

Appeal Decision

Site visit made on 15 January 2026

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 28th January 2026

Appeal Ref: APP/W2845/X/24/3356648

Annexe building at The Old Red Lion, 4 Banbury Road, Litchborough NN12 8JF

- The appeal is made by David Rogers under section 195 of the Town and Country Planning Act 1990 against the failure by West Northamptonshire Council to give notice of their decision on an application for a certificate of lawfulness made under section 191(1)(a).
 - The application Ref: 2023/5419/LDE was made on 24 April 2023.
 - The use for which the certificate is sought is "Use of building as independent residential unit".
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use relating to the use described in the application, which I consider to be lawful at the time of the application.

Reasons for the decision

2. In the event, the Council reached a decision to refuse the application on the same day as the day the Inspectorate received the appeal against non-determination. For the record, the Council's decision notice was issued at 17:19hrs on 3 December 2024, which was after the appeal had been received at 11:40hrs on that day. The appeal is therefore continuing as an appeal against non-determination. This sequence of events has had no effect on my consideration of the appeal.
 3. Section 195 requires an assessment to be made as to whether the refusal of the application would or would not be well-founded. This assessment is based on the lawfulness of the use at the time of the application. In this instance, the use will be lawful if no enforcement action could have been taken at that time in respect of it because the time for enforcement action had expired.
 4. The Council decided that: "Based on the lack of evidence, the applicant has not established, on the balance of probability, that a material change of use has occurred for any continuous period of four (4) years prior to the date of this application to confirm that the site benefits from a lawful use as an independent residential unit". Email correspondence indicates that, whilst it appeared to the Council that there had been occupation of the annexe since 2015, based on the evidence presented there appeared to be periods where there might have been gaps in occupation that required further explanation.
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5. Consideration has to be given as to whether there has been any time during the relevant period when the Council could *not* have taken enforcement action, because, for example, the annexe was unoccupied or was no longer a dwelling. Significant periods of unexplained non-occupation between tenancies could have the effect of interrupting the relevant period and starting it again.
6. The evidence available to me is as follows: -
 - The use of the annexe as a dwelling began in 2015.
 - The annexe was let to successive tenants from 8 May 2015, 11 December 2016, 1 March 2019 and 18 November 2019, in each case as a dwelling house on a formal Assured Shorthold Tenancy agreement for a term of 6 months, with provision for the tenancies to roll over into a statutory periodic tenancy after 6 months, as is normal in such agreements.
 - The lettings were arranged by managing agents, who have confirmed that there has been continuous letting of the annexe as a one-bedroom apartment since 2015. The agents' director states that he has visited the property from time to time and confirms that it has been occupied during these periods of letting.
 - The annexe has been advertised for letting by agents on the open market as a self-contained first-floor flat with its own secure entry.
 - The appellant himself has confirmed that the annexe has been let on four occasions and has been continuously occupied between 2015 and 2023 with only short periods where a tenant has vacated the annexe before a new tenant has taken possession. The appellant is the joint owner of the adjoining public house, The Old Red Lion.
7. The Council's response relies on two matters, neither of which makes the appellant's version of events any less probable. The Council refer to planning applications submitted for development to create two residential units here, which were not described as being partly retrospective applications and where neighbours' representations did not mention the annexe being already in use as an independent residential unit. As the applications involved new building work, this is unsurprising. The Council also refer to an officer's report of 2021 which recorded the comment that "The building is currently in use as ancillary staff accommodation associated with the attached public house.". This comment is not borne out by the tenancy agreements, which are freestanding Assured Shorthold Tenancy agreements, not service occupancy arrangements.
8. I have concluded that the appellant's evidence is sufficiently precise and unambiguous to justify the grant of the certificate on the balance of probability. I am satisfied that a refusal of the application would not be well-founded, since the time for enforcement action has expired. The appeal has therefore succeeded and a certificate of lawful use has been issued.

D.A.Hainsworth

INSPECTOR



Certificate of Lawful Use

APPEAL REFERENCE APP/W2845/X/24/3356648
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39 & SCHEDULE 8

IT IS CERTIFIED that on 24 April 2023 the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and shown edged and 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, for the following reason:

No enforcement action could then have been taken in respect of the use because the time for enforcement action had expired.

D.A.Hainsworth

INSPECTOR

Dated: 28th January 2026

First Schedule

Use of the annexe building as an independent residential unit.

Second Schedule

Annexe building at The Old Red Lion, 4 Banbury Road, Litchborough NN12 8JF.

Notes

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990.
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the specified date and, therefore, would not have been liable to enforcement action under Part VII of the 1990 Act on that date.
3. 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 uses that are materially different from those described or which relate to any other land may render the owner or occupier liable to enforcement action.

Plan attached to Certificate of Lawful Use

Annexe building at The Old Red Lion, 4 Banbury Road, Litchborough NN12 8JF

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This is the plan attached to the Certificate of Lawful Use dated: 28th January 2026

D.A.Hainsworth
Inspector

