Planning Inspectorate

Appeal Decision

Site visit made on 1 September 2026

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 October 2026

Appeal Ref: APP/D3505/X/26/3377214
Windy Farm, Capel Road, Bentley, Suffolk IP9 2DL

- 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 and Mrs Laurence and Lisa Butcher against the decision of Babergh District Council.
- The application ref DC/25/01493, dated 25 March 2025, was refused by notice dated 23 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 as a C3 dwellinghouse.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matters

2. The appellants describe the existing use as '*a re-submission for CLEUD after previous refusal of DC/24/0455. Please see the attached Supporting Statement that provides additional information based on the refusal, that provides the LPA with evidence to support that a material change of use has occurred*.' They also describe the use as 'C3 – Dwellinghouses' and have ticked the box 'The use as a single dwelling house began more than four years before the date of this application'. It is clear from the evidence that the appellants are seeking determination that the use of the annexe/outbuilding as a separate dwelling was lawful at the date of the application and I shall consider the appeal on this basis.

Main Issue

3. The main issue is whether the Council's decision to refuse the application was well founded. This will turn on whether the material change of use of the outbuilding occurred on or before 25 March 2021 and continued without significant interruption thereafter.

Reasons

4. An application under section 191(1) of the Act[1] seeks to establish whether (a) any existing use of buildings or other land is lawful; (b) any operations which have been carried out in, on, over or under land are lawful. Section 191(2) sets out that uses and operations are lawful at any time if (a) 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

[1] Town and Country Planning Act 1990 (as amended)

expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. In an LDC, the burden of proof is firmly on the appellant to make their case, to the civil standard, which is the 'balance of probabilities'. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

6. The appeal site comprises a detached single storey outbuilding, which is accessed via a private drive which also serves a detached dwellinghouse and outbuildings. The appeal building comprises a kitchen with living area, bathroom, two double bedrooms, a study, storage room and a utility room. To the front of the building is a modest, paved area, which provides access into the building and to the side is an area laid to lawn. Bin storage is provided by the front door to the appeal building and a post box is affixed to the wooden fencing around the paved area.

7. The main thrust of the appellants' case is that the building has been used as a self-contained dwelling for more than 4 years by the date of the application and its use as such is therefore immune from enforcement action. The appellants have drawn my attention to a number of appeal decisions[2]. Importantly, each case turned on its own facts.

8. Significantly, the Council does not dispute the facts presented in the statutory declarations: It is not disputed that the appellants' son has occupied the appeal building continuously and I have no reason to doubt the appellants' account in this regard. The Council's case is that the building is an annexe linked to the main dwellinghouse and that there has not been a material change of use resulting in the creation of an independent dwelling. Given the matters in dispute, it is necessary to consider the physical and functional links between the use of the building and the main dwelling and consider whether a separate planning unit has been created as a matter of fact and degree.

9. The appellants' son is stated to have lived independently in the appeal building, which is adjacent to their parent's house. The appellants state that their son moved into the appeal building on 26 November 2018 and has inhabited it since that date. I am advised that their son purchases and cooks his own food and has no reliance on the main house, other than utilities. There is a private garden to the east of the appeal building and their son has paid a monthly rent, which includes a contribution towards electricity, water and sewage costs.

10. The appeal building has all the facilities needed for day to day living and, in my judgement, is a dwellinghouse for the purposes of the Act. The accommodation provided within the building is generous and provides sufficient space for relaxation, both inside and out, as well as the carrying out of incidental activities, as indicated by the presence of a study.

11. Although the appeal building is accessed via a driveway which is shared with the main dwellinghouse, there is physical delineation between the two buildings, with

[2] APP/B3410/X/19/3239498, APP/L5240/X/17/3183526, APP/Z5630/X/18/3217186, APP/L3245/X/19/3222768, APP/L5240/X/21/3267202, APP/N5090/X/19/3243802, APP/K0235/X/24/3343748, APP/B5480/X/17/3192331, APP/W2465/X/22/3302408, APP/D3125/X/24/3340800, APP/X1545/X/22/3313618, APP/J3720/X/24/3345767, APP/J3720/X/13/2201676, APP/W0340/X/22/3308949, APP/Y2620/X/22/3306008, APP/M2270/X/13/2191048, APP/E2001/X/19/3232649 & APP/E0345/X/22/3310197.

the appeal building having its own physically separate outside space. The appellants have provided dated photographs, which show that fencing was present in 2018 which delineated the main dwelling house and the appeal building. A photograph, also dated 2018, shows that a grassed area, with seating was provided next to the appeal building.

