



Appeal Decision

Site visit made on 14 June 2025

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

an Inspector appointed by the Secretary of State

Decision date: 18th June 2025

Appeal Ref: APP/J1535/X/23/3332783

Larkhill, Abridge Road, Theydon Bois Epping CM16 7NN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended (“the Act”)) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Michael McGarr¹ on behalf of English Architectural Oak Design and Construction against the decision of the Council of the London Borough of Epping Forest.
 - The application Ref EPF/1841/23, is dated 14 August 2023.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is described in the appeal form as follows: “Certificate of Lawful Development for existing use of property known as The Annexe as a separate dwelling”.
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Decision

1. The appeal is dismissed.

Inspector’s reasons

2. 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. I must examine the submitted factual evidence, the history and planning status and apply relevant law or judicial authority to the circumstances of this case: planning merits has no role to play in this appeal.
3. Larkhill is a substantial detached property set in a landscaped plot. The Annexe is positioned to south of the main dwellinghouse separated by a spacious garden. The appellant seeks a LDC on the basis that the existing use of The Annexe as a dwellinghouse is lawful, due to the passage of time². The claim is that the self-contained residential use began before the relevant date, which is 14 August 2019 and continued thereafter for a period of 4 years without significant interruption. They focus on evidence demonstrating use as a single dwellinghouse. The Council, on the other hand, explain that, had it determined the application, it would have refused to grant the LDC, because the existing use has not continued for a period of 4 years. For the following reasons, I find the approach adopted by the appeal parties to be incorrect.
4. It is apparent to me that Larkhill forms a single unit of occupation in residential use and The Annexe falls within the same residential planning unit. Provided it is located within the curtilage to Larkhill, an incidental use would not amount to development for the purposes of s55(1) of the

¹ The applicant and agent who has made the appeal.

² Within the meaning of s191(2) of the Act.

Act³. In this case, however, the claim is that there has been a material change in the use of The Annexe because a physically and functionally separate dwelling was instituted on or before the relevant date.

5. In the case of *Gravesham*, it was found that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day domestic existence⁴. It is necessary to consider evidence showing when The Annexe became a single dwelling and when/how it was occupied and used as a single dwellinghouse without significant interruption [my emphasis]. For the described use to be lawful, the onus is upon the appellant to show that The Annexe provided facilities for day-to-day living on or before the relevant date and it was occupied and used as a single dwellinghouse thereafter for a continuous period of four years prior to the date of the LDC application (applying s171B(2)⁵ of the Act).
6. The Annexe forms two sections and possesses the necessary wherewithal for day-to-day living. The original single-storey traditional brick and tile structure, which includes a gym, home office, hall and kitchen, is connected to a L-shaped extension set at lower level. The latter, which contains bedrooms and a lounge, is a hipped-roof modern structure clad in weatherboard. It was constructed as a standalone building containing living accommodation and linked to the existing outbuilding to form one large building. Given its make-up, layout and configuration, The Annexe, in practice, cannot function as a dwellinghouse without the extension. The latter was, as a matter of fact and degree, substantially completed once the two structures were physically linked.
7. An LDC⁶ for the proposed single-storey extension to an existing outbuilding and its use as living accommodation was refused in November 2016. However, it seems the extension was, nevertheless, built by about 2018. Having investigated the matter, the Council came to a view that the operational development constituted permitted development by virtue of article 3, schedule 2, part 1, class E of the Town and Country Planning (General Permitted Development) Order 2015 as amended. I am not concerned about the validity of that conclusion. The Parish Council's evidence, however, seems to support this version of the events. The owner and occupier of Larkhill also affirms that The Annexe was physically converted and extended in 2018. The building regulation completion certificate, which was issued 8 May 2018, refers to a portable building and not to a new dwelling.
8. There is a lack of clear and precise evidence showing when The Annexe was physically joined to the existing outbuilding. The appellant's bundle includes dated photographs taken inside the extension, but these do not demonstrate how and when the wide gap between the structures was filled and the dwelling formed. The 2017 Google Earth aerial image does not show the extension nor is any kind of building work underway. The 2018 image shows the existence of the L-shaped building, but there is a wide gap separating the outbuilding. By 2020, the latter was physically bridged, and I observed the infill permits internal access. Although a snapshot in time, the aerial images casts considerable doubt in my mind over the veracity of the appellant's claims, which affects the weight I can attach to the testimony.
9. None of the submitted documentary information, including witness statements, demonstrate when the outbuilding was physically linked to the extension. Correspondence, invoices relating to utility like water connection, delivery receipts or notes are inconclusive as they do not show when the dwelling was formed. Additionally, given the layout and design of the whole building combined with nature of the work required to link the structures, some kind of building knowledge or expertise would have been needed to carry out the building operations. There is a lack of clear

³ Section 55(2)(d) applied.

⁴ See the case of *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.

⁵ The 10-year time limit, which came into force in April 2024, does not apply.

⁶ Council ref EPF/2506/16 refused November 2016.

and specific evidence explaining when the operations were done and by whom, and timings. Additionally, there is no supporting documentary information, such as invoices for building materials, which makes comparisons difficult to make.

10. I find that the quantum of evidence presented does not clearly and unambiguously show when The Annexe was substantially completed as a dwellinghouse. On the contrary, the aerial imagery appears to show the two buildings were physically linked to provide the necessary wherewithal for living after the relevant date – around 2020. My findings are sufficient to conclude the appeal fails. For completeness, I have also reviewed the evidence about occupation and use.
11. The appellant's evidence is that neighbours were aware of The Annexe's use as a dwellinghouse and there are public footpaths, but the latter was deliberately kept under the authority's radar. Be that as it may, the owner of Larkhill affirms The Annexe was gifted to his offspring so they can make it their own home. There appear to be significant family connections. In such circumstances, it is for the applicant to demonstrate the occupation and use of The Annexe is not ancillary to the main dwelling.
12. The Annexe has a separate gated access, but it shares the driveway. Nonetheless, there is a defined area around and about The Annexe and it has a detached garage. The quantum of the evidence presented does not clearly show the ancillary use has been severed. The images from 2018 onwards show the extension in a residential use and friends and family support the claim that The Annexe has been independently occupied. However, the nature and scale of the residential use is unspecified. There is very little, if any, supporting documentary evidence showing significant degree of self-containment. For example, a gas tank is used to supply energy, yet detail of any usage has not been provided for consideration. The Annexe has separate supply of electricity, but bills have not been submitted for assessment, nor has any local taxation records been tendered as evidence. This kind of detail would, and could, have demonstrated the extent of occupation and use over the relevant period and its absence makes it difficult to make comparisons between the nature and scale of the residential use as a single dwellinghouse.
13. Even if a different view prevails on my findings about when The Annexe was capable of affording facilities for day-to-day domestic existence, I consider that the quantum of the evidence presented about occupation and use of The Annexe is incomplete, lacking in specificity and detail. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me. There is insufficient evidence to substantiate the appellant's claims. As the Planning Practice Guidance says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Conclusion

14. Drawing all the above threads together, I find that insufficient evidence has been submitted for me to determine whether the Council's deemed refusal to grant an LDC in respect of the existing use would have been well-founded.
15. For all the above reasons, I conclude that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the Act.

A U Ghafoor

INSPECTOR