



Appeal Decision

Site visit made on 20 May 2025

by **Sarah Dyer BA BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30th May 2025

Appeal Ref: APP/K2610/X/23/3332116

Hill Farm House, Wroxham Road, Rackheath, Norwich NR13 6NE

- 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 Martin Davies against the decision of Broadland District Council.
 - The application ref 2023/0707, dated 16 March 2023, was refused by notice dated 31 July 2023.
 - 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 described as 'Certificate of lawfulness (existing) to use annexe as independent dwelling'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the existing use as set out in the application form included details about the history of the use and the Council requested a change to the description when it received the application. This was agreed and I have used that description in the banner heading.
3. There is reference in the appellant's statement to a Statutory Declaration from a visitor to the site and to sales particulars from when the property was purchased, but this has not been provided in evidence.
4. Reference has been made to the suitability of access to the site. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are 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 (the Act), as amended, which relates to an application for a Certificate of Lawful Use (LDC). My decision rests on the facts of the case and on relevant planning law and judicial authority. The onus is on the appellant to make out his case to the standard of the balance of probabilities.

Main Issue

5. The main issue is whether or not the Council's decision to refuse the application was well-founded.

Reasons

6. The appellant seeks to establish that the use of the annexe as an independent dwelling is lawful. The Act establishes that uses are lawful at any time if no enforcement action may then be taken in respect of them. The appellant is not

seeking to establish that the use of the appeal site does not involve development nor that it does not require planning permission. His contention is that the time for enforcement action has expired.

7. In this case, where the alleged change of use took place before 25 April 2024, the development would be immune from enforcement if no action was taken within four years of the unauthorised change of use to a single dwellinghouse. Therefore, the appellant needs to show that the appeal building changed to the use described in his application on or before 16 March 2019 (that being four years prior to the date of the LDC application) and that the use as an independent dwelling then continued for at least four years after the date of the change, without any substantial interruption.
8. The appellant has submitted a statutory declaration (SD) and four affidavits in support of his application. The appellant's SD has been witnessed and signed by a solicitor. There is reference to the Statutory Declarations Act 1835 and a declaration that the contents are true.
9. The affidavits have been sworn before a solicitor, but there is no reference to the 1835 Act. As a signed statement to which no sanctions apply the affidavits carry less weight than the SD.

The Appellant's SD

10. The appellant states that he is the owner of Hill Farm House, which he purchased in December 2020. (The reference to '2020' is clearly a typographical error given the other information provided in the SD and should read '2010') He says that he took occupation of the property soon after December 2010 with his then wife and her son who is Witness 2. He states that at that time his son, Witness 1, started to live in the 'former annexe on the site which was an outbuilding converted by the previous owners into guest accommodation'. He defines this building as 'the Property' and states that it is edged blue on the plan which is annexed to his SD.
11. 'A plan is attached to the SD which identifies the 'Annex', 'Hill Farm House bungalow' and the farm buildings. The Annex is an L-shaped building outlined in blue.
12. The appellant describes how Witness 1 improved 'the Property' into self-contained living accommodation for himself and his daughter from 2016.
13. The appellant says that he charged rent from Witness 1 during his occupation of the appeal building from 2017 onwards. This is stated to cover the cost of water, electricity and Council Tax and it increased in 2022. The appellant says that Witness 1 purchased his own LPG tanks.
14. Copies of bank statements have been provided showing payments into a bank account with the description Stephen Davies or S Davies in February 2017, January 2018, May 2019, November 2020, January 2021, October 2022 and February 2023. Of the seven bank statements, the first four show one figure and the last three show an increased amount.
15. The appellant says that Witness 1 lived completely separately from him and his family. He says that Witness 1 did not 'attend the main residence for anything connected with his use of the Property as his home'. He also says that they did not

socialise much together and that he was not aware of Witness 1's movements during this time. He said that they did not form part of the same household.

The appellant's statement

16. The appellant's statement includes a copy of an email between the appellant and the Council's Council Tax team which is dated 24 May 2023. He refers to the 'building' having been notified to the Council as being a separate dwelling for Council Tax and asks how to proceed with getting 'the lodge' banded in its own right. The reply from the Council refers to the annexe as being then valued for Council Tax purposes from 1 April 2023. The appellant argues that it was the Council's decision not to charge Council Tax prior to this date although he advised the Council Tax team that the annexe had been used independently from 2017.
17. In his statement the appellant also sets out that the property now has separate water and electricity meters which were installed in September 2023. He has submitted an undated copy of a text message and correspondence relating to a water connection at Hill House from Anglian Water.

