Planning Inspectorate

Appeal Decision

Site visit made on 20 October 2026

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2026

Appeal Ref: APP/E3335/X/25/3376279
The Annexe, Queens Square, Wraxall Road to Folly Cottages, Ditcheat, Shepton Mallet, Somerset BA4 6QX

- 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 Martin and Shirley Barrett against the decision of Somerset Council.
- The application ref 2025/0477/CLE, dated 12 March 2025, was refused by notice dated 8 May 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is the use of the Annexe at Queen Square as a self-contained dwelling (Use Class C3).

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use describing the use of the Annexe at Queen Square as a self-contained dwelling (Use Class C3) which is found to be lawful.

Preliminary Matters

2. In an LDC such as this, the relevant test is the balance of probability, not the more onerous test of beyond reasonable doubt. The Planning Practice Guidance states that if the Council has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous.[1] The onus of proof rests with the appellant to provide sufficient information to demonstrate this to be the case.

3. I note from the Officer's Report and the list entry included with the Council's submissions that the property is Grade II listed, which includes the Annexe subject of this appeal. However, the appeal concerns the lawfulness of its use rather than any works to the listed building. Its listed status does not prevent the use from becoming lawful through the passage of the relevant enforcement period. Furthermore, matters such as planning policies and the effect of the development on matters such as the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.

Main Issue

4. The effect of section 191(2) of the Town and Country Planning Act 1990 (1990 Act) is that a use would be lawful if no enforcement action can be taken because the

[1] Paragraph: 006 Reference ID: 17c-006-20140306

time for taking such action has expired. The four-year enforcement period formerly applicable to a change of use to a single dwelling house continues to apply where the change of use occurred before 25 April 2024. The appellants' case is that the use commenced before that date, and, therefore, if established by the evidence, the relevant period would be four years from the date of the application.

5. The date of the application is 12 March 2025, as such the use would have to had commenced by 12 March 2021 and been continuous for a four year period to be considered lawful. However, any four-year period before the relevant date is applicable provided the use continued for four years and had not subsequently been abandoned or lost by a supervening event before the date of the application.

6. The main issue is, therefore, whether the Council's refusal to issue an LDC for the use of the annexe as a self-contained dwelling was well-founded.

Reasons

Evidence

7. A Statement of Case has been submitted in support of the appeal. The appellant has also submitted evidence in the form of:

- Planning Statement and Application Form.
- Plans- comprising site location plan and a floor plan.
- Appendix 1 - An Airbnb Earnings Report- Dated between 2021 and 2023.
- Appendix 2 - Booking.com Records- Summary of invoices and payout summaries between 4 January 2021 and 3 February 2025.
- Appendix 3 - Direct Letting Records- Summary of direct letting payments between 7 June 2021 and 1 February 2025.
- Appendix 4 - Reservations for The Annexe- List of named reservations between 3 November 2020 and 7 April 2023.
- Appendix 5 - The Annexe Accounts Records- Accounts for The Annexe between 24 August 2019 and 29 March 2024.

Self-Contained Dwelling

8. The site location plan includes the appellant's main property (edged in blue) and the appeal site (edged in red). The plans submitted within the appeal indicate a U-shaped, single storey building with two bedrooms, a kitchen, bathroom as well as a dining room and lounge. Although attached to the main house, there is no internal access between the properties, and during my visit I was able to see that the Annexe has access to a private courtyard as well as its own off-road parking space. The Annexe can be accessed without having to go through the main property.

9. Both parties have referred to a historical planning permission, granted on 29 October 1999, for the change of use of a former butcher's shop to an annexe ancillary to the main listed house, Council reference 059879/001. I will hereafter refer to this as the 1999 permission.

10. The Council does not dispute the physical layout of the building or the facilities contained therein. The Council also accepts that the Annexe has been let out to third parties as a form of a short-term letting arrangement. The Council indicates that the occupation is short term, the appellants control the rental, and they provide certain consumables to those occupiers renting the Annexe. The Council also points out that there is no evidence that the Annexe has separate utility supplies or has been separately assessed for Council Tax. The Council, therefore, maintains it functions as an annexe to the main house in compliance with the 1999 permission.

