
Appeal Decision

Site visit made on 15 August 2025

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 12TH September 2025

Appeal Ref: APP/Y3425/X/25/3359934

Camomile, Watery Lane, Stafford ST18 9EH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Yvonne Passey against the decision of Stafford Borough Council.
 - The application ref: 24/39412/LDC, dated 24 July 2024, was refused by a notice dated 2 January 2025.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a LDC is sought is use of a detached double garage as an annexe.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the existing use, in the banner heading above, for which the LDC is sought, is taken from the Council's Decision Notice. However, that description does not specify what use 'an annexe' comprises. The application form indicates that the annexe was used previously as separate living accommodation and that since the appellant and her husband bought the property, they have used the annexe as an office. It is therefore not clear whether the LDC application has been made on the basis that a material change of use to a separate single dwellinghouse has occurred or that a material change of use has not occurred as the residential use/office use of the annexe is part and parcel and/or incidental to the residential use of the property known as Camomile. Four of the boxes under the '*grounds for application for a LDC*' section of the application form have been ticked, therefore that section of the form does not provide clarity on this issue.
3. Within the Council's Officer's Report, the Council assessed the LDC application based on whether '*on the balance of all probabilities that the detached garage has been used as an annexe in breach of condition 02 of planning permission 08/10321/FUL in excess of ten years*'. I find that approach to be incorrect as condition 02 of that planning permission relates to the development being carried out in complete accordance with the approved plans and specification and the reason for that condition is '*to define the permission*'.
4. In my judgement, there is nothing to suggest within the reason for the condition that it was intended to prohibit anything. This type of condition is applied to planning permissions to ensure that there is no doubt as to which plans are approved and that that development is constructed/laid out in accordance with those plans. In that sense the condition is an amplification of the description of the development. It gives certainty as to what has been approved as part of the planning permission.

The planning permission was for '*alterations and extensions, improvements to access and garage*'. There is no condition on that planning permission that specifically restricts the use of the garage.

5. Taking into account all of the above, I have determined this appeal on the basis of '*the existing use of the detached garage as a residential annexe*' and in my reasoning below I have taken into account the scenarios highlighted above.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

7. In order for an LDC to be granted under section 191 of the 1990 Act, the burden of proof is with the appellant, and the appropriate test of the evidence is the balance of probabilities. The onus is firmly on the appellant to show that the use of the annexe was lawful at the time the application was made. 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 unambiguous.
8. Section 191(2) of the 1990 Act states that '*For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.*' In this case there is no evidence before me to indicate that there were any requirements of any enforcement notice in force on this site at the date of the LDC application.
9. Section 55(1) of the 1990 Act sets out that "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. Section 55(2) sets out that certain operations or uses of land shall not be taken for the purposes of the 1990 Act to involve development of the land, including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which – (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.
10. As stated previously, planning permission¹ (the 2008 permission) for '*alterations and extensions, improvements to access and garage*' was granted in August 2008. The Council's evidence indicates that in January 2009 an enforcement officer from the Council visited the site and a letter was sent in February 2009 that advised the development was in accordance with the approved plans and no breach in planning legislation was noted. As such, there is little to indicate that the operational development involved in the initial construction of the garage was in breach of condition 02 of the 2008 permission. It is also reasonable to consider that the

¹ Ref No: 08/10321/FUL

internal alterations to the garage would, more likely than not, have been carried out after the enforcement officer's visit in January 2009.

