DELEGATED REPORT

Application Reference:	PL/2023/09259
Application Type:	Lawful Development Certificate

Site Address:	The Annexe, 7 Hillcrest, Thickwood Estate, Colerne, Chippenham, Wiltshire, SN14 8BP
Proposal:	Certificate of Lawfulness for the annexe to be used as a dwellinghouse
Recommendation:	That the application for a Certificate of Lawful Development be REFUSED

PROPOSAL & SITE DESCRIPTION

An application for a Lawful Development Certificate (LDC) has been submitted to the Local Planning Authority (LPA). The purpose of the application is to establish that an existing Annexe constitutes a separate dwellinghouse in its own right.

The application relates to a residential dwelling known as 7 Hillcrest which is located on the Thicketwood Estate at Colerne. The site of 7 Hillcrest occupies a corner plot at the junction of Hillcrest and Fairview, at the northern fringe of the Thicketwood Estate; the Annexe building itself of located within close proximity (within c.2m) of the main dwelling, sited to the immediate east of the dwelling. The Annexe comprises of garage spaces, workshop and utility room at ground floor level, and bedroom, kitchen and lounge at first floor level.

The building taken as constituting 'The Annexe' the subject of this application is understood to have been completed sometime following the granting of planning permission in 2008. More recently, the building has been extended through (householder) planning permission PL/2021/03637, which was granted for: 'Single Story utility room with balcony' on 10/08/2021, those physical works having since been completed. The planning history, as relevant to this application, is considered in more detail below.

LEGISLATION

The statutory framework covering lawfulness for lawful development certificates relating to existing use or development is set out in Section 191 of Town and Country Planning Act 1990.

This sets out that uses and operations are lawful at any time where no enforcement action may 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 where they do not constitute a contravention of any of the requirements of any enforcement notice in force.

In considering whether the time for enforcement action has expired, the test of whether a Certificate of Lawfulness for an existing use development can be granted is whether on the balance of probability that continuous use can be demonstrated, with the burden of proof falling to the applicant.

In accordance with 171B(3) of the Act, the extension of a single lawful dwellinghouse and the use of that extension as one or more separate dwellings is subject to the 10-year rule (and not the 4 year rule), where there has been no intervening use (such as the extension being used for ancillary purposes to the lawful dwelling in the first instance before its material change of use to one or more separate dwellings). On review of the facts in this case, as the breach of planning control relates to the use of a building attached to a single lawful dwellinghouse as a separate dwelling, it is considered that the relevant period is ten years.

The covering letter states that at the time the extension was built, there was no intention for it to be ancillary accommodation and that it has always been occupied separately. This being the case, the 10 year period would apply.

The LPA needs only to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular type of application.

CONSULTATION RESPONSES & REPRESENTATIONS

There is no statutory requirement to consult third parties – including Town/Parish Councils or neighbours – on this application type.

However, the Parish Council and neighbours were consulted, and a site notice was sent to the applicant to display at the site.

No responses have been received, including from Colerne Parish Council, with regard to this application.

EVIDENCE AND ASSESSMENT

<u>Evidence and scope of consideration</u>

This Certificate of Lawfulness application seeks confirmation as to whether the use of the building as a separate dwellinghouse is lawful by virtue of being immune from enforcement action due to the time period which has elapsed since the work was carried out.

This application is assessed against the criteria set out in Section 191 (‘s191’) of the Town and Country Planning Act 1990 (as amended)(‘the Act’). S191 of the Act allows an application to be made to establish the lawfulness of development (‘uses or operations’) carried out. Enforcement action in respect of all breaches of planning control is subject to time limits. In this case, as the building is lawfully within residential use (albeit within a single planning unit and as ancillary to the main dwelling), rather than the use of the building as single dwellinghouse (4 year time limit) being

the determining issue for lawfulness, the determining issue in fact relates to the *change of use* relating to one single planning unit into two separate planning units. In accordance with Section 171B(1) of the Act, for this *change of use* to be considered legally acceptable, it must have been ongoing for more than 10 years, after which time no enforcement action can be undertaken.

For a certificate of lawfulness to be issued, the onus is on the applicant to provide evidence that, on the balance of probabilities, the works or uses were completed not less than the time limit for immunity from enforcement action prescribed under Section 171B (Time Limits) of the Town and Country Planning Act 1990 (as amended), whereby the time limit for taking enforcement action had expired.

The LPA needs only to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in the determination of this particular application.

Evidence provided by the applicant –

- Application form
- Covering letter
- Statutory Declarations: Marcus Kendrick / Robert Brain
- Bank statements
- Rental Agreement
- Electoral Register (October 2023)
- Medical details
- Plan and elevation drawings

Other evidence available –

- Planning history

Planning history

The site has been the subject of the following planning applications previously:

- N/03/03142/FUL: Conservatory – Approved – 09/01/2004
- 05/02091/FUL: Re-build Garage/Workshop and Add Annex to House – Approved – 10/10/2005
- 05/00271/FUL: Demolition of Double Garage & Erection of Two Storey Building to Provide Self Contained Unit, 2 Single Garages & Workshop – Refused – 08/04/2005
- 08/02264/S73A: Re-Build Garage/Workshop & Add Annex to House (Revision to 05/2091/FUL) – Approved – 27/11/2008
- 09/00901/S73A: Remove Condition 4 Attached to 08/02264/FUL to Allow Independent Occupation of Annex – Refused – 27/07/2009
- PL/2021/03637: Single Story utility room with balcony – Approved – 10/08/2021

These are considered below where relevant to this application for a Certificate of Lawful Development.