11. The appellants' case is that, despite the generally short periods of occupation and the provision of linen and other consumables, the layout, facilities and manner of occupation are characteristic of a separate dwellinghouse. Although the building was converted shortly after the 1999 permission, the appellant claims it was only ever in use as a self-contained dwelling and not as an annexe.

12. The evidence does show that occupiers generally stay for short periods and that the Annexe was marketed as holiday accommodation[2]. Nevertheless, the appellant has drawn my attention to the legal case *Gravesham Borough Council v Secretary of State for the Environment and O'Brien (1984) 47 P&CR 142* in their submissions. *Gravesham* established that the duration or frequency of occupation is not necessarily determinative of whether accommodation has the character of a dwellinghouse. The subsequent authorities also demonstrate holiday accommodation does not, of itself, preclude it from being a dwelling. Whether a holiday let results in a materially different use remains a matter of fact and degree having regard to the particular characteristics of the use.

13. With that in mind, the fact that occupiers generally stayed for short periods and did not use the Annexe as their sole or main residence does not prevent it from being a dwellinghouse. The physical layout and functional nature of the Annexe, together with the manner of its occupation, are of greater significance.

14. The evidence before me does not indicate the occupation of the Annexe as being of a scale or character materially different from an ordinary or typical dwelling use. It functions independently of the main house, and occupiers have the facilities necessary for living, sleeping, cooking, washing clothes and bathing. The limited services provided do not materially alter the character, with occupiers largely left to use the Annexe independently for their day-to-day domestic purposes. I therefore consider the facilities and the nature of the occupation characteristic of a self-contained dwelling, notwithstanding its use as holiday accommodation.

15. I do not consider the appellants' management and control of the letting arrangements to indicate that the Annexe was occupied ancillary to the main dwelling. Those arrangements concern how the accommodation was let rather than the character in which it was used. Shared utilities and the absence of a separate Council Tax can indicate a relationship with the main house. However, on their own they are not determinative of the character of the use and without further evidence demonstrating that the Annexe was used in an ancillary manner, I give these factors limited weight. The evidence therefore demonstrates a use materially different from the ancillary occupation authorised by the 1999 permission.

16. Taking the physical characteristics of the Annexe and the particular nature and manner of its occupation together, I am satisfied, on a balance of probabilities, that

[2] Page 5, Planning Statement- Link provided to Booking.com page : https://www.booking.com/hotel/gb/the-annexe-ditcheat.en-gb

the use demonstrated by the evidence is properly characterised and described as a self-contained dwelling, despite being predominantly let as holiday accommodation.

Continuous Use

17. The appellant indicates the Annexe was used as a self-contained dwelling through assured shorthold tenancies, monthly lets, holiday lets, and accommodation for jockeys, since its conversion sometime shortly after the 1999 permission. However, the evidence provided with the application and appeal covers a period of use between 2019 and 2025 during which holiday letting occurred.

18. The evidence takes a number of forms and is not of equal precision as to actual occupation. The reservation records provide the clearest evidence, identifying the dates and duration of individual stays as well as earnings. The annexe account records and direct letting records identify dates, customers or booking platforms and payments received and, while they provide evidence that lettings took place, they do not specifically set out their duration. Similarly, the Airbnb and Booking.com financial records demonstrate income and commercial letting activity but do not, without the corresponding reservation details, establish dates or duration of occupation.

19. The reservation records clearly show the dates and duration of various occupations between 3 November 2020 and 7 April 2023. Although they show a number of gaps between recorded stays, including one of approximately 88 days between January and April 2022, the additional annexe accounts and financial records provide evidence of further lettings during some of those intervals. I have given the reservation records significant weight as evidence that lettings were taking place, and the Annexe was occupied on the dates, and for the duration, recorded.

20. The annexe account records extend over a longer period, with dated sales entries from 2019 onwards. The earlier 2019 dates shown on the annexe account records are less consistent than the later dates and include significant gaps in time. Nonetheless, from 1 July 2020 onwards, the annexe account records show a regular and recurring pattern of transactions associated with the letting of the Annexe, which continues through the subsequent years to 29 March 2024.

