



Appeal Decision

by **A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 27th March 2025

Appeal Ref: APP/Q1153/X/23/3330371

Seldon Farm, Road from Vellaford Cross To Monkokehampton Cross EX19 8RY

- 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 G Case against the decision of West Devon Borough Council
 - The application Ref 1722/23/CLE, dated 19 May 2023, was refused by notice dated 17 August 2023.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
 - The use for which a certificate of lawful use or development is sought is described in the application form as follows: "Use of timber chalet and associated garden curtilage area as annex to main house".
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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 extent of the existing use which is found to be lawful.

Preliminary Matter

2. The appeal turns on the facts of the case and relevant planning law and whether the specific matter is lawful as defined by the 1990 Act. Planning merits are not relevant at any stage in this process. I do not consider a site visit is necessary to determine the appeal and proceed on this basis. For clarity's sake, I have taken the description of the site from the Council's officer report.

Inspector's reasons

3. In this appeal, the onus of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability.
4. The LDC application site is located within Seldon Farm amongst existing buildings. The site is accessed from the north via a single-track lane and off the existing Deckport Cross road which runs from Hatherleigh in the west and Monkokehampton in the east. The appellant's statutory declaration states that in 2005 a timber chalet and boundary fence around the building had been erected. The chalet is accessed from within the driveway serving the main dwelling. The claim is that the chalet together with its enclosed curtilage has been occupied and used as ancillary accommodation.
5. The Council agree that the evidence shows building operations involved in the construction of the timber chalet, which included viable facilities for day-to-day living,

were substantially completed in excess of 4 years prior to the date of the LDC application. That being the relevant time limit for immunity prior to April 2024 when the law changed. I concur with that assessment because there is nothing before me to cast any doubt on the veracity of the appellant's claims.

6. The nature of the claimed ancillary use of the timber chalet and garden is disputed by the Council. It refused to grant the LDC application on ground that the evidence submitted is conflicting and is not considered to clearly and unambiguously demonstrate that the building outlined in red on the LDC site plan has been used on a consistent basis as an annexe with associated garden area on or before 19 May 2013, which is the relevant date.
7. Seldon Farm is used for agricultural purposes. The residential dwelling together with areas immediately around and about form a single planning unit¹. It is well established that the right to use land for some primary purpose includes the right to use it for any purpose which is incidental or ancillary to that dominant purpose. Indeed, the 1990 Act, at s55(2)(d), declares that 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 does not amount to development. However, the appellant's case is that the existing use of the timber chalet for ancillary residential accommodation is immune from enforcement action, due to the passage of time.
8. The essential feature of an incidental or ancillary use is that there should be some functional relationship with the primary use of the planning unit. That functional relationship should be one that is normally found; it is not founded on the personal choice of the person carrying out both activities together.
9. In the case of *Uttlesford DC v SSE & White* [1992] JPL 171 in the High Court, Mr Lionel Read QC, sitting as Deputy Judge, considered that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling; it would be a matter of fact and degree. The accommodation gave the occupant the facilities of a self-contained unit although it was intended to function as an annexe only with the occupant sharing her living activity in company with the family in the main dwelling. There was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling. On the specific circumstance of the case, the key issue is whether a separate planning unit has been created. If an outbuilding with its living accommodation was part of the same planning unit as the dwellinghouse and provided that the planning unit remains in single family occupation and continues to function as a single household, no material change of use is involved.
10. In *Sage v SSHCLG & Bromley LBC* [2021] EWHC 2885 (Admin), Sir Duncan Ouseley, sitting as a High Court Judge, held that incidental or ancillary [uses]...are in law part of the single main use, and for these purposes are not a separate use at all: the single main use is in reality the single use of which the incidental and ancillary uses are part.
11. The Council focusses too much on the conflicting description of the timber chalet given in the appellant's evidence. To my mind, the existing use is clearly defined in the LDC application - the use of timber chalet and associated garden curtilage area as annexe to

¹ *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207 applied.

main house. It does not matter if the timber chalet is varyingly described as a lodge, chalet or temporary/permanent sleeping accommodation. The key is that the evidence should establish, on the balance of probabilities, that the residential use is integral to the residential use of the main house and that its use does not constitute a material change in the use of the land through subdivision of the planning unit and the creation of a separate dwelling.

12. In that context, I find the appellant's evidence satisfies the burden of proof because it shows the timber chalet's use, together with the enclosed garden, is integral to the residential use of the main dwelling. The timber chalet is physically disconnected from the main dwelling given its detached positioning. Nevertheless, the uncontested evidence is that there are no separate utilities for example power or water supply. It is accessed from the shared driveway and parking area and the unchallenged evidence is that there is no separate postal address, bills are shared, and the timber chalet is not separately registered for local taxation purposes.
13. The appellant and his family have recently occupied the timber chalet as their own home, but the evidence presented clearly shows they share their lives with their parents who live in the main dwelling. Moreover, they work on the farm as a family. The evidence strongly suggests the timber chalet has been occupied and used by the appellant who forms a single household with the occupiers of the main dwelling.
14. Additionally, the quantum of witness statements unambiguously supports the appellant's claim that timber chalet has been occasionally used by family and friends and there is nothing to suggest a self-contained residential use since the timber chalet's construction and subsequent occupation. For example, the submitted evidence does not indicate to me that the timber chalet has been separately let out.
15. My analysis and assessment of the evidence presented reveals no contradictions and I find that the quantum of documentary information meets with the balance of probabilities test. I am not persuaded by the Council's arguments regarding the perceived inaccuracies with the description of the existing use nor has it required the evidence to be subjected to cross-examination. In my judgment, the sworn testimony is not overly consistent between the appellant's version of the events and witnesses to cast doubt over the veracity of the claims. The statements do not appear to be engineered to suit the appellant's claims. There is no internal inconsistency between the appellant and their witnesses.
16. As a matter of fact and degree, I find that the nature of the timber chalet's residential use is functionally linked to the main dwelling. In my judgment, the residential use has not resulted in the creation of a separate planning unit and its use remains integral to the dominant or primary residential use of the main dwelling. The former began on or before the relevant date and has continued thereafter for a period of 10 years without significant interruption. I am not aware of any enforcement notice in force, and I therefore find the existing use to be lawful within the meaning of s191(2) of the 1990 Act.
17. Even if an alternative view is to prevail, the character of the use does not suggest a primary residential use of the timber chalet rather it is an integral type of use. It is arguable whether the nature and scale of the ancillary residential use of both the timber chalet and garden falls within the definition of "development" for the purposes of s55(1) of the 1990 Act.

18. As the notes attached to the LDC explain, the certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule. 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.

Conclusion

19. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of use of timber chalet and associated garden curtilage area as annexe to main house was 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).

A U Ghafoor

INSPECTOR

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 19 May 2023 the matter described in the First Schedule hereto, constituting an existing use of timber chalet and associated garden curtilage area as annex to main house, in respect of the land specified in the Second Schedule hereto and edged on the plan attached to this certificate, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action may then be taken in respect of the use because the time for enforcement action has expired, and the use does not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

A U Ghafoor

INSPECTOR

Date: 27th March 2025

Reference: APP/Q1153/X/23/3330371

First Schedule

Use of timber chalet and associated garden curtilage area as annexe to main house.

Second Schedule

Land edged as shown on the plan attached to this certificate and identified as Seldon Farm, Road from Vellaford Cross to Monkokehampton Cross EX19 8RY.

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 existing 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 existing use as 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 27th March 2025

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Land at: Seldon Farm, Road from Vellaford Cross To Monkokehampton Cross EX19 8RY

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Scale: Not to Scale