LPA review of evidence

Planning application PL/2021/03637 was submitted to the LPA in May 2021 and approved on 10/08/2021. That application was submitted in the form of a 'householder' planning application and was considered and determined on that basis – there was no distinct reason at that stage for the Council to assume any independent use was occurring. Specifically, no change of use was sought at that time and there was no reason for the LPA to consider that the application proposal was anything other than for works to a dwellinghouse or building within the curtilage of that dwellinghouse, as was the case. When considering the above, it would have been very difficult for the LPA to identify, with sufficient clarity, any particular alleged breach of planning control to form the basis of an Enforcement Notice.

It is thus maintained that the Applicants *at that point* in time implicitly confirmed the use of the buildings on the site on a 'householder' basis. Were the building used for any other purpose at that time then there is likely to be an element of deliberate concealment arising.

Related to this, on the basis that planning permission PL/2021/03637 was implemented in accordance with the approved plans, the building which functions as 'The Annexe' is considered to be lawful.

Prior to that application, independent occupation of The Annexe was sought through planning applications 05/00271/FUL and 09/00901/S73A and in each case was refused (08/04/2005 and 27/07/2009 respectively).

In terms of the submitted evidence, the provided Rental Agreement upon which much of the case rests is a 'Licence Lodging Agreement for 'Rent a Room''. This states in the heading text that: *"The annex is classified as part of the house '7 Hillcrest' and is used in conjunction with and ancillary to the house, as such 'we are permitted to enter as required'."* That Agreement then goes on to set out a large number (19no.) of bullet points which the tenant is required to abide by, all of which confirm an element of control over the occupation. The submitted Cover Letter notes that the occupant of the building has not complied with just one of these listed bullet points [*"We will provide clean bed linen and towels weekly and collect form [sic] your room (special arrangements will be made when we are away)"*]. Implicit compliance with each of the other listed bullet points confirms that the occupation of 'The Annexe' has fundamentally not been undertaken on an independent basis.

In particular, but by no means exclusively, it is noted that one of the basis upon which the rental has been undertaken is that (in part): *"The agreement includes all rates (water/council tax), electric bills, broadband access…"* Clearly, The Annexe has been occupied on an ancillary basis in the same way as would have been the case had the 'Rent A Room' occupancy been within the main dwelling.

Other elements of the Rental Agreement confirm the availability of a *"communal washing machine"*, and the ability to use the kitchen and lounge (presumably in the main house). The agreement invites use of the communal garden and requires the signee to notify the owner if they are staying away overnight. In fact, the entire Agreement appears to be akin to one which a lodger would be required to sign when living in a spare bedroom, and not a person who is renting a house to be occupied as an independent dwelling. Indeed, the Agreement is entirely symptomatic of accommodation that does not amount to an independent dwellinghouse.

The applicant has submitted the Rental Agreement as part of their evidence, but it in fact confirms precisely the opposite to what is claimed: that the building has in fact been used and occupied as ancillary accommodation to the dwelling known as 7 Hillcrest.

In spatial terms, the building the subject of this application is sited within very close proximity of the main dwelling and there is a lack of any discernible separate curtilage space. Moreover, the buildings are served by one access from the highway and it would be unlikely that parking and manoeuvring of vehicles could be undertaken on an independent basis.

The other evidence provided on the Statutory Declarations has been taken into consideration but does not in any way suggest the occupation has been on a basis other than in general accordance with the submitted Rental Agreement. Similarly, the submitted electoral register details, bank statements and medical details do not represent any material evidence which would lead to a different conclusion.

CONCLUSION

On the balance of probabilities, and based on the evidence provided, it is concluded that the use and occupation of the building referred to as 'The Annexe' has not been undertaken in an independent manner from the main dwelling, and the use of the building has remained as ancillary to the main dwelling. This is evidenced, in particular, through the submitted Rental Agreement and the basis upon which occupation of 'The Annexe' has been carried out.

As such, the use specified in the description of the proposal is not considered to be lawful.

RECOMMENDATION: That the application for a Lawful Development Certificate is REFUSED.

Refusal Reason(s): (1)

The evidence provided in support of the applicant's claim demonstrates that the use and occupation of 'The Annexe' has not been undertaken on an independent basis.

As no separate dwelling or planning unit has been created, there has been no breach of planning control against which the LPA could take enforcement action.

The LPA is not satisfied that the legal tests are met in relation to the creation of a new residential planning unit at 7 Hillcrest and therefore a Lawful Development Certificate cannot be granted.