



## Appeal Decision

Site visit made on 26 September 2023

**by P N Jarratt BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3 October 2023**

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**Appeal Ref: APP/Y1110/X/23/3322252**

**66 Merrivale Road, EXETER, EX4 1PT**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr and Mrs Mike Collacott against the decision of Exeter City Council.
  - The application ref 22/1337/LED, dated 17 October 2022, was refused by notice dated 3 February 2023.
  - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is to retain a single storey annex in rear garden of the house in conjunction with the existing house.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. For the avoidance of doubt I should explain that the planning merits of any use or operations are not relevant and not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case and on relevant planning law and judicial authority.
3. The onus of proof rests with the appellant and the level of proof is on the balance of probabilities.

### Main Issue

4. I consider the main issue to be whether the Council's decision to refuse to grant an LDC was well founded.

### The appeal site and relevant planning history

5. The main dwelling contains a kitchen, dining area and a bedroom on the ground floor. There are two further bedrooms and a bathroom on the first floor. It is in use as a House in Multiple Occupation (HMO).
6. In the small rear garden is a single storey timber building which I could not access internally at my site inspection due to it being locked although the agent confirmed that the internal layout had not changed from that shown in the photographs submitted by the Council. A locked gate prevented access from the yard to the rear passage.

7. The LDC application subject to this appeal arose from enforcement investigations by the Council when it was concluded that a separate self-contained dwelling had been created in the annex.

## **Reasons**

8. The application form refers to the construction of single storey annex in the rear garden, that it had been used as an annex to the residential property for over four years and that its use was as C3 – dwellinghouse. It was originally constructed as a two storey building in the spring of 2018 but was reduced to a single storey building following receipt of a letter from the Council dated 6 August 2018. The appellant states that the single storey building was substantially completed in August 2018, however no evidence has been submitted to indicate the date when the annex was substantially completed and first occupied, or by whom and whether occupation has been continuous.
9. The appellant maintains that the outbuilding is an annex to the main house, that access is through the house, all services are through the house and the laundry and the means of cooking a major meal are in the house and that the annex is similar to a 'granny annex.'
10. The Statement of Truth dated 23 September 2023 and signed by Kelsea Bright indicates that he/she has been a friend of the appellant for 5 years, was a regular visitor to the appeal property and over 4 years ago the annex was modified to be single storey and has been continuously lived in as an annex. However, whilst weight is normally attached to statements of truth submitted in evidence, in this case there is sufficient contradictory evidence to question its veracity.
11. The plan submitted by the appellant indicates that the flat roofed outbuilding contains a bed/sitting room, shower room and kitchen. Access to the outbuilding is at its furthest side from the house close to the rear gate. The Council's internal photographs show the bed area, living space, a well-stocked kitchen with fridge, sink hob and oven. It has the appearance of, and the facilities of, a separate dwelling capable of independent living. Laundry facilities are at the rear of the main house and it is not necessary to enter the house to access these. Reference to it being akin to a 'granny annex' fails to recognise that some degree of dependence exists between the occupant of a 'granny annex' and that of a main house but no evidence of support has been shown here.
12. Contradictory evidence has been provided relating to the use of the annex. On 30 June 2022, an HMO Licensing officer visited the property and subsequently confirmed that an HMO License was issued for the property for five residents. That officer confirmed that the annex was occupied by the owners of the site and is separate from the licence relating to the main dwelling, which is C4 HMO use. This contradicts information on the application form and also that provided to the enforcement officer on 16 May 2022 when the appellant claimed to use the main dwelling and had a bedroom there.
13. Whilst there is evidence that some form of outbuilding has been in situ for some time, the precise date when the current outbuilding was substantially complete and occupied is unclear and there is a lack of evidence to support the appellant's claim. Whether the two storey outbuilding could have been reduced

to single storey and made habitable in a couple of weeks would represents remarkable progress.

14. It has not been shown on the balance of probabilities that the use of the outbuilding as a self-contained annex ancillary to the main dwelling has been demonstrated. Furthermore as it is not an ancillary building to the main dwelling used for a purpose incidental to the house, the annex would require planning permission as it does not come within the scope of a householders permitted development rights.

### **Conclusion**

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development to retain a single storey annex in the rear garden of the house in conjunction with the existing house was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*P N Jarratt*

INSPECTOR