

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-0520-22 **Applicant:** Mr D Pite

Proposal: The use for which a certificate of lawful use or development is sought, is the change of use of the building known as The Annexe from office use, to a lawful use as a separate, independent residential planning unit falling under User Class C4.

Location: Annexe Mercia Lodge 65 Pinchbeck Road

Terminal Date: 19th August 2022

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

Town and Country Planning Act 1990.

Representations:

	Object	Support	No Obj.	Comments
RESIDENTS	2	0	0	1

CASE OFFICER ASSESSMENT

Proposal

S191 LAWFUL USE CERTIFICATE - Use of building as one separate independent residential dwelling. Use Class C4.

Revised evidence has been submitted to clarify the residential use to be C4.

Site Description

The Annexe is located at the rear of Mercia Lodge at 65 Pinchbeck Road. The Annexe has vehicular access from a shared driveway.

History

H16-0687-01. Mercia Lodge, 65 Pinchbeck Road. OUTLINE. Erection of two dwellings. Refused. 8.10.2001. Allowed on appeal 1.8.2002.

H16-0606-16. 63 Pinchbeck Road. Residential development of one chalet bungalow following the refusal of H16-0263-15. Refused 6.02.2017. Appeal dismissed 18-05-2017.

H16-0654-21. FULL. Change of use of residential annexe to private dwelling separate from host dwelling including minor alterations to boundary treatments. UNDETERMINED.

Consultation Responses

SHDC Legal Service

I have looked at this application and I was expecting more evidence to show that the buildings had been in separate residential use; annual gas safety certificated (until prohibition notice served).

I looked at the Land Registry details to confirm that the sites are under separate titles, which they are. Although the plans do not tally with Exhibit 1 provided by the applicant. Obviously, without requesting Official Copies, I can't see how the Annexe is accessed. Although I suppose that is an issue for a potential purchaser to be concerned about. The fact that they have separate title numbers supports the evidence that the units are separate and individual.

Evidence Supplied:

17 September 2007 - Letter from previous owner to tenant of Room 3, Merica Lodge - notice to quit as selling with vacant possession
22 November 2008 - Tenancy agreement for Merica Lodge - Ground Floor Garden Room
19 April 2009 - Tenancy Agreement (Core Terms) - Merica Lodge (18-month let)
20 September 2010 - Landlord's Gas Safety Certificate - The Annexe
21 September 2010 - Landlord's Gas Safety Certificate - Merica Lodge
15 November 2011 - Private Sector Housing Letter aware Leathercote House, 11 Tower Lane, Spalding, is being rented as a HMO
16 November 2012 - Planning Enforcement letter aware of properties being used as HMO's
30 April 2013 - Private Sector Housing Letter aware of HMO use and works required to comply with HMO Regulations
Undated - 2 x tenancy agreement
5 October 2015 - Tenancy Agreement for Mercia Lodge - Room 9
5 October 2015 - Tenancy Agreement for Mercia Lodge - Room 3
16 February 2015 - Tenancy commencement date for the Annexe
16 February 2015 - Tenancy commencement date for the Annexe
16 February 2015 - Tenancy commencement date for Mercia Lodge
16 February 2015 - Tenancy commencement date for Mercia Lodge
16 February 2015 - Tenancy commencement date for Mercia Lodge
16 February 2015 - Tenancy commencement date for Mercia Lodge
16 February 2015 - Tenancy commencement date for Mercia Lodge
23 June 2015 - Tenancy agreement for Mercia Lodge - Room 6
22 September 2015 - tenancy agreement for Mercia Lodge - Room 9
6 October 2015 - Tenancy agreement for Mercia Lodge - Room 7
11 January 2017 - Private Sector Housing letter - Housing inspection notice
19 December 2021 - Prohibition Notice served in respect of both premises
25 March 2021 - Notice of Variation of Prohibition Notice in relation to the Annexe only.

