The Planning Inspectorate

Appeal Decision

Site visit made on 19 May 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2025

Appeal: APP/L2630/X/24/3338773
The Annexe, Mametz, Framingham Lane, Bramerton, Norfolk NR14 7HF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) against a refusal to grant a certificate of lawful use or development.
- The appeal is made by Mr David Neale against the decision of South Norfolk District Council.
- The application Ref 2023/0727, dated 17 March 2023, was refused on 18 May 2023.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990, as amended.
- The development for which a LDC is sought is described as use of the property known as 'The Annexe' at Mametz, Framingham Lane, Bramerton NR14 7HF as a single dwelling, Use Class C3(a).

Decision

1. The appeal is dismissed.

The Legal Background

2. In an appeal under s195 of the Act, against the refusal of a LDC, the burden of proof is upon the appellant who will need to demonstrate immunity from planning enforcement action on the balance of probability. Accordingly, the key is that the evidence should be precise and unambiguous to this end.

3. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on evidential fact, planning legislation and relevant case law.

Main Issue

4. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

5. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. In this particular instance the appellant purchased the property, Mametz, in 2007. It is understood that it was in a poor state of repair and not then

capable of habitation. In the circumstances, an existing double garage within the curtilage was extended upwards, without the benefit of planning permission, and then converted into a self-contained two bedroom dwelling, now known as the Annexe.

7. I understand that the Annexe is rated separately for Council tax purposes. However, an outbuilding or annexe is liable for Council Tax if it has been fitted out to function as independent living space, with its own sleeping, cooking and sanitation facilities; in other words being capable of use as separate and self-contained living accommodation. That is the case here, but this is a matter for the relevant Council department and it has no direct implications for the actual planning position.

8. It is accepted that the operational development to extend the former garage enjoys immunity from planning control due to the passage of time. This additional dwelling is connected to services which are supplied for the main dwelling and the annexe together. In October 2007 the family moved into the dwelling created, and have lived in it continuously since. The main house, for which an extension was granted in 2012, has undergone refurbishment but, at the date the current appeal was lodged, its new kitchen had yet to be installed. Indeed, it is understood that its reoccupation has yet to take place.

9. The judgement in *Gravesham BC v SSE & O'Brien* [1982] sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence. The Council accepts that this is the case here and does not dispute that the appellant and his family have occupied the annexe on an uninterrupted for a period exceeding four years.

10. In essence, an outbuilding will become a single dwellinghouse where it is self-contained with all the necessary living facilities and has resulted in the creation of a separate planning unit. In the judgement of *Uttlesford DC* v *SSE and Wright* [1992] it was held that the use of an outbuilding in the curtilage of an existing dwellinghouse for primary residential purposes – of which the former garage currently at appeal is a case in point – does not involve a material change of use where it is used in conjunction with the host dwelling. Given this, and whilst here the main dwelling has remained unoccupied upon the appellant purchasing the land (and maybe before this time), it is necessary to consider the actual planning unit and whether an additional planning unit has been created by the current use of the former garage.

11. The leading case in which the planning unit was defined was *Burdle v SSE* [1972] 3 All ER 240. In this judgement it was held that there may be three possible situations which can be identified when considering this concept. Two are relevant here; first, where there is a single main purpose to which any secondary activities are ancillary or incidental. In such a situation the whole unit of occupation is the planning unit. Second, in instances where there are separate and distinct areas occupied for unrelated purposes, these areas are separate planning units and each is to be considered by itself. The latter scenario is not the case here; there is no severance or obvious divide.

12. The general rule is that the unit of occupation is the appropriate planning unit to consider until or unless a smaller unit is identified which is in separate use, both physically and functionally. Accordingly, I have no reason to conclude otherwise that Mametz, which includes a two-storey dwelling - albeit under

long-term refurbishment – and a former double garage used as a self-contained dwelling since 2007, comprises, in its entirety, a single planning unit.

13. The application form, as submitted to the Council, requested a LDC under s191 for the development described as *'The use of The Annexe as a single* dwelling'. However, it would appear that the Council changed the description of the development, and this was obviously in response to the submitted site plan which shows the subdivision of the Mametz site into two sections; red-ringing part of the site which includes the Annexe and an allotted surrounding curtilage. I have not seen anything to suggest that the description was changed without the appellant's consent. Indeed, the appellant has made no reference to this point.

14. There is no justification in planning terms for this site plan except as a convenient facilitator to the appellant's apparent intentions. This effectively amounts to a carve-up of the site to create an additional planning unit. Yet there would still be one vehicular access point to serve the two units, and this is positioned outside the red-line. In contrast, the site frontage ahead of the Annexe's curtilage is marked by heavy verdure in the form of a high, substantial hedge. The dividing line has therefore been falsely drawn, without any reasoned claim or argument.

15. It would appear that the description was changed when the application was first advertised after receipt. Accordingly, the Council's decision letter describes the development, instead, as '*existing use of annexe as an independent dwelling.'* The appellant, in his supporting statement that accompanied the application does not use the word 'independent' but instead refers to it as a 'single dwelling.'

16. As a response to the Council's stated reason for refusing the application – ie that there is insufficient evidence to demonstrate that the dwelling has been occupied as an independent dwelling for a continuous period of four years – the appellant's appeal statement, for the first time, makes reference to the planning unit, although only insofar as stating that *'the planning unit is a legal construct that cannot override powers … in this case sections* 171B *and 191(2) of the Town and Country Planning Act 1990.'* However, these sections are mainly concerned with time limits for taking enforcement action and immunity, and this only falls for consideration should a material change of use have take place requiring the benefit of planning permission. Immunity from planning control is not at issue in this appeal.