Witness 1

18. Witness 1 says he lived at 'the lodge' from January 2017 until March 2023, having refurbished it in 2016. During that time his daughter lived there every other weekend and every Tuesday evening. He says that he paid rent, covering electricity, water and Council Tax, to his father (the appellant) who lived at 'Hill Farm House', which he describes as a separate residence to 'the lodge'.
19. Witness 1 is named in a copy of correspondence relating to an electricity service installation in August 2023.

Witness 2

20. Witness 2 says he moved into Hill Farm around 2010 with his parents. He says it is a two bedroom property, he had the downstairs room, and they had the master bedroom upstairs. Witness 2 moved out when he was 18 in 2017. He says that Witness 1 moved into 'the lodge' around January 2017 and lived there. Witness 2 says Witness 1's daughter also lived there part time. He says that following his parent's divorce he often visited Witness 1 and that Witness 1 was 'still living in 'the lodge' full time'.

Witness 3

21. Witness 3 says he has known Witness 1 since 2009. He says that he helped Witness 1 to rebuild 'the lodge' in 2016 and helped him move in in January 2017. Together they built a gym in an old pig shed which they usually used on Monday, Wednesday and Friday. Witness 3 says he attended social events while Witness 1 was living at the property. Witness 3 says that since he helped Witness 1 move in, Witness 1 lived in the property until February 2023 when he moved out.

Witness 4

22. Witness 4 commenced a relationship with the appellant in February 2019, she says she was a regular visitor to Hill Farm House from March 2019 and that she moved in as the appellant's partner in October 2019. Witness 4 states that during

‘the whole of this time’ until the end of March 2023 Witness 1 resided in ‘the lodge behind Hill Farm House’, completely independently from herself and the appellant.

23. Witness 4 says that she saw Witness 1 ‘once or twice a week’ when he popped in to ask if he had any post or to borrow tools or the appellant’s van. She recalls Witness 1 coming to ‘the house’ for a meal twice in the whole time she has lived there, on both occasions at separate Christmases.

Assessment of the evidence of use as an independent dwellinghouse

Physical arrangement and separation

24. There is a degree of inconsistency between the appellant’s and the witnesses’ descriptions of the appeal building, with reference to ‘former annexe’, ‘outbuilding’, ‘Property’ and ‘lodge’. However in the light of my site visit and the plans which have been submitted it is clear that they are all referring to the same building.
25. There is a plan which is embedded in the appellant’s statement which shows the annexe, an adjacent building which is labelled ‘hayloft’ and land either side of both buildings. This is described as ‘the appeal site’. However, the plan which is attached to the certificate only identifies the L-shaped ‘annexe’ and a small structure next to it, which I established on the site visit, is not the ‘hayloft’. I have relied on the plan attached to the certificate for my assessment.
26. Currently, the annexe is separated from Hill Farm House by the hayloft which is semi derelict and fencing which segregates it from surrounding land. Although there is a single access from the road, there are informal but separate driveways serving Hill Farm House and the annexe. In order to access the annexe from Hill Farm House on foot, it is necessary to negotiate around the hayloft and another semi-derelict building and enter through a gap in the fenced area. The present physical characteristics of the annexe are of a building which is separate from Hill Farm House.
27. The annexe is fitted with a full kitchen and bathroom, and it has a lounge and two bedrooms. Therefore it currently has all the necessary facilities for independent living.
28. The appellant says that improvements were made in 2016, Witness 1 refers to refurbishment in the same year and this is corroborated by Witness 3 who says he helped to rebuild the ‘lodge’ in 2016. Two photographs of work in progress in the annexe have been provided, these are annotated with dates 2016 and 2017 but they are not date stamped. Witness 3 is described as being in one of the photographs, but he does not refer to this in his evidence.
29. Evidence has been provided to demonstrate that there are now separate utility meters for the annexe. However, these were installed in 2023 and therefore cannot be seen as evidence of a physical separation before that date.
30. In terms of the physical arrangement and separation of the annexe from Hill Farm House, the current arrangement is that the annexe is independent in both ways. However, the appellant is almost wholly reliant on his SD and the affidavits produced by Witness 1 and Witness 3 in order to establish when this physical arrangement and separation was established. Whilst each statement is consistent with the others in terms of the year when the works were said to have been carried out, they are limited in scope and for example Witness 3 refers to assisting

Witness 1 in his affidavit but there is no reciprocal reference in Witness 1's affidavit.

31. Neither of the photographs have been referred to in the SD from the appellant nor the affidavits by Witness 1 and Witness 3. The photographs do not have a timestamp and the presence of Witness 3 in one of them has not been confirmed by first hand sworn evidence.