The authors of objection 1 would not have seen any evidence of people renting the properties as the prohibition notice was served on 19 December 2018 (prior to them purchasing their property on 4 July 2019). At that point the premises were vacated and the tenants re-housed. The prohibition notice was only withdrawn in relation to the Annexe on 25 March 2021.

Based on the above information (including information from various Council departments), on the balance of probabilities, I consider that the buildings have been in separate residential use for a period exceeding 10 years.

The applicant cannot reside in Mercia Lodge due to the live Prohibition Notice.

The effect of the emergency prohibition order is to *prohibit, with immediate effect, the use of the*

House in Multiple Occupation for the following purposes:

Occupation of the premises

Housing may be able to provide more information about whether or not it can still be used as a dwellinghouse (in the traditional sense) whilst the order is in force. However, if the works specified in the notice are undertaken, then the notice can be withdrawn and use as a HMO can resume.

I don't consider this has any impact on the application. The current application is about showing that the properties are separate units (so possibly either or both can be sold individually).

Third Parties

Two objections have been submitted, raising the following matters (precised):

Objection 1

The fact the applicant chose to use the Annexe (Jap Lodge) as his dwelling house rather than the main building (Mercia Lodge) this should not give credence to the Annexe being classed as a Class 3 building as claimed by his agent.

As regards to its own postal address an Annexe does not have separate address, the main building is it's address. The applicant may have made arrangements for post to be delivered to the Annexe for his own convenience.

The applicant will most likely be producing Council Tax Bill payments as proof of residing in the Annexe. As Mercia Lodge is the main building, this is the property subject to council tax only and should be banded accordingly.

The applicant chose to reside in the Annexe instead of the main building, claiming he has always known the Annexe to be a separate dwelling. You would expect the applicant to possess all relevant legally required documents and paperwork when the annexe was sold to him as a separate dwelling. If not " a claim of he has always known it to be a separate dwelling" should under no circumstances be accepted.

The objector moved into their property on the 4/7/2021 Mercia Lodge and the annexe are both in close proximity to their house.

In the almost 3 years the objectors have lived there, they say that there has been no sign nor activity of persons or vehicles, several room lights on after darkness, excess rubbish placed out for collection or continual comings or goings from both buildings that would be associated with long term - short term tenants.

When the objector did arrive no one lived in Mercia Lodge and the applicant daughter was the only person living with him in the Annexe. She has left and came back short term in that time but is not residing there at this moment in time.

When the objectors family cat was trapped inside Mercia Lodge they had to knock at the annexe to ask the applicant to unlock the door of Mercia Lodge. On entering, it was not hard to see the building was completely unfurnished.

Objection 2

The proposed additional use of the driveway by Jap Lodge as a separate residence by up to 4 vehicles, currently used by 65a and 65b only past the boundary of Mercia Lodge, will

a) put additional strain on this area leading to additional driveway maintenance and cause additional traffic and people related noise/disturbance. This area of driveway is currently gravel rather than hard standing and is currently not adequately maintained by the owner of Mercia Lodge resulting in constant and large holes in the driveway which we, and occupants of 65a, have to use in order to exit on to Pinchbeck Road.

B) potentially be a safety risk to pedestrians using the driveway to access the properties as there is little room for both on the driveway and also to pedestrians walking past the end of the driveway where it meets the public highway

C) potentially cause overcrowding of vehicles on the driveway particularly visitors to Jap Lodge

We are also concerned over the contractual implications for driveway maintenance (which only 65a and 65b are currently responsible for) as this change will mean up to 4 additional vehicles of Jap Lodge will use a section of the driveway and how this may be impacted by an additional residence not in contemplation when contracts were agreed. Having relatively recently purchased our property in good faith based on the understanding that Mercia Lodge with annex was one property and not split into two separate residences and with its own significant driveway at the front this worries us.

Regarding the usage of Mercia Lodge. My wife and I moved into property on 15th August 2020. Since living here we have never seen anyone else living in or in the proximity of Mercia Lodge other than the owner Mr Pite and a female. However last summer we did see Mr Pite start taking collection of a number of small light goods vehicles/vans, which filled his driveway in front of Mercia Lodge, and advertise them for sale from the front driveway and this has happened numerous times since and also including throughout this year.

