

BRACKNELL FOREST BOROUGH COUNCIL

DELEGATED REPORT

APPLICATION NO: 12/00844/LDC
OFFICER: Jason Varley

DESCRIPTION: Application for a certificate of lawfulness for the retention of the annex as a separate dwelling
 LOCATION: The Annex - ~~Status Pending~~ *Blackthorn Cottage*, Chawridge Lane Winkfield

Week No	43/2012	Registered	18.10.2012	Expiry	13.12.2012
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SITE VISIT NOTES (separate sheet attached? Y / N)	DATE UNDERTAKEN
See case officer summary	

CONSULTATIONS & REPRESENTATIONS RECEIVED

<u>Consultee(s)</u>	<u>Reply Date</u>	<u>Consultee Comments</u>
Winkfield Parish Council	07.11.2012	Recommend refusal: Winkfield Parish Council are concerned that this flouts Green Belt Policy. We are disappointed that the matter was not addressed when BFC became aware of the separate dwelling back in May 2010. We would like to query if this in breach of any pre-existing non-alienation clause.

POLICIES:

CASE OFFICER'S SUMMARY:

1.0 The Annex, Blackthorn Cottage, Chawridge Lane, Winkfield, Windsor, Berkshire SL4 4QR

Retention of 'The Annex' as a separate dwelling.

1.1 Site description

Blackthorn Cottage is a residential single storey property with an outbuilding, known as 'The Annex', situated to the front right hand side of the main dwelling. The outbuilding which it is understood was originally a double garage was converted into living accommodation in 2005. The accommodation in the Bungalow consists of one bedroom at first floor level, living/dining room, kitchen, hall and wc/shower room. Additionally, it has a small amount of private external space and a shed. Access to it is from the driveway on to Chawridge Lane and there is space for on-site parking for one vehicle.

1.2 Relevant period:

18.10.2008 - 18.10.2012 (4 years) - Use of 'the annex' as a separate dwelling

1.3 Site visit:

A visit was carried out on 20 September 2012 in the company of Tara Perry, the applicant. Only the exterior of the property was observed. The annex and its external amenity space were observed. The cottage and annex are located in a quiet rural lane with no immediate neighbours. The main dwelling had a small garden and parking to the front and a row of barns/stables to the rear. There is an "in and out" drive for which access and there is currently no physical barrier between the two.

2.0 Summary of the evidence submitted

2.1 Information in form of signed Statutory Declaration received from:

(i) Tara Samantha Perry dated 09.10.2012

2.1(i) Tara Samantha Perry signed statement dated 09.10.2012

She and her husband purchased Blackthorn Cottage on 17 March 2010 shown edged blue on the attached plan. The property was subsequently transferred into her sole name. The garage had already been converted into an independent annex to the main dwelling and was being rented out at the time of the purchase.

The annex has its own designated parking space and use of part of the outbuildings for storage (shown edged red on plan).

Planning permission was granted in 1977 (604007) for the erection of a double garage and there was no planning condition placed on that permission limiting the conversion of the garage for residential purposes.

In 2005 the previous owners were informed by letter from Bracknell Forest Council that planning permission would not be required for the conversion of the garage provided that "living accommodation will be occupied as an annex, ancillary to Blackthorn Cottage. Planning permission will be required if the proposed accommodation is occupied as a self-contained, independent dwelling".

The previous owners, Dr and Mrs Morton, carried out the conversion works in February to May 2005. These consisted of internal changes to allow for a kitchen, bathroom, lounge/diner and first floor bedroom, which resulted in an independent dwelling being created.

The annex was first occupied by Dr and Mrs Morton's son and daughter-in-law until they left Berkshire in 2007, this is confirmed in an e-mail from Dr Morton attached.

Dr and Mrs Morton then rented the property to Joe Wood from 1 October 2007 to 5 July 2008 (tenancy agreement and e-mail confirmation attached).

When the tenancy expired Dr and Mrs Morton undertook upgrading works, including decorating and replacing the cooker. They still tried to attempt to rent out the annex during the works using local contacts and connections. This was unsuccessful so they instructed Chancellors letting agents.

From 21 October 2008 to 2010 the annex was rented to John Pye (tenancy agreements attached). She and her husband inherited him as a tenant when they bought property on 17 March 2007. They retained Chancellors as the letting agent and had a new tenancy agreement drawn up. Attaches tenancy agreements form 23 March 2020 to date.

She started paying Council Tax for the Annex independent of Blackthorn Cottage from 11 May 2010.

Since 2005 the Annex has been used independently from Blackthorn Cottage and occupied on a continuous basis.