Use of the annexe

32. The appellant seeks to argue that his son (Witness 1) occupied the annexe independently of Hill Farm House. He says that he was paid rent which covered utilities but not the purchase of fuel. However, there is an inconsistency in the evidence. The copies of the bank statements provide only a partial picture. On the basis of monthly payments between February 2017 and February 2023 there would have been in the order of 72 rental payments, but only seven payments have been shown in the evidence. Furthermore, the appellant says that an increased rent was payable from 2022, but the bank statements show an increase from 2021 and there is an inconsistency in the amount of rent paid between the appellant's statement and the bank statement. These factors undermine this evidence provided by the appellant.
33. The appellant says that Witness 1 purchased his own fuel. However, Witness 1 does not refer to this and there is no evidence from him of these transactions.
34. The appellant does not dispute that the annexe has no separate postal address, and the evidence of Witness 4 confirms that Witness 1 visited Hill Farm House to collect post. This is evidence of some interaction between the occupiers of Hill Farm House and the annexe, as is the van being borrowed which is also referred to by Witness 4. On the other hand there is also a reference to lack of social interaction in the form of meals.
35. Witness 2 supports the evidence provided by the appellant and Witness 1 that Witness 1 moved into the annexe in January 2017. However, Witness 2 does not provide any details about any independent use of the annexe by Witness 1. Also he says that he moved from Hill Farm in 2017 and thereafter was a visitor, albeit a frequent one, but does not provide any dates or evidence of when he visited. Witness 2's evidence does not demonstrate that the annexe has been used for any four year period as an independent dwelling.
36. Witness 3 is able to address the time period from 2016 to 2023 in terms of the occupation of the annexe by Witness 1. However, he makes no reference to how the annexe was used, in particular whether it was occupied independently of Hill Farm House. He also provides no supporting information regarding when he visited the annexe, and his evidence does not demonstrate that the annexe has been used for any four year period as an independent dwelling.
37. The evidence from Witness 4 addresses the period from October 2019 to March 2023 when she lived at Hill House Farm herself. Whilst she said she was a regular visitor before she moved in from March 2019, she cannot provide first hand evidence of the interaction or lack of it between the appellant and Witness 1 between March 2019 and October 2019. Therefore Witness 4's evidence does not cover a four year period as required for the appeal to succeed.

38. There is an inconsistency between the evidence from the appellant in which he states that Witness 1 did not attend the main residence for anything connected with the use of the annexe and Witness 4's evidence which refers to Witness 1 collecting post and borrowing tools and a van on a regular basis.
39. The appellant and Witness 1 use different phraseology to describe the separation between the use of the annexe and that of Hill Farm House. I have established that Witnesses 2 and 3 do not corroborate these descriptions of the way in which Hill Farm House and the annexe was used and Witness 4 is only able to provide partial evidence. Had the information regarding the payment of rent been more complete it would have provided evidence of a formalised interaction between the appellant and Witness 1 regarding the use of the annexe. As it stands the evidence of use of the annexe independently of Hill Farm House is essentially statements of fact by the appellant and Witness 1 which are only supported by evidence to a very limited extent.
40. The fact that the annexe is valued separately from Hill Farm House for Council Tax purposes is good evidence of a separate use. However, the evidence shows that this has only been formally the case since April 2023.

Conclusion

41. In order to achieve success on appeal the appellant needs to show that the annexe has been used as an independent dwellinghouse for a continuous period of four years. The Council has provided limited evidence to contradict the arguments which have been made by the appellant. However, this does not remove the responsibility from the appellant to provide evidence which is precise and unambiguous. In this case, based on my assessment of the evidence, I find that the appellant's evidence is not sufficiently precise and unambiguous such that the balance of probability rests in his favour.
42. The appellant and Witnesses 1 and 3 all refer to works being carried out to the annexe which have resulted in its current physical arrangement and separation from Hill Farm House. They say that these works were carried out in 2016. The evidence beyond their sworn statements is limited to photographs which have been annotated. However there is no evidence of when they were taken in terms of a date stamp, who annotated them, and Witness 3 does not refer to the photograph which is said to feature him working in the building during its renovation.
43. In terms of the way in which the annexe has been used, two of the witnesses did not refer to this in their affidavits. Witness 4 was not living at the site prior to October 2019 so cannot provide first hand evidence of the interactions or lack of them between the appellant and Witness 1 before that date. The shortcomings in the evidence regarding the payment of rent mean that this cannot be relied upon to provide evidence of a formalised arrangement. Furthermore, there is an inconsistency in the evidence in terms of the frequency of contact between the appellant and Witness 1 while Witness 1 was living in the annexe.
44. The evidence from the appellant and the witnesses is limited by the lack of any information to corroborate the statements which they make about the timing of the works to the annexe and its use. Taking the evidence in the round, it has not been precisely and unambiguously established that the annexe has been independent

from Hill Farm House in terms of its physical arrangement, degree of separation or use for a period of four years prior to the date of the LDC application.

45. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the annexe as an independent dwelling for in excess of four years is 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.

Sarah Dyer

INSPECTOR