Otherwise we've seen no signs of anyone living in the Mercia Lodge property and indeed online property particulars - as he is currently trying to sell this property - show how unfinished and derelict the Mercia Lodge property is and is described as townhouse with annexe and in and out formal carriage driveway - see below link and description*

A Substantial Double Fronted Grade II Listed Victorian Townhouse
-Requiring a Full Programme of Modernisation for a Single Residence
-Located on Treelined Avenue Within Walking Distance of Facilities & Amenities
-Set Back From the Road,
-Benefitting From an In and Out Formal Carriage driveway

* Renovation project!

** Three bedroom annex included!

*** Some of the images are virtually staged for showcasing purposes

Further we are concerned given Mercia Lodge already looks unoccupied would the addition of a wooden fence to segregate the driveway to the left (looking at the property), leaving the main Mercia Lodge driveway unused, attract unwanted attention such as vandalism or squatters and the like (which cause issues for the neighbouring properties including 65a and 65b) as well as detract from the historic and intended look of this prestigious property on Pinchbeck Road.

Revised information

Further objections received:

Objection 1

As we pointed previously Jap Lodge seems to have been built from an outbuilding to Mercia Lodge, we are assuming without planning permission for this change to residential annexe to Mercia Lodge retrospectively. Jap Lodge will have benefited from the many benefits of being a residential annexe to the host dwelling over many years since its conception. Any council planning rules are to be taken seriously for everyones sake and not avoided by taking a less obvious route, even if this takes many years to reach the main objective, which has now been submitted as planning permission for "Chang of Use."

We object to Jap Lodge riding roughshod over the rules of the land, an annexe is an annexe and should never be accepted as a private dwelling separate from host dwelling. Furthermore we noted on planning application Reference H16-0654-21 on the 06/05/2022 SHDC Conservation Officer Who explained the former use of Jap Lodge annexe and in his opinion has no objections based on Conservation grounds. HOWEVER!!! the Conservation Office then goes on to make a strong, telling entry which clearly sums the situation up Conservation Office states The applicant and any subsequent owners of Jap Lodge should be aware that the property shall still be considered to be part of historic curtilage of Mercia Lodge and therefore shall be considered listed by association to the original host property. The potential approval of this application would not in any way alter the listed status of this site and the status of Jap Lodge upon the National Heritage list remains INEXTRICABLY tied to that of Mercia Lodge.

Our third point is the agents are the paid acting agents for the applicant and as such it is clearly in their financial interest to act on the applicant's information and wishes. We have very strong concerns that the applicant's agents, without question expect the council to grant this ever changing application on the grounds that the applicant has signed a "Signed Declaration." and also accept the preposterous term of "balance of probability."

Surely due to the seriousness of this matter, ALL evidence held by the applicant should be submitted at this stage, so decisions can be made to put an end to this ever evolving story. Not to mention the unnecessary waste of time and expense to the Council, council's lawyers and ultimately the taxpayers.

As Jap Lodge is the Annexe of Mercia Lodge and is therefore situated on the land of Mercia Lodge, ALL land surrounding Jap Lodge is legally owned by Mercia Lodge. This is a major issue as granting permission to Jap Lodge does not automatically give it the land the applicant claims it owns. Access to Jap Lodge can only be given by the future owner of Mercia Lodge on goodwill as they will legally own the ground. This goodwill can be withdrawn at any time if the owner chooses as this will not be a legal requirement.

Objection 2

I refer to our previous comments made on the 2 previous attempts to put this through. As nothing has changed I am at a loss to understand why our council are wasting even more of our money on this matter. Especially in view of the response provided by their specialist, details below. However, the applicant and any subsequent owners of Jap Lodge should be aware that the property shall still be considered to be a part of the historic curtilage of Mercia Lodge and therefore shall continue to be considered listed by association to the original host property. The potential approval of this application would not in any way alter the listed status of this site, and the status of Jap Lodge upon the national heritage list remains inextricably tied to that of Mercia Lodge.

