



Appeal Decision

by **Andrew McGlone BSc MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16th January 2026

Appeal Ref: APP/U1105/X/24/3339119

The Olde Dairy, Hunthays Farm, lane part Hunthays Farm, Awliscombe, Devon EX14 3QB

- 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 L M Summers against the decision of East Devon District Council.
 - The application ref 23/1270/CPE, dated 15 June 2023, was refused by notice dated 1 December 2023.
 - The application was made under section 191(1)(c) of the Act.
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is the use of the building known as 'The Olde Dairy' as an independent dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the appeal Mr C M Summers passed away. He was one of the two appellants when the LDC was submitted and when the appeal was lodged. As confirmation has been provided that Mrs L M Summers is the legal representative of the estate/deceased, the appeal has proceeded in her name.

Main Issue

3. The main issue is whether, on the balance of probability, the Council's decision was well founded. This turns on whether the appellant can show, on the balance of probabilities, that The Olde Dairy has been in use as an independent dwelling house for a continuous period of four years in breach of a planning condition, and as such, the time for enforcement action has expired or for any other reason.

Reasons

4. An application for an LDC is not an application for planning permission. Its purpose is to enable the appellant and others to ascertain whether specific operations or activities would be lawful. The burden of proof is upon the appellant. The test of the evidence is one of balance of probability. The appeal concerns only the lawfulness of the matter for which the LDC is sought, not its planning merits. The decision is based on the facts of the case and on relevant planning law and judicial authority.
5. An application under S191(1)(c) of the Act seeks to establish whether any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful. S191(2)(a) confirms that a use is lawful at any time if 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 they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. S191(4) of the Act sets out that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect. With regard to s191(4) of the Act, the relevant date for ascertaining whether the existing development is lawful is the date of the LDC application.

The site

7. Hunthay's Farm is a complex comprising multiple buildings with a varied planning history. The Olde Dairy (unit 1) is in the northern part of the site amongst a courtyard barn complex to the north of Hunthay's Farm. Long Meadow forms the southern part of the courtyard barn complex. Threshayes, a dwelling, is to the northeast of The Olde Dairy.

The 1995 planning permission and the planning unit

8. Planning permission was granted by the Council for the "*conversion of farm buildings to holiday let and annexe*" on 8 June 1995 (the 1995 permission). The 1995 permission relates to two farm buildings (units 1 and 2) in the courtyard barn complex. The description of development on the decision notice states how each building was to be occupied after they were converted.
9. A planning permission is a public document that may be relied on by parties unrelated to those originally involved. The meaning of the planning permission should be clear from the four corners of the document to a reasonable reader. If the planning permission is not clear, then plans or other documents may be used to aid interpretation or understanding. The 1995 permission was granted subject to planning conditions which were imposed to regulate the development or use of the buildings. Conditions must be imposed on a grant of planning permission if the decision-maker considers it necessary to restrict or constrain the type of development or the way in which the development takes place.
10. While planning permission may originally have been sought for two holiday lets, that is not what was granted through the 1995 permission, as the decision notice states that one of the two buildings was to be a holiday let, with the other an annexe. The approved site layout plan is annotated to say "THRESHAYES, occupied by Mr and Mrs P. Gillingham, daughter and son-in-law to Mr and Mrs C Summers who will occupy one let as dependent relatives." The approved layout plan states that the "upper holiday unit to be conditioned to allow use for dependent relative". The upper holiday let was unit 1, The Olde Dairy.
11. Dependency involves needing something or someone. That could involve practical and/or emotional support, whether that be for physical or emotional help at home, or help with everyday jobs or chores.
12. Condition 2 of the 1995 permission limited the occupation of unit 1 to the appellant (and deceased husband) as an annexe to Threshayes. The condition does not refer to any other individual, nor does it include any of the wording found in condition 3, which was imposed in relation to the holiday let in unit 2. The reason for condition 2 was that the creation of a separate independent dwelling unit was not acceptable and contrary to the approved policies of the County Structure Plan. Hence, condition 2 was imposed for a planning purpose and no other purpose; it was fairly and reasonably related to the development permitted and was not so unreasonable that no planning authority could have imposed it.