2.2 Further information:

- (i) Application form
- (ii) Bracknell Forest Council letter dated 18 January 2005
- (iii) Bracknell Forest Householder Enquiry Form date stamped 22 December 2004
- (iv) Floor plans and cross-sectional drawing
- (v) E-mail from (Dr) Alan Morton dated 23 September 2012
- (vi) E-mail from Joe Wood to Alan Morton dated 23 Sept 2012
- (vii) Tenancy Agreement dated 15.09.2007 signed by Alan Morton and Joe Wood for The Pad, Blackthorn Cottage.
- (viii) Assured Shorthold Tenancy Agreement dated 21.10.08 with John Pye for the period 23.10.08 to 22.10.09 signed by John Pye 21.10.08.
- (ix) Assured Shorthold Tenancy Agreement dated 23.09.09 with John Pye for the period 23.10.09 to 22.10.10 signed by John Pye 05.09.09.
- (x) Assured Shorthold Tenancy Agreement dated 23.03.10 with John Pye for the period 23.03.10 to 22.03.11 signed by John Pye 18.03.10.
- (xi) Tenancy Details form for period dated 23.03.11 to 22.03.12 for John Pye (tenant)
- (xii) Assured Shorthold Tenancy Agreement dated 23.03.11 with John Pye for the period 23.03.11 to 22.03.12 signed by John Pye 21.03.11.

(xiii) Assured Shorthold Tenancy Agreement dated 23.05.12 with John Pye for the period 23.05.12 to 22.05.15 signed by John Pye 16.05.10.

(xiv) Letter from Taylor Vinters dated 13 November 2012 (received 19 November 2012).

2.2(i) Application Form

It is confirmed in:

Section 8 that 'The Annex' is a "dwelling house".

Section 10 that the use or activity began, or the building works were substantially completed on 1 October 2007 and that there has not been any interruption in the use.

2.2(ii) Bracknell Forest Council letter dated 18 January 2005

The letter from Bracknell Forest Council that planning permission would not be required for the conversion of the garage provided that "living accommodation will be occupied as an annex, ancillary to Blackthorn Cottage. Planning permission will be required if the proposed accommodation is occupied as a self-contained, independent dwelling".

2.2(iii) Bracknell Forest Householder Enquiry Form date stamped 22 December 2004

The proposal was for "Internal changes to existing detached garage (used as domestic, workshop/store) to living accommodation".

2.2(iv) Floor plans and cross-sectional drawing

Showing the internal accommodation comprising kitchen, hall, wc/shower room, lounge/dining and first floor bedroom.

2.2(v) E-mail from (Dr) Alan Morton dated 23 September 2012

The e-mail confirms that the annex was occupied by his son and his wife until they left Berkshire in September 2007. Following that they let it to Joe Wood from 1 October 2007 to 5 July 2008. After that they redecorated and installed a new cooker. They attempted to find a new tenant via personal contacts but failed and then used Chancellors Lettings Department. They found a new tenant, John Pye who occupied it from 22 October 2008.

2.2(vi) E-mail from Joe Wood to Alan Morton dated 23 Sept 2012

He confirms that he rented Blackthorn Cottage Annex from Alan Morton. To the best of his knowledge this was during the period 1 October 2007 to 5 July 2008.

2.2(vii) Tenancy Agreement dated 15.09.2007 signed by Alan Morton and Joe Wood for The Pad, Blackthorn Cottage

2.2(viii) Assured Shorthold Tenancy Agreement dated 21.10.08 with John Pye for the period 23.10.08 to 22.10.09 signed by John Pye 21.10.08

2.2(ix) Assured Shorthold Tenancy Agreement dated 23.09.09 with John Pye for the period 23.10.09 to 22.10.10 signed by John Pye 05.09.09

2.2(x) Assured Shorthold Tenancy Agreement dated 23.03.10 with John Pye for the period 23.03.10 to 22.03.11 signed by John Pye 18.03.10

Special Letting Terms - Special Provisions on page 13 stating that the Landlord pays the Council Tax and water charges. The Landlord to provide the tenant with the electricity meter readings (which is separately metered in Blackthorn Cottage) on a quarterly basis to enable the tenant to pay the relevant supplier.

(xi) Tenancy Details form for period dated 23.03.11 to 22.03.12 for John Pye (tenant)

(xii) Assured Shorthold Tenancy Agreement dated 23.03.11 with John Pye for the period 23.03.11 to 22.03.12 signed by John Pye 21.03.11

Special Letting Terms - Paragraph 3.1 on page 3 stating that the Landlord pays the Council Tax and water rates. Electricity is separately metered in Blackthorn Cottage and the Landlord is to supply the Tenant with a meter reading on a quarterly basis for payment to the relevant supplier.

(xiii) Assured Shorthold Tenancy Agreement dated 23.05.12 with John Pye for the period 23.05.12 to 22.05.15 signed by John Pye 16.05.10

Special Letting Terms - Special Provisions on page 12 stating that the Landlord pays the Council Tax and water charges. The Landlord to provide the tenant with the electricity meter readings (which is separately metered in Blackthorn Cottage) on a quarterly basis to enable the tenant to pay the relevant supplier.

