



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2025

Appeal Ref: APP/P2114/X/24/3342430

Gate House, Gate Lane, Freshwater, Isle of Wight PO40 9QT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (*the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Samantha-Jane Mitchell against the decision of Isle of Wight Council.
 - The application ref 24/00116/CLEUD, dated 19 January 2024, was refused by notice dated 18 March 2024.
 - The application was made under section 191(1)(c) of the Act.
 - The failure to comply with any condition or limitation for which an LDC is sought is construction of outbuilding and use as an independent residential unit since 2010.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The parties were advised that a site visit was not necessary and would not be undertaken.
3. The description of the failure to comply set out above is taken from the application form and relates to condition 3 of planning permission P/01842/09 – TCP/29933, granted 1 February 2010 ("condition 3"):

3 *The development hereby permitted shall not be occupied at any time other than for purposes that are incidental to the enjoyment of the main dwellinghouse known as Gate House.*
4. The Council's decision notice gave the different description "retention of outbuilding being used as an independent residential living unit." However, condition 3 is concerned with the occupation of the outbuilding, not its construction or retention. I shall therefore determine the appeal based on whether the outbuilding had been used in breach of condition 3 for any period of not less than 10 years prior to the date of the application.

Main Issue

5. The main issue is whether the Council's refusal to issue an LDC was well founded. The responsibility for providing sufficient information to support an LDC appeal primarily rests with an appellant. However, if no other evidence contradicts or otherwise makes their version of events less than probable, and provided their evidence is sufficiently precise and unambiguous, there is no good reason to withhold an LDC.

Reasons

6. Section 191(3) of the Act states that any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if both of the following apply:
 - (a) The time for taking enforcement action in respect of it has then expired.
 - (b) It does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.
7. No relevant enforcement notice or breach of condition notice has been identified, so only point (a) requires further consideration in this appeal.
8. The time for taking enforcement action in respect of a breach consisting of a failure to comply with a planning condition is prescribed by section 171B(3) of the Act. It states that no such action may be taken after the end of a period of 10 years beginning with the date the breach began.
9. The appeal would therefore succeed if it can be demonstrated, on the balance of probabilities, that the failure to comply with condition 3 persisted for any period of not less than 10 years that elapsed on or before the date of the application.
10. The appellant's evidence of occupation of the outbuilding is by members of her family, and the Council expresses doubt about whether such occupation would have been fully independent of the dwellinghouse of Gate House. However, it also recognises that a family tie does not automatically prevent there being independent occupation.
11. Occupation of the outbuilding for purposes that are not incidental to the enjoyment of the dwellinghouse at Gate House would constitute a separate planning unit. The planning unit is usually the unit of occupation, unless a smaller area can be identified that is physically and functionally separate and is occupied for different and unrelated purposes.
12. Prior to the claimed breach of condition 3, the land edged red and the land edged blue on the submitted existing site plan were a single unit of occupation and a single planning unit, with no physical or functional separation.

Physical separation

13. The appellant states that the outbuilding has always been physically separated from Gate House by a continuous boundary fence. That is not, however, made explicit in any of the 8 produced Statutory Declarations (SDs).
14. Lines marked on the existing ground floor plan could be fences, although that is not certain because there is no annotation to confirm what they represent. However, if they do depict fences, the drawing does not show a continuous section separating the outbuilding and Gate House. None of the SDs state there has been an amenity area exclusive to the outbuilding, so it has not been demonstrated that it had a curtilage separate from Gate House over any 10-year period.
15. The SDs do not confirm that the outbuilding had its own access and parking arrangements over any 10-year period. In contrast, the Council's officer report recorded that the outbuilding and Gate House were served by shared access

arrangements. This has not been disputed, and it therefore makes the appellant's claim of separate entrance gateways and parking areas less than probable.

16. Accordingly, physical separation of the outbuilding and Gate House has not been demonstrated on the balance of probabilities. This is indicative of a single planning unit comprising Gate House and the outbuilding.

Functional separation

17. The appellant and her husband's SDs both state that the outbuilding had been "occupied continually as an independent residential unit" from June 2010 to January 2024, and that "there has been no dependency on the Gate House." They identify the occupiers of the outbuilding over that period as Mary Elizabeth Hutchings, Lily Hutchings and Louis Hutchings.
18. Mary Elizabeth Hutchings died in 2018, so no SD exists for her, and an SD for Louis Hutchings has not been provided. Lily Hutchings' SD states that she occupied the outbuilding from January 2019 to March 2020 and from March 2021 to January 2024. Her SD adopts the standard wording that the outbuilding was "occupied continually as an independent residential unit" and that "there has been no dependency on the Gate House."
19. That brief description is not elaborated on in any of the SDs. However, dictionary definitions indicate that "dependency" means a situation in which something essential to normal existence is needed from something or someone else.
20. From the available evidence, all the internal facilities necessary for everyday domestic existence were installed in the outbuilding in 2010. It has therefore been possible for a person to live in it normally without needing any of the facilities in Gate House since. However, the relevant test is not whether the outbuilding could have been occupied in breach of condition 3 over any 10-year period, but whether in fact that happened.
21. There can be little doubt that the family connection between the occupiers of the outbuilding and of Gate House meant they had a closer relationship than neighbours normally would. That does not necessarily mean that they could not have lived independent lives whilst in such proximity, even allowing for the more frequent social interaction to be expected within the family. However, the onus is on the appellant to demonstrate, on the balance of probabilities, that the occupiers of the outbuilding did live independently, in breach of condition 3, for a period of not less than 10 years.
22. The people who made the SDs all refer to independent occupation and a lack of dependency, but none describe this positively in clear and simple terms, setting out how they, or those they knew, maintained an independent existence. No reference is made to regular activities that might indicate this, such as preparing and eating meals and washing clothes.
23. Furthermore, evidence of separate Council Tax registration, utility bills and postal address, matters that would normally indicate that the residential use of the outbuilding was not incidental to the enjoyment of Gate House, is absent.
24. The appellant's evidence of use of the outbuilding in breach of condition 3 is therefore limited and imprecise. On the balance of probabilities, it does not

demonstrate use of the outbuilding in breach of condition 3 for a period of not less than 10 years ending on or before the date the application was validly made.

Conclusion

25. For the reasons given above, I conclude that the Council's refusal to grant an LDC for use of the outbuilding as an independent residential unit since 2010 is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Mark Harbottle

INSPECTOR