Planning Considerations

This is a legal determination and planning policy is not relevant to the determination as to whether the claimed use is indeed lawful. The decision is based upon officers' judgment as to the case being proven on the balance of probabilities.

The applicant has submitted the following evidence in support of the claim:

An amended planning statement

Evidence to support application, including the following Exhibits:

Exhibit 1 -

Statutory Declaration. D Pite. 13.5.22

Exhibit 2 -

17 September 2007 - Jdl/gen12. Letter from previous owner to tenant of Room 3, Mercia Lodge

Exhibit 3 -

19 April 2009 - Tenancy Agreement (Core Terms) - Mercia Lodge (18-month let)

Exhibit 4 -

20 September 2010 - Landlord's Gas Safety Certificate - The Annexe

21 September 2010 - Landlord's Gas Safety Certificate - Mercia Lodge

Exhibit 5 -

SHDC. Emergency Prohibition Order Ref. 1996. 19 December 2018

Exhibit 6 -

British Gas. Account A3160135. Invoice date 13/02/08

British Gas. Account A3160135. Invoice date 13/05/08

British Gas Business. Account A3055637. Invoice date 21/05/08

British Gas Business. Account A3055637. Monthly Summary 13/05/08

Anglian Water Account 163682685. Statement date 18 April 2022

SHDC Council Tax Bill Account 302189919. Property Ref 70512232. Date 19.04.2022

British Gas. Customer Number 851012511608. 5 April 2022

SHDC. Emergency Prohibition Order Ref. 1996. 21 March 2021
SHDC Notice of Variation of Prohibition Order. 25 March 2021

Exhibit 7 -

SHDC letter ENF-415-11-E16. 16 November 2012. Kate Bellamy
SHDC letter SAJ/PSH. 15 November 2011. Stuart Johnson
SHDC letter. LMH/HMO/067. 30 April 2013. Lyn Harvey
SHDC letter. LMG/HHSRS/026. 11 January 2017. Lois Goodley

Exhibit 8 -

Undated tenancy agreement
Undated tenancy agreement. The Annexe
Tenancy agreement. 16 Feb 2015. The Annexe
16 February 2015 - Tenancy commencement date for the Annexe
House/Flat share Agreement. Date unclear. Mercia Lodge
22 September 2015 - tenancy agreement for Mercia Lodge - Room 9
16 February 2015 - Tenancy commencement date for Mercia Lodge
6 October 2015 - Tenancy agreement for Mercia Lodge - Room 7
23 June 2015 - Tenancy agreement for Mercia Lodge - Room 6
16 February 2015 - Tenancy commencement date for Mercia Lodge
16 February 2015 - Tenancy commencement date for 65 Pinchbeck Road. Garden Room
16 February 2015 - Tenancy commencement date for 65 Pinchbeck Road. Garden Room
16 February 2015 - Tenancy commencement date for Mercia Lodge
16 February 2015 - Tenancy commencement date for Mercia Lodge
Shared Occupation agreement. Room 9. 5th October 2014
Shared Occupation agreement. Room 3. 5th October 2014

Case law has established that in order to become immune from enforcement and therefore lawful, the breach must be continuous for a period of at least 10 years.

In the absence of any evidence to the contrary, and based on the above information (including information from various Council departments), on the balance of probabilities, it is considered that the buildings (Mercia Lodge and the Annexe building) have been in separate residential use for a period exceeding 10 years since the breach of planning control, thereby making it immune from planning enforcement.

It is therefore considered appropriate to issue a certificate of lawfulness.

Conclusion

Approve.

Additional Considerations

Objectors have set out planning objections to the use of the property as a separate unit, but do not address this Certificate application. It is considered that the matters raised do not inform the Certificate application merits.

Similarly, it is possible that a building can be occupied separately but still be considered to be a listed building through historic association.

Civil matters relating to the maintenance of the access way are outside the remit of this certificate application.

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act

B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the

special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.