17. The two buildings are separate entities, with some distance between them. It is generally accepted that, whilst 'separate' implies being apart or distinct, 'independent' focusses on self-reliance and autonomy. In other words, 'independent' relates to freedom from external control, whereas 'separate' does not necessarily address any issue of control. As such, it appears to me that the Council, in changing the description of the application was a response to how the application had been presented.

18. By way of the factors involved I take the view, reinforced by the Uttlesford judgement, that the use of the former domestic garage as a self-contained residential unit of occupation did not amount to a material change of use. The relationship with the main dwelling remains, despite the many years it has remained unoccupied. Its use rights cannot be said to have been abandoned and, as such, its intended reoccupation does not necessitate a grant of

planning permission. This approach is backed up by the Court of Appeal judgement of *Hughes v SSETR* [2000] 80 P&CR 397 which held that the test of the owner's intentions should be objective and not subjective.

19. To illustrate its case the Council has cited the case of *Pope v SSE and Teignbridge DC* [1992] 62 P&CR 442 which concerned a boilerhouse within the curtilage of a dwellinghouse which had been used by the owner's family for residential purposes whilst the main dwelling was undergoing renovation. The fundamental difference in this case and that currently at appeal is that, on completion of the renovation, the family moved back into the main dwelling and began to let the boilerhouse to tenants as an independent residential unit. In such circumstances it was found that the earlier period of residential use had been ancillary to the main dwellinghouse but that the commencement of the tenancy constituted a material change of use of the land to that of two dwellings.

20. In the case of Mametz, in the absence of any sub-division, severance or independent occupation by a third party, both the main dwelling and its so called 'annexe' sit within one single planning unit. Accordingly, the former garage's conversion and use for residential purposes did not result in a material change in the use of the land. However, if in the future, any of the above factors should change then the planning position would need to be reassessed.

21. The appellant, for his part, has provided Counsel's Opinion titled 'Use of converted garage as an independent dwelling.' The opinion appears to suggest that a material change of use has occurred with the use of Mametz as a single dwellinghouse, and that use – which by inference would have been unlawful prior to reaching the four year immunity bar – is now lawful by virtue of s171B(2) of the 1990 Act.

22. To support this the Opinion relies on the judgement of *Sage v SSHLGC* [2021] EWHC 2885 (Admin). Here, a homeowner was refused a certificate of lawful use for an outbuilding in his garden which was partly used as a gym for commercial purposes in relation to his business as a personal trainer. It was considered that the use of the gym entailed an increase in traffic and general disturbance in a tight-knit residential area and thereby brought about a change in character, being a mixed use as a dwelling and a personal training studio. This justified the conclusion that the use was not incidental to the residential use of the property and planning permission was required. In the case of Mametz there has been no change in the character of the use of the land which, given the generous curtilage, has seemingly remained low-key residential since 2007.

23. With reference to *Sage* a business use in the context of a primary residential use may be considered secondary to that use but may nevertheless create a material change of use where that use is not merely ancillary to the residential element such as there is just one use, or where the use is not incidental to the enjoyment of the dwellinghouse. Indeed, it was held in *Wood v SSE & Uckfield RDC* [1973] that once an incidental use expands to become a primary use on its own, within a separate planning unit, or the planning unit takes on a new mixed use, it is likely that there has been a material change in planning terms. Again, that is not the case with Mametz.

24. Given the different circumstances and factors involved, the *Sage* judgement cannot be applied to the planning issues involved in the current case. Instead,

Uttlesford established that planning permission is not required to convert a garage in a residential curtilage to an annexe capable of separate accommodation, provided both this and the main dwelling remain in the same planning unit.

25. Whilst the use of the garage as a single dwelling, as applied for, has occurred, the fundamental obstacle to a LDC being issued is the site plan provided as part of the application which isolates a section of the site. If the red-line had ringed the whole property – and, importantly the whole single planning unit – the certificate claimed should have been issued as, because there had been no material change of use, no development had taken place in this regard.

26. In this context neither can I see the relevance of, or parallels with, the other case law cited; namely *Moore v SSE and New Forest Council* [1998] nor *Eagles v Welsh Assembly Government* [2009]. The issues involved do not support the appellant's case here, and my conclusions remain unchanged. I do note, though, that the Opinion makes reference to *Uttlesford*, but only insofar as being an example of where an ancillary use was proven. A clear parallel can here be drawn.

27. In the circumstances and, most importantly, with the submitted site plan showing the intended subdivision of Mametz's curtilage, there is little point in me amending the plan to red-ring the site to correctly identify the planning unit as a whole so as to invoke powers under s195(2) of the 1990 Act. In light of the evidence, that is not the purpose of the application. Moreover, as no immunity from planning control is necessary here as the basis for a LDC, there is actually no need for a certificate as the planning position has not been altered.

28. For the reasons given above I conclude, from the evidence available, that, on the balance of probability, the use of The Annexe as a single dwelling, independent of Mametz, was not lawful on 17 March 2023, within the meaning of section 191(2) of the Town and Country Planning Act 1990.

29. Accordingly, I will exercise my powers under section 195(3) of the Act.

Timothy C King

INSPECTOR