



Appeal Decision

Site visit made on 16 July 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2024

Appeal Ref: APP/W0340/X/22/3308949

The Annexe at Pinnacle House, Red Lane, Aldermaston, Reading RG7 4PA

- 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 Ms Julie Graham against the decision of West Berkshire District Council.
 - The application ref 22/00604/CERTE, dated 2 March 2022, was refused by notice dated 29 April 2022.
 - 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 the use of the 'Annexe' as a separate dwelling (Use Class C3) for more than four years before the date of the application.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use, which is found to be lawful.

Background and Preliminary Matters

2. The application subject of this appeal is made under section 191(1)(a) of the Town and Country Planning Act 1990 (1990 Act), which relates to the existing use of The Annexe at Pinnacle House (hereafter referred to as the Annexe) as a separate dwelling. The effect of section 191(2) of the 1990 Act is that an existing use would be lawful if no enforcement action can be taken because the time for taking such action has expired.
3. The Council indicates the garage was converted to include living accommodation in 2008, prior to the claims of its use as a separate dwelling. The Annexe would, therefore, need to have been in use as a separate dwelling for a continuous period of 4 years prior to the date of the application, which in this case is 2 March 2022. The use would, therefore, have to have commenced by no later than 2 March 2018. However, any 4-year period before the material date is relevant, provided the use was established and has not been abandoned or lost by a supervening event.
4. The relevant test is the balance of probability, not the more onerous test of beyond reasonable doubt. The onus rests with the appellant to provide sufficient information to demonstrate this to be the case. The Planning Practice Guidance (PPG) states that if the Council has no evidence itself, nor any 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, provided the applicant's evidence alone is sufficiently precise and unambiguous.

5. On request of some missing items, the Council provided a copy of the Statement of Truth from J Graham and R F Graham dated September 2018, together with an electricity and gas statement dated 11 May 2019. At the time of this correspondence, the Council included further observations on the appeal and the appellant was given sufficient opportunity to respond. Accordingly, there is no prejudice to either party if I have regard to the documents submitted and the observations made when determining the appeal.
6. A revised Location Plan, drawing reference HP-PH-01, has been submitted with the appeal to substitute the original location plan. The variations include the substitution of the blue line around the Annexe on the original plan with a red line. A blue line is also now edged around the appellant's land and property at Pinnacle House. The revised plan does not introduce any substantive changes to the proposal and given its timely submission I am satisfied the Council had sufficient opportunity to provide observations during the appeal. As such, I shall have regard to the revised location plan when determining the appeal.
7. The Council has highlighted that the site is located within the AWE Aldermaston's Detailed Emergency Planning Zone, and an additional dwelling in this location might impact on the Emergency Plan. However, my decision rests solely on the facts of the case, relevant planning law and judicial authority. As such, its location within the AWE Aldermaston's Detailed Emergency Planning Zone cannot alter my consideration of whether the existing use of the Annexe as a separate dwelling was lawful at the time of the application.

Main Issue

8. The main issue is, therefore, whether the Council's refusal to issue an LDC for the Annexe being used as a separate dwelling was well-founded.

Reasons

Evidence with LDC Application and Appeal

9. The supporting evidence included with the LDC application includes internal photographs of the building; Council tax and utility bills, dated between 2018 and 2021; A register of electors' letter dated 15 March 2010 and an eligible to vote letter dated 29 September 2021.
10. The application also included a Statement of Truth by the appellant and occupier dated 13 September 2018 as well as a Statement of Truth by the occupier, Mr R F Graham, dated 1 November 2021. The Statements of Truth are signed and cosigned by a solicitor, ensuring they accord with the provisions of the Statutory Declarations Act 1835. I will hereafter refer to them as SD1 and SD2 respectively. It is acknowledged that there are different commencement dates for the use of the Annexe set out in SD1 and SD2. However, even if I were to take the view that the independent use did not commence until the later September 2010 date, this would still be an extended period of more than 10 years. As such, I will determine the appeal on this basis.
11. The appellant has also included an Appeal Statement and additional evidence produced in Appendices A to E of the appeal submissions. These include: -
 - **Appendix A- Utility Bills-** The additional utility bills with the appeal include an electricity bill dated July 2016 and a combined electricity and gas bill for a period between 29 July and 28 September 2022. Also, bills for

phone and television dated 2 December 2017, 2 June 2017, 2 September 2021 and 2 September 2022. All bills are addressed to Mr R Graham at either 'Garage Pinnacle House' or the 'House behind Pinnacle House'.

