



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2025

Appeal Ref: APP/J1535/X/24/3353579

The Annex, 2 Holyfield Cottages, Holyfield Road, Waltham Abbey EN9 2EL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Matthew Isted against the decision of Epping Forest District Council.
 - The application ref EPF/1425/24, dated 11 July 2024, was refused by notice dated 6 August 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which an LDC is sought is separate detached 2 bedroom dwelling.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.
3. An application for costs has been made by the Appellant against the Council. This application is the subject of a separate Decision.

Reasons

1. 2 Holyfield Cottages is a semi-detached dwelling. To the east of the dwelling, separated from it by a driveway, is a detached building known as The Annex. The Appellant maintains that he has occupied The Annex since 2009 as a dwelling separate from 2 Holyfield Cottages, which is occupied by his parents. To be immune from enforcement action and therefore lawful The Annex must have been occupied independently and continuously for a four year period. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that The Annex has been occupied independently and continuously for a four year period. If the four year period is not immediately prior to the date of the application then the use established over four years must then be continuous up to that date.
2. It is not disputed that The Annex provides all facilities for day to day living and is a dwellinghouse. The Annex is a converted garage and is lawful by virtue of an LDC granted in March 2003. The Appellant has provided a Statutory Declaration in which he states that "I have lived independently in "The Annexe" as a self-contained dwellinghouse...since January 2009". Five others, the Appellant's aunt, two neighbours and two family friends, have also provided Statutory Declarations. All five Declarations confirm the Appellant's claimed first occupation of The Annex, January

2009, and they all have the same last paragraph; “To my knowledge Matthew Isted has occupied the land on a self-contained basis and lives separately and independently of this parents occupation of 2 Holyfield Cottages” (emphasis added).

3. The spelling error, ‘this’ rather than ‘his’, appears in all five Declarations. This error, and that it appears in a repeated paragraph, casts doubt on the provenance of the Declarations. They certainly cannot be claimed to be personal recollections of past events. It is also surprising that, 15 years later, all five Declarations recall the same month of first claimed occupation of The Annex by the Appellant. The weight to be afforded to the Statutory Declarations is diminished by their obvious consistencies. No corroborating documentary evidence other than energy bills has been provided, such as Council Tax bills and payments, electoral roll registration or TV licence, telephone and broadband bills and payments.

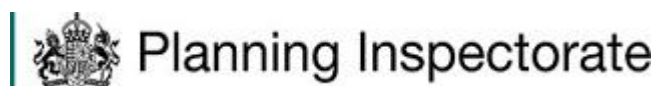
4. The Annex is separately metered for gas and electricity supplies from 2 Holyfield Cottages. Energy bills cover the periods 1 March 2019 to 8 September 2020, 19 January 2021 to 30 April 2021, and 1 April 2022 to 27 April 2024. For the four year period 27 April 2020 to 27 April 2024 there are gaps between 8 September 2020 to 19 January 2021 (4 months) and 30 April 2021 to 1 April 2022 (11 months). The Appellant has explained that energy bills for the eleven month gap are unavailable because of the movement of his account from E-on to E-on Next. The four month gap in energy bills is also not crucial because the meter readings of bills before and after the gap show there to have been energy usage during the four month period. The energy bills do indicate that The Annex was occupied during the four year period and there is no reason to conclude that occupancy did not continue up to the date of the application.

5. The length of time since the claimed first occupation of The Annex by the Appellant may explain why those who have provided Statutory Declarations all declared the same month; they needed to be reminded. On the evidence of the energy bills it can be concluded that The Annex was independently and continuously occupied for in excess of four years prior to the date of the application. Notwithstanding the consistencies in the Statutory Declarations they are compelling evidence that it was the Appellant who occupied The Annex for that more than four year period. The Appellant has provided sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability and as a matter of planning judgement, that The Annex has been occupied independently and continuously for a four year period.

6. For the reasons given above, and on all the evidence now available, the Council’s refusal to grant an LDC for use as a separate detached 2 bedroom dwelling at The Annex, 2 Holyfield Cottages, Holyfield Road, Waltham Abbey was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

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 11 July 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black 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 Annex has been independently and separately occupied as a dwellinghouse for in excess of four years and is immune from enforcement action

Signed

John Braithwaite

Inspector

Date: 12 December 2025

Reference: APP/J1535/X/24/3353579

First Schedule

Use as a separate detached 2 bedroom dwelling

Second Schedule

Land at The Annex, 2 Holyfield Cottages, Holyfield Road, Waltham Abbey EN9 2EL

IMPORTANT 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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 12 December 2025

by John Braithwaite

Land at: The Annex, 2 Holyfield Cottages, Holyfield Road, Waltham Abbey EN9 2EL

Reference: APP/J1535/X/24/3353579

Scale: Not to Scale