21. Although entries in the annexe account records cannot establish the precise dates or duration of individual occupations, their pattern provides evidence that the letting use had become established by that time. This is reinforced by the substantial consistency in the guest names, financial amounts and the timing of sales entries relative to the corresponding stays in the reservation records. The direct letting records are more limited in number and detail, but the amounts and timing of those entries are also broadly consistent with the pattern of letting shown by the reservation records between 3 November 2020 and 7 April 2023. While there are isolated discrepancies in the annexe account records and direct letting records when cross-referenced, these do not materially detract from the predominant consistency with the pattern of letting shown by the reservation records.

22. I have, therefore, given both the annexe account records and direct lettings records significant weight as evidence that lettings were taking place on or around the dates recorded in those two records, although I cannot regard individual entries as precise dates of occupation in the same way as the reservation records.

23. The evidence becomes less precise after 29 March 2024 as the Airbnb earnings records; the reservation records and the annexe account records end by this time. The Booking.com records do extend beyond this date but do not identify when individual occupations began or ended, or their duration. The direct letting records are also limited only to two recorded lettings, one in 2024 and one in 2025. I therefore attach less weight to these later records in establishing the precise pattern of occupation and frequency of stays to show a continuous use.

24. Nevertheless, the Booking.com and, to a more limited extent, the direct letting records, still provide evidence of continuing letting activity at the Annexe. Although they do not establish the precise dates or duration of individual occupations, the continuing payments are consistent with further letting activity at the Annexe. Importantly, those payments continue during the relatively short period between the end of the more detailed annexe account records on 29 March 2024 and the relevant date of 1 July 2024. In the context of the regular and recurring pattern of letting established by the earlier and more detailed records, I consider this to be sufficient evidence that the established use continued over that intervening period.

25. I recognise that there were periods when the Annexe was left unoccupied. The appellant's evidence is that between occupiers the Annexe remained furnished, serviced, marketed and available for letting and was not used in intervening periods as an annexe to the main dwelling. I consider that some gaps between individual stays are to be expected given the nature of short-term letting and do not, without more, demonstrate an interruption in the ongoing use. Given the length of the gaps and the nature of the use, it is more probable than not that these intervening periods represented vacancies between lettings within the continuing use over the four years, rather than interruptions in, or a reversion from, that use being carried out.

26. Taken together, I consider the reservation records, annexe accounts records, direct letting records and platform records provide a clear and consistent picture of the Annexe being maintained and used throughout the relevant period as a self-contained dwelling described above. They demonstrate recurring occupation and letting activity which, when considered together with the evidence that the Annexe remained furnished and available for letting, are sufficient to establish on the balance of probabilities that the use had become established by 1 July 2020. As the use had become established before 25 April 2024, the relevant enforcement period is four years. The use continued without material interruption until 1 July 2024.

27. I have also considered whether anything subsequently occurred which would affect that position after 1 July 2024 and before the application was made on 12 March 2025. There is a two month gap in the Booking.com financial records for November and December 2024. However, I have no substantive evidence that during that period the Annexe was put to another use or that the established use was abandoned. The appellant's evidence is that the Annexe remained furnished, serviced, advertised and available for letting, and the Booking.com records also resume in January 2025. This period is therefore insufficient on its own to demonstrate that the lawful use established by 1 July 2024 was subsequently lost before the date of the application on 12 March 2025.

Conclusion

28. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for the use of the Annexe at Queen Square as a self-contained dwelling (Use Class C3) is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

M. P. Howell

INSPECTOR

Planning Inspectorate

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 12 March 2025 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red 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 use of the Annexe as a self-contained dwelling was established and continued without material interruption for a period of four years between 1 July 2020 and 1 July 2024. There is no evidence to indicate the use established had been abandoned or lost by a supervening event before the date of the application.

Signed

M. P. Howell

Inspector

Date: 12 November 2026
Reference: APP/E3335/X/25/3376279

First Schedule

Use of the Annexe at Queen Square as a self-contained dwelling (Use Class C3).

Second Schedule

The Annexe, Queens Square, Wraxall Road to Folly Cottages, Ditcheat, Shepton Mallet, Somerset BA4 6QX

IMPORTANT NOTES – SEE OVER

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.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **12 November 2026**

by M. P. Howell

Land at: The Annexe Queens Square Wraxall Road To Folly Cottages , Shepton Mallet, BA4 6QX

Reference: APP/E3335/X/25/3376279

Scale: Not to Scale

