



Appeal Decision

Site visit made on 20 May 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 30 May 2025

Appeal Ref: APP/D3125/X/24/3340800

17A Moor Avenue, Witney, Oxfordshire

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Lou Lou against the decision of West Oxfordshire District Council.
 - The application Ref 23/02164/CLE, dated 9 August 2023, was refused by notice dated 11 October 2023.
 - 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 described as a material change of use of the annexe at 17A Moor Avenue from accommodation ancillary to the main dwelling.
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Summary Decision: the appeal is allowed and a Certificate of Lawful Use or Development is issued in the terms set out below in the Formal Decision.

Procedural Matters

1. The description of the use for which a Certificate of Lawful Use or Development (LDC) is sought is described in the Council's formal Decision Notice as a material change of use of the annexe at 17A Moor Avenue from accommodation ancillary to the main dwelling to a separate dwelling. That is technically correct but requires clarification. The main dwelling to which the annexe was originally ancillary is known as 17 Moor Avenue. The change of use is therefore more properly described as a material change of use of the former annexe to 17 Moor Avenue from accommodation ancillary to that dwelling to a separate dwelling known as 17A Moor Avenue.
2. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) allows the Secretary of State or an Inspector to modify the description of the existing use, operation or other matter. The clarification that I propose to make is not a substantive modification to the description of the use for which the LDC is sought, such that I do not perceive a need to seek the views of the parties before making it. Accordingly, I will make that clarification in the Certificate of Lawful Use or Development to be issued.
3. The time limits for taking enforcement action are set out in section 171B of the 1990 Act. With effect from 25 April 2024, the time limits for taking enforcement action changed pursuant to the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 (2024 Regulations). The LDC application subject to this appeal was submitted in August 2023 and is therefore unaffected by the changes instigated by the 2024 Regulations.

4. This application concerns occupation of a building in breach of a condition imposed upon a planning permission, specifically a planning permission granted on 18 September 1998 for the erection of a granny annex at 17A Moor Avenue, Witney (Council Ref: W98/1089). Condition 4 of that permission states that:

The building hereby permitted shall be used as accommodation ancillary to the existing dwelling on the site and shall not be occupied as a separate dwelling.

5. The time limit for taking enforcement action would have fallen under section 171B(3) of the 1990 Act, namely that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

Reasons

6. Section 191(4) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation 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; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
7. No 17A Moor Avenue (hereafter No. 17A) is a single-storey building located behind the rear garden of No. 17 Moor Avenue (hereafter No.17). It has a separate, fence-enclosed pedestrian access off Moor Avenue, its own car parking space and separately enclosed front and rear gardens. Internally, No. 17A provides wholly self-contained accommodation in the form of a living room, kitchen, bathroom, double bedroom and single bedroom. I am satisfied that the building provides all the facilities necessary for day-to-day private domestic existence.
8. The Council is satisfied that the building has been occupied for residential purposes since it was constructed in or around 1999. Consequently, there is no need for me to rehearse in detail the documentary evidence provided by the appellant in support of the appeal.
9. The Council also accepts that No 17A is physically separate from No. 17. I see no reason to take a different view. The main issue in this appeal is therefore whether No.17A is functionally separate from No. 17.
10. The principal evidence in this respect is in the form of two Statutory Declarations from relatives of the previous occupiers of No.17A. I am satisfied that both Statutory Declarations are properly formatted, dated, signed and witnessed, and include the appropriate wording from the Statutory Declarations Act 1835. I therefore afford these Statutory Declarations full weight. In the interest of safeguarding their privacy, I do not state the full names of the authors of those Statutory Declarations here but instead refer to them by their initials.

