



Appeal Decision

No site visit made

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2025

Appeal Ref: APP/J2210/X/24/3342685

Padma House, The Drove, Fordwich CT2 0DE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a refusal in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Lt. Col. Martin Neame and Dr Helen Neame against the decision of Canterbury City Council.
- The application ref CA/21/02512, dated 18 October 2021, was refused in part by notice dated 1 December 2021.
- 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 a building as a self-contained residential dwelling.

Formal Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the use of a building as a self-contained residential dwelling which is found to be lawful.

Applications for costs

2. An application for costs made by the appellant against the Council is the subject of a separate decision.

Preliminary Matters

3. The description of development used on the approved LDC differs from that used on the application form, decision notice and appeal form. It is not clear whether that was agreed by the appellants who have confirmed that they wanted the LDC for what they originally applied for. S195(4) of the 1990 Act clarifies that references to a refusal of an application in part includes a modification or substitution of the description in the application of the use, operations or other matter in question. Given the amendment was not apparently agreed, I have interpreted the decision of the Council as a refusal in part.
4. I will therefore deal with the appeal on the basis of what was applied for, which was *“the use of a building as a self-contained residential dwelling”* rather than the revised description used by the Council to agree the use of the same building only as *“ancillary accommodation to Wychwood.”*
5. Thus, in the interests of clarity, I rely upon the description as submitted by the appellants in the LDC application form for the purposes of the heading above and paragraph 1 of my Formal Decision. Furthermore, I also refer to refusal in part in the relevant sections of the heading above.

6. An application under s191(1)(a) of the 1990 Act can only confirm whether an existing use of land is lawful. The onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities¹. The Planning Practice Guidance (PPG) states the appellant's own evidence does not need to be corroborated by independent evidence in order 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 dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous². In a s191 case such as this, the determination is based on the evidence submitted. It was not therefore deemed necessary to carry out a site visit in the circumstances.
7. The provisions of the Levelling Up and Regeneration Act, which came into effect on 25 April 2024, mean all unauthorised uses are subject to the ten year bar. However, as the application, in this instance, was made on 18 October 2021, the four year bar still applies for unauthorised residential uses. To demonstrate immunity from planning control, the applicant must therefore show that the use has continued on an uninterrupted basis for at least four years from the date of when the LDC application was made. Accordingly, the material date here is 18 October 2017.

Main Issue

8. With reference to the above the main issue is whether the Council's refusal in part to grant an LDC for the claimed use was well-founded.

Reasons

9. The appeal site relates to Padma House a converted single storey outbuilding originally comprising a garage and home office³, within the grounds of the main house 'Wychwood'. In 2012, internal works were undertaken to Padma House to create a one-bedroom property with two reception rooms on the ground floor, kitchen, bathroom and bedroom accommodation within the roof space, so that the appellants daughter could have a degree of independent living.
10. The appellant contends, in October 2016, their daughter vacated the premises and Dr. Helen Neame (the appellant) took up occupation of Padma House as her sole residence following her separation from the other appellant (Lt. Col. Martin Neame). From the information before me, Dr. Neame remained resident at Padma House when the LDC application was made to Canterbury City Council in October 2021 and continued to occupy the premises until at least April 2024⁴.
11. The question, therefore, is whether a new planning unit has been created. The planning unit is usually the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. From the evidence before me, Padma House is a smaller unit which is a physically separate unit and sub-divided from Wychwood. The submitted photos highlight that each property has separate gardens and parking areas, which are clearly delineated through the provision of closed board fencing and established vegetation along the boundaries.

¹ Thrasyvoulou v SSE & Hackney LBC (No 1) [1984] JPL 732

² Lawful Development Certificates Paragraph: 006 Reference ID: 17c-006-20140306

³ Canterbury City Council Planning Ref: CA/05/00817

⁴ Statutory Declaration of Helen Fiona Neame date 15th April 2024

12. The applicant has produced extensive evidence, including nine sworn statutory declarations (SD) highlighting that Padma House was converted in 2012 and has been occupied as a single self-contained residence in excess of four years. There is no sound reason which would lead me to believe that the appellant's SD evidence is not authentic.
13. The evidence contained in the SD, indicates that the estranged appellants use Padma House and Wychwood self-sufficiently as two physically separate units, occupying them independently and unrelated given the living arrangements of the separated couple, albeit both properties are used for residential purposes. In such a case, each area could be considered a separate planning unit.
14. However, the appellants' submitted information is lacking in copies of council tax records, postal addresses, utility bills and expenditure that would provide substantive information showing that the appeal site was supplied with separate services, which would provide additional assistance in verifying the appellant's claim in respect to the site being used as a single residence.
15. From the evidence before me, there is a functional linkage between the properties of Padma House and Wychwood, given that bills, correspondence and council tax are only apportioned to the main house at Wychwood. This suggests that Padma House, whilst capable of providing self-contained accommodation and facilities could be considered incidental to Wychwood to some extent. Thus, I understand the Councils comments in this regard.
16. Nevertheless, the lack of council tax or utilities bills is by no means conclusive of how the property has been used in practice. There may be a number of reasons why the lack of these records does not accurately reflect the actual use in planning terms. Furthermore, it is well-established that an appellant's evidence should not be rejected simply because it is not corroborated by independent evidence.
17. The Council has provided little evidence to counter the information supplied in the appellants SD, other than reference to a withdrawn planning application⁵ in December 2017 at Padma House, where the existing use was described as "garage, office space and storage to existing house". Even if, the use at the time of the withdrawn application was not residential, from the details before me Dr. Neame has continued to reside at Padma House for over four years, until at least April 2024.
18. Based on the evidence before me, and having regard to the evidence already made available, the absence of details concerning utilities and services does not create any significant uncertainty over the use of Padma House as a separate dwelling for the relevant period. The burden of proof is on the balance of probabilities, not beyond all reasonable doubt. Based on the submitted information and lack of evidence to the contrary, I must therefore conclude that Padma House has been occupied continuously as an independent, self-contained residential unit for the requisite four year period, and any functional relationship between Wychwood and this former outbuilding have been severed. Accordingly, the appellant has discharged the burden of proof.

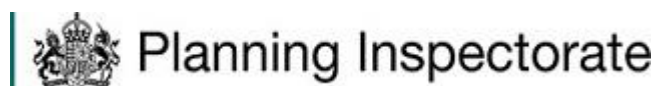
⁵ Canterbury City Council Planning Ref: CA/17/02818

Conclusion

19. For the reasons given above, I conclude on the evidence now available, that the Council's refusal in part to grant a certificate of lawful use or development for use of a building as a dwellinghouse is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Robert Naylor

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 18 October 2021 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 appellant has demonstrated their case on the balance of probabilities that the use of the building as a self-contained dwellinghouse has been continuously occupied for a period of more than 4 years.

Signed

Robert Naylor

Inspector

Date: 13 August 2025

Reference: APP/J2210/X/24/3342685

First Schedule

Use of building as a self-contained residential dwelling.

Second Schedule

Padma House, The Drove, Fordwich CT2 0DE

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 13 August 2025

by Robert Naylor

Land at: Padma House, The Drove, Fordwich CT2 0DE

Reference: APP/J2210/X/24/3342685

Scale: Not to Scale