- **Appendix B- Internal Photos (as submitted originally)**
- **Appendix C- Statutory Declarations¹**
 - Mrs Hayley Anne Nolan- dated 10 October 2022- A statement from a friend of the appellant. I will hereafter refer to it as SD3.
 - Mrs Susan Josephine Wright- dated 10 October 2022- A statement from a friend of the appellant. I will hereafter refer to it as SD4.
 - Mr Kieran Smyth- dated 6 October 2022. A statement from a friend/work colleague of the appellant's husband. I will hereafter refer to it as SD5.
 - Mrs Anna Louise England- dated 30 September 2022. A statement from a friend of the appellant living in the local area. I will hereafter refer to it as SD6.
- **Appendix D- Images of Access to Annexe-** The picture of the access from Red Lane shows the vehicle access and a sign stating 'The Annex at Pinnacle House entrance' along with a keypad and doorbell. The pictures are not dated or annotated.
- **Appendix E- Revised Site Location Plan-** drawing reference HP-PH-01. As indicated in the preliminary matters above.

Continuous, Self-Contained Independent Use

12. The Council accepts Mr R F Graham has lived in the Annexe for the requisite period of time and has all the necessary facilities to live separately. However, the Council considers Mr R F Graham a dependent relative, using the building as a granny annex to the host property at Pinnacle House. The Council has highlighted the legal case *Uttlesford*², which is caselaw that has established that, even if the accommodation provides the capability for independent day-to-day living, it does not necessarily mean it is a separate planning unit. Whether a separate planning unit has been formed is a matter of fact and degree.
13. Based on the evidence before me, and from what I saw, Pinnacle House and the Annexe are situated within a large spacious plot. At my visit, a fence was present between the host property and the Annexe, which subdivided the plot. However, I have no evidence to suggest that the fence was present at the time of the application and facilitated the use of the Annexe as a separate dwelling. Nonetheless, even without the physical subdivision of the plot, the Annexe and Pinnacle House are detached from each other, with a reasonable amount of separation space in between. In addition to the distances between, the layout of the buildings means the Annexe faces towards the front of Pinnacle House and has direct access to its own private outdoor area directly to its rear.

¹ All statements are Statutory Declarations, they are signed by the person referred to and cosigned by a solicitor with their signature and details. As such, they accord with the provisions of the Statutory Declarations Act 1835.

² *Uttlesford District Council v Secretary of State for the Environment and another* [1991] 2 PLR 76