11. In his Statutory Declaration, DG confirms that immediately after No.17A was completed it was occupied by his parents JG and EG. The former lived there until his death in December 2021, and EG continued to live there until she moved out in April 2022. The building was subsequently occupied by SH, who lived there with her two children until at least August 2023.
12. DG moved out of No 17 in March 2007 following his divorce. Relations between the appellant and JG/EG quickly deteriorated thereafter, and DG was told by his parents that neither JG nor EG ever spoke with the appellant again. DG goes on to explain that immediately after his divorce, his parents arranged and paid for a 1.8m fence to be erected to provide a boundary between No 17A and No. 17. At the same time, a 1.8m fence was erected alongside the path linking No. 17 to No.17A. Attached to the Statutory Declaration are two photographs taken in or around 2007 that show both fences in place. DG confirms that both fences have remained in place since that time.
13. The Statutory Declaration by DG is replicated, almost word for word, in the Statutory Declaration made by the appellant. This corroborates the version of events described in the Statutory Declaration made by DG.
14. The Statutory Declarations show that, alongside the physical separation of the two properties in or around 2007, there was at the same time a complete functional separation caused by the tension that clearly existed between JG/EG and the appellant. There is no evidence before me to suggest that from 2007 onwards there was any functional link between the properties at No.17 and No.17A, notwithstanding their proximity to each other. The evidence shows that from 2007 onwards the occupiers of the two properties lived completely separate lives from each other with no interaction between them.
15. The Council's perspective is that, on the applicant's own evidence, from 1999 until 2022 No.17A was occupied by members of her family. There is no suggestion that they paid for occupation of the property. The Council considers that there would have been no way for officers to determine that a material change of use had taken place without asking questions about personal details of the applicant's relationship with her ex-husband and his family to establish that the functional link might have been severed.
16. I do not understand the Council's position in this respect. The evidence before me is that No.17A was occupied continuously from 2007 onwards as a separate dwelling. It is wholly irrelevant whether the occupiers paid money for that purpose or not: the sole consideration is the manner in which the building was occupied and whether there was a functional link between the two properties. It would have been entirely open for the Council to have discovered, through diligent investigation, how the building was occupied during that period and whether there was a functional link with No.17. I fully appreciate that doing so may have required asking some sensitive questions about personal relationships, but it appears to me that this would have been entirely justified as part of an enforcement investigation and would have been subject to the normal GDPR rules to safeguard the privacy of all concerned.
17. This is a situation where the local planning authority has no evidence of its own to contradict that of the appellant or make her version of events less than probable. I find that the appellant's evidence is sufficiently precise and unambiguous on its own to show, on the balance of probability, that following the events that took place in 2007 No.17A was occupied in a way that was both

physically and functionally separate from No.17. Throughout period, No.17A was therefore occupied as a separate dwelling and not as accommodation ancillary to the existing dwelling on the site.

18. I conclude that No.17A has been occupied as a separate dwelling in breach of Condition 4 imposed upon planning permission W98/1089 for considerably in excess of ten years prior to the date on which the LDC application was made, such that it has become immune from enforcement action. Consequently, on the balance of probability, the use of No.17A as a separate dwelling was lawful on the date that the LDC application was made.

Conclusion

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the material change of use is of the former annexe to 17 Moor Avenue from accommodation ancillary to a separate dwelling known as 17A Moor Avenue, Witney, Oxfordshire is not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

20. 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.

Paul Freer
INSPECTOR



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 9 August 2023 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:

No.17A Moor Lane, Witney, Oxfordshire has been occupied as a separate dwelling, physically and functionally separate from the dwelling known as No.17 Moor Avenue, in breach of Condition 4 imposed upon planning permission W98/1089 for in excess of ten years prior to the date on which the LDC application was made, such that pursuant to Section 171B(3) of the Town and Country Planning Act 1990 it has become immune from enforcement action and is lawful.

Signed

Paul Freer

Inspector

Date: 30 May 2025

Reference: APP/D3125/X/24/3340800

First Schedule

Material change of use of the former annexe to 17 Moor Avenue from accommodation ancillary to that dwelling to a separate dwelling known as 17A Moor Avenue.

Second Schedule

Land at No.17A Moor Avenue, Witney, Oxfordshire.

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 May 2025

by Paul Freer BA (Hons) LLM PhD MRTPI

Land at: No.17A Moor Avenue, Witney, Oxfordshire

Reference: APP/D3125/X/24/3340800

Scale: Not to scale

