether or not, between 1999 and April 2021, *'The Annexe'* became a separate dwellinghouse and, therefore, a separate planning unit. Whether this is considered/assessed on the basis of a material change of use from the former agricultural building, or through a change in character of any incidental residential usage of the appeal building, the onus is upon the appellant to provide the necessary precise and unambiguous evidence.

60. I now turn to the specific evidence submitted with the LDC application and whether or not the appellant has demonstrated, on the balance of probability, that *'The Annexe'* has been used as a separate dwellinghouse in Use Class C3 for a relevant and necessary continuous 4-year period.

The Statutory declaration

61. The Statutory Declaration sets out the history of how the property was used by the appellant and his family from 1999, as well as referring to the services provided; how contributions to running costs have been made; how it is accessed and how the areas around the property have been used. I refer to these matters further in my consideration under the other submissions below.

The Council Tax Evidence and the Electoral Register

62. The current occupiers of '*The Annexe'* are the appellant's daughter-in-law and her children and the submitted Council Tax documents are in her name. The documents indicate that Council Tax payments have been made for *'The Annexe', as opposed to the main dwelling,* for all years between 2013 and 2019. Some of the Council Tax documents indicate that a discount for 'single occupancy' had been applied. In certain situations, separate 'residential annexes' including those referred to as 'Grannie Annexes' can be exempt from Council Tax. These include where a unit is occupied by a dependent or disabled relative.

63. I acknowledge the separate Council Tax payments in this case and the fact that those paying the tax were not exempt. However, evidence relating to the payment of Council Tax cannot, in itself, categorically indicate the lawful use of any residential accommodation. There are many situations whereby incidental or ancillary residential occupation of a separate unit of occupation do not necessarily equate to there being two separate planning units. The fact is that, once it is established that such buildings are being used for residential purposes, the payment of tax is required.

64. There is no dispute that the appeal building is a physically separate unit of residential accommodation. However, it would be subject to Council Tax irrespective of whether or not it was a separate dwellinghouse in Class C3 or a residential annexe to Caldecote Mill, or indeed staff accommodation in relation to any other use at the mill. It is a fact that the criteria for assessment of Council Tax are not simply based on the specific residential Use Class of a property.

65. Neither do I consider that the Electoral Register evidence assists the appellant's case that *'The Annexe'* is a completely separate dwellinghouse in Use Class C3. The reminder information is addressed to Caldecote Mill. Although it indicates the names of the appellant, his wife, his son and his daughter-in-law, it does not distinguish between the residential use of mill and *'The Annexe'.*

66. If it had done so and there had been separate reminders, it would have added weight to the contention that the appeal building was a separate Class C3 property. As it stands, it is simply indicating the names of all those eligible to vote who lived at the Caldecote Mill site which included *'The Annexe'*. As for the Council Tax position, therefore, I do not consider that it can be a positive determining factor in support of the case for the issuing of a LDC.

Character and terms of occupation, utility services and physical relationship

67. Although the Statutory Declaration indicates payments of £100 has been made in contribution to the utility services provided by the appellant, via Caldecote Mill, there is no evidence of any formal rent being paid for the accommodation. The fact is that the main utility services remain connected to the appellant's main dwellinghouse. In order to be seen as completely separate dwellings, one would have normally expected all services to be separate. The fact that there are two gas meters , with only one in use suggests that separation of the gas supply might have been considered. However, only one remains in use and at the time of the application the services remained combined.

68. In situations whereby properties in the same ownership have been separated; where different households occupy each property and where some payment is made for the second property, one would also expect to have some formal agreement in place. I acknowledge the family circumstances in this instance and that the lack of such a tenancy agreement cannot in itself be determinative that the appeal building has not been used as a separate independent dwelling. I also accept that many dwellings are occupied as subsidized or even rent-free properties, without tenancy agreements and by people related to the owners.

69. However, in my view, there is insufficient precise and unambiguous evidence in this instance to indicate that the use of '*The Annexe'* had changed in its character of residential usage between 1999 and the date of the application on 8 April 2021. In 1999 the evidence indicates that the appeal building was lived in by the appellant as temporary accommodation. Although by 2003 and between 2010 and 2021 it has been occupied by members of the appellant's family, there is no firm evidence that the two units of accommodation had or have been, completely separated.

70. In fact the evidence indicates the opposite to be the case. Basic physical links via yards and open areas between the two properties appear to be still the same as they were in 1999. The provision of utility services to '*The Annexe*' has remained the same, via the main dwelling and there have been no changes in ownership of the property.

71. I acknowledge that there have been some differences (between 1999 and 2021) in the manner in which the immediate surrounding areas have been used (garden, access and parking). However, in my view, these are not sufficient to

indicate any meaningful physical separation of the two properties or to demonstrate that *'The Annexe'* is a completely separate Class C3 dwelling. Furthermore, a separate unit of residential occupation as in this case does not automatically equate to a separate planning unit.

Other Matters

72. I have noted the references to the enforcement action instigated by the LPA in 2018 and the comment that it has not been formally closed. I do not accept the appellant's contention that the case would only have been formally closed *'once matters had been resolved, unless it is accepted that the development is lawful'.* The facts are that the LPA had initially considered that the appeal building was being used unlawfully and therefore wrote to the appellant accordingly. Based on the communications between the parties at that time, the LPA was entitled to decide that it was not expedient to issue a formal notice. Instead, the appellant followed the Council's advice and applied for a LDC.

73. In my view the LPA's stance on this point could not in any way be used as an indication that the authority was in agreement that the alleged use was lawful for planning purposes. Furthermore, if an enforcement notice had been issued at that time, in order to demonstrate that a separate Class C3 use was being carried out the appellant would have had to have demonstrated (through an appeal on ground (d) that the use was immune from enforcement action by virtue of there having been a continuous period of 4 years separate residential use of *'The Annexe'.* Presumably the same or similar evidence to that submitted for this LDC application would have been submitted.

Conclusion

74. I do not consider the appellant has demonstrated that, in terms of physical and functional separation, the mill and '*The Annexe'* comprise two physically separate and distinct units of occupation which are occupied for different purposes; that is two completely different Class C3 dwellings, each within its own planning unit. In my view, the evidence does not demonstrate that a material change of use has occurred.

75. I accept that the mill and *'The Annexe'* comprise two separate units of residential accommodation but, in my view, on the balance of probability the evidence points to a single main purpose of the appellant's land and property, whereby the use of *'The Annexe'* remains as a secondary or ancillary residential annexe use to that of the main house. On this basis I consider, therefore, that the '*whole unit of occupation*', the main dwelling and the appeal building, still constitute a single planning unit.

76. In conclusion, I remaine unconvinced that, on the balance of probability, the appellant has demonstrated that on 8 April 2021 *'The Annexe'* was lawful for

planning purposes by virtue of it having been in use as a separate Class C3 dwellinghouse for a necessary 4-year period.

77. In line with the case of *'Miller',* I consider that the probability of the '*The Annexe'* being a separate dwellinghouse for the relevant period is less than equal and do not accept that it is *'more probable than not'* that it was totally separate from Caldecote Mill. The appeal must, therefore fail.

Formal Decision

78. The appeal is dismissed, and a Lawful Development Certificate is not issued.

Anthony J Wharton

Inspector