13. The approved layout plan details the arrangement, location, and size of the rooms making up unit 1. The rooms described in the appellant's evidence reflect the names of rooms on the approved layout of unit 1. I have not been informed of any differences to the approved layout for unit 1. The Olde Dairy was converted, and Mr and Mrs Summers started occupying the building on 1 January 1997. Given the facilities available in The Olde Dairy, they had the necessary facilities to support their day-to-day existence, and thus the distinctive characteristics of a dwellinghouse, from this date. Further, as the occupiers were those named in condition 2, a material operation in accordance with s56(4)(e) of the Act took place within the five-year time limit stated in condition 1 of the 1995 permission. Condition 2 restricts the occupancy, not the use of the building as a dwellinghouse.
14. Although conditions 4 and 5 on the 1995 permission required actions to be carried out in relation to parking provision, neither is a condition precedent, as they required an action before first occupation, not before commencement of development. The conditions do not also go to the heart of the planning permission, as they require suitable surfacing of the parking area and the retention of that provision unless an alternative and equivalent provision is made. Given the access and other areas shown on the site plan for vehicular use, alternatives were available even if they were not the ultimate parking provision. Therefore, the development did not commence in contravention to any condition stated on the 1995 permission.
15. For clarity, unit 2 was not converted at the same time as unit 1. Following the planning permission granted in 2021, unit 2 is now known as Long Meadow. Thus, the holiday let granted through the 1995 permission in unit 2 did not materialise. Long Meadow is occupied by the appellant's granddaughter and her husband as a separate dwellinghouse. However, this does not change my view that the 1995 permission was implemented insofar as The Olde Dairy and that the conditions relating to it are in force.
16. Where, as in this case, it is necessary to assess whether a material change of use has occurred since the 1995 permission, it is essential to identify the relevant 'planning unit'. This is a matter of fact and degree. 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; the concept of physical and functional separation is key. Uses may be physically separated but functionally connected or vice versa. Neither factor is necessarily decisive.
17. Although the appellant contends that the 1995 permission permitted the conversion of The Olde Dairy to a separate independent dwelling, it allowed unit 1 to be converted, to have all the necessary facilities to support day-to-day existence, and to be used as an annexe to Threshayes. That is not the same as creating an independent dwelling.
18. The appellant says that The Olde Dairy was incapable of being used as an annexe to Threshayes. However, condition 2 of the 1995 permission states how The Olde Dairy was to be occupied and names the people that could occupy it. While the appellant's daughter and son-in-law own Threshayes and her son, The Olde Dairy (lives at nearby Wessington Farm), that was the case when the 1995 permission was granted and the appellant and her husband started to occupy The Olde Dairy. The appellant and her husband are/were members of the same family as the occupiers of Threshayes, having regard to section 258 of the Housing Act 2004.

19. As such, a functional link between the occupation of Threshayes and The Olde was created through the implementation of the 1995 permission even though the respective buildings are physically separate from each other by the access track and they have their own facilities for day-to-day living, parking and amenity areas. Although the appellant says that The Olde Dairy did not have a dependency on Threshayes and lacked an ongoing relationship, this is not what the planning application form submitted as part of the 1995 permission stated. It confirmed that the appellant and her husband were the “*dependent relatives to occupy unit 1*”. Therefore, at the very least, the occupants of The Olde Dairy could and were anticipated to receive general support from their family members, though that could potentially change depending on individuals’ circumstances and become more onerous, especially as they became elderly. It is not therefore just about the physical makeup or ownership of The Olde Dairy and Threshayes.
20. In my judgment, The Olde Dairy formed part of the same planning unit as Threshayes, along with their parking areas, gardens and external space, because the whole planning unit is a single unit of occupation. The Olde Dairy may have a larger footprint than Threshayes, but the latter is just of a different scale, massing and shape, and it does not alter the functional relationship between Threshayes and The Olde Dairy brought about by the 1995 permission. Threshayes and The Olde Dairy may be physically separated, but there was one primary use, given how they were occupied, with The Olde Dairy incidental to Threshayes.