11. The electrical installation work certificate of compliance dated 19 May 2009 is for the new installation rewire or partial rewire of a dwellinghouse. Within the details of the installation section, it states 'all new circuits in renovated and extended house'. Moreover, the address is given as Camomile. I acknowledge that the handwritten note on the certificate indicates it relates to the annexe. However, for the reasons given above, it is more likely than not that this document relates to the main house and not the annexe.
12. The Building Regulations Compliance Certificate (BRCC) dated 10 July 2009 relates to the installation of a Baxi Potterton Duotec Boiler at Camomile and the gas safety record dated 29 June 2018 indicates that a Baxi Duotec boiler is located in an airing cupboard. It does not state where that airing cupboard is located yet it does state that a Biasicompact boiler is in the annexe. As such, it is reasonable to consider that the BRCC relates to the main house and not the annexe. Therefore, in respect of the internal alterations the submitted evidence is not precise and there is ambiguity regarding the specific date that those internal alterations were carried out. Nevertheless, those internal alterations would not have required the benefit of planning permission under section 55(2)(a)(i) of the 1990 Act.
13. A Building Regulations application for single storey, 2 storey side extensions, internal alterations, double garage and associated works was approved on 15 October 2008. A Final Certificate stating the whole of the works approved in that application had been completed was issued on 30 September 2010. Therefore, on the balance of probabilities, it is more likely than not, that the detached double garage had been substantially completed prior to 30 September 2010 and that at some time after January 2009 internal alterations were made to install the first floor, stairs, the kitchen and shower, wc and ensuite facilities.
14. It is not disputed that the primary use of Camomile is that of a single dwellinghouse. I have been provided with a layout of the appeal building, which shows that it is laid out with a kitchen, shower room, living area and bedroom/en-suite and therefore appears to have all the facilities required for day-to-day living. In essence, an 'annexe' will become a single dwellinghouse where it is self-contained with those facilities and its residential use has resulted in the creation of a separate planning unit. In caselaw the courts have held that the use of an outbuilding or annexe in the curtilage of an existing dwellinghouse for primary residential purposes does not involve a material change of use where it is used in conjunction with the host dwelling.
15. The appellant bought Camomile in November 2018 and has stated that the annexe has been in use as an office since they bought the property but go onto state that it has been in use as an office since 2007. They also state that the annexe was used as the previous owner's daughters living accommodation. A letter from a neighbouring landowner whose family owned Camomile prior to 2007 states that a Mr McAdam bought the property in 2007 and he obtained planning permission for the double garage. It goes onto indicate that the garage was built and shortly after converted to a 2-storey annexe in which Mr McAdams partner's daughter lived. He also states that since the appellant bought the property the annexe has been used as additional family accommodation and as an office.

16. It is not clear if utilities such as water and electricity are taken from the main house, the access from Watery Lane and a parking area are between the main house and the annexe building. The annexe appears to be within the curtilage of Camomile and there are no boundary treatments separating the annexe off from the main house. The appellant's evidence suggests that the annexe was occupied by the previous owner's partner's daughter. However, no specific details of when the annexe was occupied by that person have been provided. Moreover, even if there was a familial relationship between the occupants of the annexe and the main dwelling, there is little evidence before me to indicate whether the occupiers of them functioned as a single household or not. As such, the evidence relating to the previous owner's use of the annexe building is insufficiently precise and unambiguous to determine whether that use constituted a material change of use or not. Nor is it sufficiently precise to indicate, if there was a material change of use, when that material change of use occurred or whether that use was continuous during the previous ownership.
17. Furthermore, there is very little detail provided on how the appellant and her family have used the annexe building. The use of the annexe building as a home office is a use that can reasonably be considered to be incidental to the residential use of the main house. However, an office use may also entail the employment of staff who attend that office and in that instance planning permission may be required if a material change of use has occurred. In addition, there is no detail of what is meant by use as additional family accommodation. There are no statutory declarations from the appellants indicating the specific details of how the annexe has been used. As stated previously, if the residential use of the annexe by the appellant and their family has been incidental to and/or part and parcel of the residential use of Camomile then a material change of use would not have occurred and planning permission would not have been required for that use.
18. However, the onus of proof is on the appellant and in my judgement, the evidence before me is insufficiently precise and unambiguous to show on the balance of probabilities and as a matter of fact and degree that the existing use of the detached garage as a residential annexe is lawful for the purposes of section 191(2) of the 1990 Act. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Conclusion

19. For the reasons given above, I conclude that the Council's refusal to grant a LDC for the existing use of the detached garage as a residential annexe 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.

D Boffin

INSPECTOR