12. A letter dated 20 July 2011, to the Chief Planning Control Officer of the Council, details that in the summer of 2009, builders were working on the hen house at Windy Farm (the appeal building). It is stated that it became obvious around this time that the hen house was inhabited. It is not clear from the evidence whether any such occupation of the appeal building was continuous. Nonetheless, this points towards the appeal building being a dwellinghouse prior to the appellants' purchase of it in 2018.

13. In support of their appeal, the appellants have provided statutory declarations (SD). The SD submitted by Mr Butcher, confirms that since moving into the appeal building on 26 November 2018, their son has permanently inhabited the dwelling and not slept one night in the main house. They confirm that their son purchases and cooks his own food and has no reliance on the main house other than utilities, which are shared with the main house. A SD signed by the occupant of the appeal building is consistent with Mr Butcher's SD, confirming that they have resided in the appeal building, with no reliance on the main house other than utilities outlined above.

14. I note that Council tax has previously been registered under the main dwelling and that there was no separate electoral registration at the appeal building nor was there a separate postal address, however, this, of itself is not determinative that the building has not been used as a self-contained dwelling. As pointed out by the Council, Council Tax is payable on residential annexes: the Council does not suggest that this indicates that the building was not occupied.

15. Although not previously separately registered, it seems that a shared postal box and area for bins have previously been located along the shared driveway (as evidenced in Exhibit 1-J). These have now been moved to the front of the appeal building. Nevertheless, given their previous location it seems unlikely that the occupant of the appeal building would have had to enter the main dwellinghouse to access post or dispose of rubbish.

16. The appellants state that rent has been paid by the occupant of the appeal building. While this may have been below market value for a property of this size, that, of itself, is not indicative of a functionally single household. The appellants suggest that it is clear that there is a tenancy agreement in place in that rent is paid, utilities are covered within that rent and it is for their son's exclusive use of the dwelling.

17. While a written tenancy can assist in demonstrating who had the right to occupy a dwelling at a particular point in time, the absence of one in this case does not contradict the appellants' evidence or make their version of events less than probable. The occupant of the building is the appellant's son; it seems reasonable to me that they would be content to rely on a verbal agreement.

18. The appellants have drawn my attention to appeal decision APP/B5480/C/18/3204800, which concerned appeals under section 195 and section 174, relating to the use of an annexe as a separate dwelling. As explained

by the Inspector in that case, a familial connection between the occupants of the appeal building is not necessarily indicative that something is not used as a separate dwelling house. What matters is how the premises has been used.

19. There is no evidence to show that the occupant of the appeal building was dependent on the main dwellinghouse, for example by virtue of their age or medical conditions. While utilities may be shared, there is no suggestion that the occupier of the appeal building is required to enter the main dwelling or its surroundings to use water, sewerage or electricity. Shared supplies are not uncommon where units are let out and do not indicate, in my view, that the use of the premises forms part and parcel of the use of the main dwellinghouse.

20. The evidence provided points towards there being physical and functional delineation between the appeal building and the main dwelling. Given the generous size of the accommodation and its distance and physical delineation from the main dwelling, it seems unlikely that the occupant of the premises relied on the main dwellinghouse, despite their familial connection with its occupants.

21. Consequently, despite the familial relationship, sharing of utilities, a post box and waste bins, I find, on the balance of probabilities, that the material change of use of the appeal building to a single dwellinghouse took place at least 4 years before the date of the LDC application and continued without significant interruption thereafter. The appeal therefore succeeds.

Conclusion

22. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a C3 dwellinghouse 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 Savage

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 25 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 appellants have shown, on the balance of probabilities, that the material change of use of the appeal building to a C3 dwellinghouse occurred on or before 25 March 2021 and continued without significant interruption for at least four years thereafter. Consequently, at the date of the application, the time for enforcement action had expired.

Signed

M Savage

Inspector

Date: 05 October 2026
Reference: APP/D3505/X/26/3377214

First Schedule

Use as a C3 dwellinghouse

Second Schedule

Land at Windy Farm, Capel Road, Bentley, Suffolk IP9 2DL

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: 05 October 2026

by M Savage

Land at: Windy Farm, Capel Road, Bentley, Suffolk IP9 2DL

Reference: APP/D3505/X/26/3377214

Scale: Not to Scale