Has there been any change to the planning unit?

21. Mr and Mrs Summers occupied The Olde Dairy as their primary place of residence from 1 January 1997 until the LDC was submitted. There is no evidence that anyone else has occupied The Olde Dairy as habitable accommodation since 1997.
22. A variety of documents have been submitted in support of the appellant’s contention that The Olde Dairy is an independent dwellinghouse and has continuously been since the appellants first occupied it.
23. Statutory declarations made by the appellant and her husband together with their children each confirm that Mr and Mrs Summers paid their own utility bills, phone, TV and had building and contents insurance separate to Threshayes. Further, the statutory declarations confirm that The Olde Dairy has its own electricity supply and its own meter, independent of Threshayes. Mr and Mrs Summers also state that they are both registered on the electoral register at The Olde Dairy.
24. Typical documents associated with residential occupation have been submitted relating to vehicle tax, car insurance, driving licences, TV licence, boiler service, bank correspondence, bin collection and Council Tax. Each of the documents relates to The Olde Dairy, albeit they are not a continuous unbroken record across the whole period of Mr and Mrs Summers occupation of The Olde Dairy. However, there is a sufficient range of documentation across a spectrum of dates to say that Mr and Mrs Summers occupied The Olde Dairy as their home since 1 January 1997 and had the facilities to do so during that time. There has also been no change to the physical relationship between Threshayes and The Olde Dairy.
25. However, the appellant’s evidence does not address the functional relationship at all. Documentation forming part of the 1995 permission confirmed to my mind that, at the very least, the occupants of The Olde Dairy were anticipated to receive general support from their family members, with that potentially becoming more onerous, especially as the occupants became elderly.
26. Given the statutory declarations made by the appellant’s children, I can only

deduce that the family circumstances did not change between 1997 and the submission of the LDC. There is also no substantive evidence to show that there was no support of any kind provided by the occupiers of Threshayes for the occupiers of The Olde Dairy. It is highly unlikely that the occupiers of The Olde Dairy received no support whatsoever in the 26 year period that passed between The Olde Dairy first being occupied and the LDC being submitted, especially given the occupiers of The Olde Dairy were elderly. It is more probable that at least general support from their family members was provided, but it is very likely that Mr and Mrs Summers received a greater level of care and support from their children even if they retained an independent living arrangement.

27. As such, I consider, on the balance of probabilities, that The Olde Dairy has been used consistent with the terms of the implemented 1995 permission in that the functional relationship between The Olde Dairy and Threshayes has not changed since 1 January 1997, when the material operation in accordance with s56(4)(e) of the Act took place by. As a result, there has not been a change to the planning unit of Threshayes and The Olde Dairy.
28. Therefore, I conclude that the planning condition has not been breached from the available evidence, and The Olde Dairy has not been in use as an independent dwellinghouse for a continuous period of four years in breach of the condition, and the time for enforcement action has not expired or for any other reason.

Other Matter

29. I have noted the site's planning history, but my determination is solely based on the Council's decision in respect of the LDC was well founded. Furthermore, planning policy is irrelevant to my determination as that relates to planning merits.
30. While the appellant has cited two LDC applications and another scheme, those decisions relate to the facts and individual circumstances of those cases. I have determined the appeal on the balance of probability regarding the lawfulness of the matter for which the LDC is sought, not its planning merits. The decision is based on the facts of the case and on relevant planning law and judicial authority.

Conclusion

31. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use of the building known as The Olde Dairy as an independent dwelling was well-founded. Hence, the appeal should fail, and I will exercise the powers transferred to me in s195(3) of the Act.

Andrew McGlone

INSPECTOR