

Appeal Decision

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19th September 2024

Appeal Ref: APP/N2535/X/24/3336904

The Bungalow, Sturton Road, Ingleby, Lincoln LN1 2PQ

- The appeal is made by Peter Geldart under section 195 of the Town and Country Planning Act 1990 against a refusal by West Lindsey District Council to grant a lawful development certificate.
 - The application Ref:147348, dated 19 September 2023, was refused by notice dated 3 November 2023.
 - The application was made under section 191(1)(a).
 - The existing use for which the certificate is sought is described on the application form as "The annexe of The Bungalow separately let as single dwelling house" and in the Council's decision notice as "to continue use as a dwellinghouse in breach of occupancy condition 2 of planning permission W85/231/89".
 - Planning permission W85/231/89 authorised the alteration of outbuildings to form a granny annexe at the appeal site. Condition 2 of the permission states: "The conversion of the outhouses to a granny annexe hereby approved shall not be occupied independently of The Bungalow and at no time shall be occupied as a separate dwelling."
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Decision

1. The appeal is dismissed.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the use at the time of the application. The planning merits of the use are not relevant to the appeal and there is no planning application before me.
 3. The Council refused the application for the following reason:

"Insufficient evidence is available or been presented to demonstrate that the annexe has been used as a separate dwelling since 1991 or indeed for a period of 4 years or more from the date of this application."
 4. The appellant states that the annexe has been let to tenants from the time that ill-health prevented it from being used as a granny annexe, with periods of non-occupation occurring only because of the time taken to find new tenants and with one period of continuous occupation lasting more than 4 years. The documentary evidence that has been submitted includes a list of tenants since
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1992, a statutory declaration made by a tenant and a copy of a handwritten note of invoices issued for electricity supplied during that tenancy.

5. The tenant's statutory declaration states:

"From October 2011 to October 2016, I was the tenant of the property known as The Annexe at The Bungalow, Ingleby, LN12PQ – the property of Mrs S Sharpe, and was in continuous occupation of the property during that time. The Annexe was let to me as a separate dwelling unit with all utilities available."

The declaration was made on 30 November 2023 and was therefore not available to the Council when they made their decision on the application, but the Council did have at that time a copy of an email from the tenant to the appellant stating that she was the tenant of the annexe from October 2011 to April 2016.

6. The Council maintain that the information supplied is insufficient to demonstrate that the annexe has been used as a separate dwellinghouse in breach of Condition 2. They accept that the information suggests that the annexe has been let to others, but state that it does not demonstrate that they were living independently of The Bungalow or that the annexe was used as a separate dwellinghouse. The Council also state that contrary information has been supplied to the Council Tax department and that there are inconsistencies between the information submitted now and the information submitted with the earlier applications 145409, 145742 and 146432.

7. The Council have a pre-2014 note that states:

"EXTENSION DONE TO PROPERTY - RANG AND SPOKE TO MRS SHARPE WHO SAYS ACCOMMODATION BUILT ON EXISTING PROP. IS NOT AN ADDITIONAL PROPERTY."

This note could be about the annexe but it is not clear that it is, in the absence of more details. I have therefore attached no weight to it.

8. In 2019, the Council's Revenues Officer reported in response to an email from the Council's Housing and Communities Officer (which indicated that the annexe was a separate dwelling and asked whether it should be separately assessed for Council Tax purposes):

"I have had a look at this property and we are aware there is an extension to the main property which is occupied. We have been advised it is not a separate annex and they have always rented rooms out."

9. The application form 145409 dated 10 August 2022, submitted by the owner, states that the removal of Condition 2 is being sought "so that we can let part of our residence" "to allow it to be a standalone residence".

10. The owner of the property responded to a letter from the Council sent in August 2022 as follows:

"The building was originally converted into a Granny Flat (i.e. the annexe) for my parents. When it was no longer required, we let it furnished under the "room to let" scheme. This is why we have always treated it as part of our

dwelling in that tenants are never charged Council Tax or water rates, and there is direct access through a door."

11. On 11 October 2022, the appellant wrote to the Council, stating:

"It might also be argued that the Condition attached to the original permission has not been breached, since the original occupation and subsequent letting of the annexe has always been ancillary to the Sharpe's own occupation of The Bungalow and has not been occupied as a single dwelling. In support of that argument, we can submit the following : 1. There is one electricity supply, paid by T.S. 2. There is a single water supply, also paid by him. 3. An inspection by WLDC rated the combined units as a single building and Council Tax has been paid by T.S. 4. All occupants of both units are entered onto the Electoral Roll and are registered as residents of The Bungalow. 5. Both units share the sewage and drainage systems, paid by T.S."

12. The application form 145742 dated 19 October 2022, signed by the appellant, contains the following information:

"In 1989 Planning consent was granted for a redundant farm building adjacent to The Bungalow to be converted into a " granny annexe" for Mrs Sharpe's parents. A condition was attached to the consent preventing the annexe from becoming a separate dwelling. Mrs Sharpe's mother died in 1990 and her father was unable to continue to occupy the converted extension with the consequence that Mrs Sharpe was left with a fully furnished but unoccupied asset. For 30 years from 1992 Mrs Sharpe has let the annexe to a number of tenants."

"Mrs Sharpe claims that the time within which a valid challenge of breach of the original consent could be made by WLDC has expired. In addition, Mrs Sharpe queries whether there has in fact been a breach of the condition 2 of the original consent that "the annexe shall not be occupied independently of The Bungalow, and at no time shall be occupied as a separate dwelling".

1. An inspection by WLDC rated the combined units as a single building and Council Tax has been paid by Mrs Sharpe 2. The annexe has always been let as ancillary to Mrs Sharpe's own occupation of the Bungalow 3. There is one electricity supply, paid by Mrs Sharpe 4. There is a single water supply, also paid by Mrs Sharpe 5. All occupants of both units are entered onto the Electoral Roll and are registered as residents of The Bungalow. 6. Both units share the sewage and drainage systems, paid by T.S.

Mrs Sharpe submits that in addition to the lawful use being established by the passage of 30 years without challenge, it is also open to question if there has been a technical breach of the original planning condition."

13. The application form 146432 dated 11 March 2023 and submitted by the appellant states:

"The planning permission was for use as a " granny annexe", but as the proposed occupants, Mrs Sharpe's mother and father were unable to continue occupation, the annexe has been let to a series of tenants since 1992. As a small farmer, Mr Sharpe was encouraged by the then MAFF to let a room or part of his dwelling to augment the farm income. Though they have now been

made aware that a separate dwelling will attract separate assessment for Council Tax, Mr & Mrs Sharpe have continuously paid the original assessment by WLDC as a single dwelling.”

14. I have assessed all the available information. The onus is on the appellant to make out the case for the certificate to a standard based on the balance of probabilities. The statutory declaration of 30 November 2023 is brief and does not explain in any detail what the arrangements were for the occupation of the annexe during the period referred to. The appellant has not produced any tenancy agreements or other written evidence setting out the arrangements made with any of the occupiers of the annexe at any time in the period since 1992. The information set out in paragraphs 8 to 13 above is authoritative and detailed. It indicates that the annexe has always been let as furnished rooms forming part of The Bungalow and never as a separate dwelling.
15. I am therefore satisfied that the Council’s refusal of the application is well-founded. The appeal has therefore been dismissed.

D.A.Hainsworth

INSPECTOR