14. There are two separate accesses into the site, one from Red Lane to the south and another from Rag Hill to the west. There is a large parking and turning area centrally, where the two accesses meet, but also a separate parking area directly to the front of the Annexe. The Annexe is a large single storey detached building with a good sized living space, separate dining room and office area as well as a separate double bedroom. There is a fully equipped kitchen with storage space, a sink, an oven and hob, gas boiler, a washing machine and a dishwasher. There is also a separate bathroom with a bath, toilet and shower.
15. Although it is easier to identify a separate, distinct planning unit by boundary separation, it is not determinative of whether a separate planning unit has been formed. In my judgement, physically the two buildings are detached from each other, with good separation distances between. Furthermore, the Annexe has all of the necessary facilities to live independently, and together with the arrangement of the site and two accesses, the Annexe is functionally capable of being used independently without any interference with Pinnacle House.
16. In terms of use, SD2 indicates Mr R F Graham has lived independently of the main property since September 2010. There is no contradictory evidence to suggest that anyone else has occupied the Annexe between this time and the date of the application. SD3 to SD6 all indicate that they have known the appellant and her father in law for the requisite period of time. They go onto identify the Annexe by the accompanying plan, and state Mr R F Graham has lived separately in the purpose built Annexe, which has all the necessary facilities. Although SD3 to SD6 do not set out specific start dates for the use, they confirm the use has been occurring for the requisite period of time. Further to this, they do not contradict the occupier's claims of living independently since 2010 without interruption.
17. None of the SD's indicate that Mr R F Graham is reliant on the appellant or other family members in respect of his day-to-day activities. Instead, SD2 specifically outlines that he pays for his own utility bills (corroborated by evidence) and during long periods when the occupiers of Pinnacle House are away, he remains living at the Annexe independently. SD4 confirms the occupier's account by outlining that when she stayed at Pinnacle House for a 4 week period, Mr R F Graham, was occupying the Annexe independently. He used his own vehicle to get to and from the supermarket, his friends visited, he only used the access from Red Lane, and he did not enter the main house during that time.
18. Based on the evidence before me, Mr R F Graham is not dependent on Pinnacle House. The use set out, together with the layout, the size of the building as well as the level of accommodation goes beyond giving him a level of independence, but where he shares most of his living activity in the main dwelling. In this respect, the case can be differentiated from *Uttlesford*, because of the size of the building and crucially due to the way it is laid out, equipped and used. I have had regard to the Council's issue with the tax exemption, particularly since the occupant and appellant are closely related. However, the evidence provided does not demonstrate how the Council assessed Mr R F Graham's dependency. The Officer Report sets out the circumstances when the granny annex exemption is applied, but it does not detail how the relevant Council department assessed his dependency, leading them to apply the granny annex tax exemption.
19. I also acknowledge that the sign for 'The Annexe at Pinnacle House entrance' was not at the Red Lane access when the google street image was taken in 2021.

However, based on the evidence before me, the appellant or occupier has not claimed that the sign has been on the access for the entire period he has been using the Annexe independently. As such, this does not contradict the appellant's version of events or make them less than probable.

20. I recognise that supporting evidence, in the form of continuous utility bills over the 4 years, all addressed to Mr R F Graham at the Annex, would have supported the appellant's claims more robustly. However, the fact that some of the bills are addressed to Pinnacle House (not the Annexe), and the ones addressed to the Annexe are not continuous, does not, contradict her claim or make her version of events less than probable. Furthermore, the fact that Mr R F Graham was a registered voter at Pinnacle House in March 2010 does not conflict with his claims of living independently since September 2010.
21. The occupier, the appellant and the people around them can provide an accurate and detailed account of the use of the Annexe by Mr R F Graham. The SDs provided are sufficiently precise and unambiguous and indicate that Mr R F Graham has lived in the Annexe independently of Pinnacle House for the requisite period of time. I attach significant weight to the SDs, especially since they have been properly declared and witnessed, with serious consequences if any of them were subsequently shown to be false. The Council has also not produced any evidence to show that enforcement action could not have been pursued if they had investigated the breach during the requisite period of time.
22. Accordingly, on the balance of probabilities, the evidence produced is sufficiently precise and unambiguous in setting out the use of the Annexe as a separate dwelling over a continuous four year period prior to the date of the application.

Conclusion

23. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use in respect of the Annexe at Pinnacle House as a separate dwelling is not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M. P. Howell

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 2 March 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the Annexe as a separate dwelling commenced more than four years prior to the date of the application for the Lawful Development Certificate and continued thereafter without material interruption.

Signed

M. P. Howell

Inspector

Date: 25th September 2024

Reference: APP/W0340/X/22/3308949

First Schedule

The use of the 'Annexe' as a separate dwelling (Use Class C3)

Second Schedule

The Annexe at Pinnacle House, Red Lane, Aldermaston, Reading RG7 4PA

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 25th September 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

The Annexe at Pinnacle House Red Lane, Aldermaston, READING, RG7 4PA

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Scale: Not to Scale