(xiv) Letter from Taylor Vinters dated 13 November 2012 (received 19 November 2012)

The annex has been continuously occupied by John Pye from 21 October 2008 to date. When Mrs Perry purchased the property, council tax was not paid initially for Blackthorn Cottage, on the basis that extensive refurbishment works were undertaken prior to renting it out. In relation to the annex council tax has been paid by Mrs Perry from 17 March 2010. The Council's tax assessor informed Mrs Perry that there are two separate dwellings on the property, both of which attract a council tax liability.

Concern that both Blackthorn Cottage and The Annex had not been fully occupied separately during the 4 year period not representing a breach of planning control and that they were incidental to one another is incorrect.

The need for the two dwellings to be occupied independently from one another for a continuous four year period is incorrect. The correct question to start with is how has the annex been occupied and is the annex linked to the main house. The courts are insistent that each case is considered on its own merits as a matter of fact and degree. They look at whether there is any functional and physical separation of activity on the site.

The layout plans submitted make it clear that the former garage has been physically altered so that two separate residences have been formed and that the annex has all the necessary facilities and accommodation for entirely separate and individual use. There is no physical connection with the main dwelling. The annex is designed so that the occupier can lead an entirely separate life to the occupier of the main house.

There is separate access off Chawridge Lane and it has its own designated parking. The occupants of the two properties need never have any interaction to live harmoniously on the site. Previous appeal decisions have concluded that there is a breach at the point of physical conversion of a garage and when the new units become available for occupation. This is backed up by the fact that the Council's own tax assessor believes there are two dwellings and have separate tax liability. (Officer Comment: It is the Valuation Office who rate new dwellings and the fact that there may be two council tax liabilities does not necessarily mean there has been a material change of use in planning terms). The Council Tax department confirmed that council tax should have been paid by the previous owner but they will not pursue Mrs Perry for this.

In the Arun DC v FSS [2006] EWCA Civ 11272 it was confirmed that any breach of planning control which results in a change of use to a single private dwellinghouse then it is the four year rule that applies. A considerable amount of evidence has been provided that proves that on the "balance of probabilities", the annex has been occupied by a person with no connection to the main dwelling. In addition there is corroborative evidence from the Council tax department.

The Council need to consider the facts of the case in terms of:

- o Was the occupation continuous for four years?
- o Is there a sufficient degree of physical separation from the main house and annex?
- o Is there/or has there been a link between the occupier of the annex and main house?
- o Is Council Tax paid as a separate dwelling?

The answer to all these questions has been provided and backed up by strong evidence. The evidence to show the degree of physical separation is strong and so is the evidence relating to continued occupancy. A certificate should be issued.

3.0 Council's evidence

3.1 Relevant Building Control:

FP10591 Closed 13.11.1998 - Single storey dwelling annex.

3.2 Relevant Planning and Planning Enforcement history:

623222 - Erection of single storey extension to existing garage approved 6 January 1998.

623804 - Extension to existing playroom to provide additional living accommodation ancillary to existing main dwelling following demolition of existing garage and store approved 6 December 1996.

EN/12/00240/UCOU - Garage used as separate dwelling and extension of curtilage.

3.3 Council Tax:

Confirm that The Annexe at Blackthorn Cottage has been on the Council Tax Valuation List from 17 March 2010. The Council Taxpayers for The Annex are Mr Martin G Perry & Mrs Tara S Perry of Vine Cottage, Winkfield Lane, Winkfield, Windsor, SL4 4QS.

The 'main house', Blackthorn Cottage, was in the name of Doctor Alan J Morton upto 16 March 2010. From 17 March 2010 - 30 March 2011 Council Tax was levied against Mr & Mrs Perry on the basis that the property was unoccupied. From 31 March 2011 to the present Mr Zak Tolley & Mrs Rebecca Cross-Tolley have been held liable.

3.4 Electoral Registration:

Confirm that The Annex was only added to the register in August 2012.

3.5 Aerial Photographs

All of the following aerial photographs show the garage in situ:

9 September 1999

3 August 2003

29 July 2006

22 September 2010

4.0 Analysis

Occupancy of The Annex from September 2007 to present:

Names Dates of Occupancy

Supporting Documents

Dr and Mrs Morton's son and wife September 2007 E-mail dated 23 Sept 2012

Joe Wood 1 October 2007 to 5 July 2008 Tenancy Agreement

E-mail dated 23 Sept 2012

John Pye 21 October 2008 to present

Tenancy Agreements

Use of The Annex as a separate dwelling house

On the basis of the evidence it appears clear that The Annex shown edged red on the plan, date stamped 18 October 2012, submitted with the application was erected more than 4 years prior to the application which is substantiated by the aerial photographs. It has been rented out since 1 October 2007 to the present day, a period of 5 years. Since 21 October 2008 it has been rented to the same tenant who has lived independently of the Blackthorn Cottage.

The Annex is capable of being occupied separately from the main house as it has all of the facilities required for independent living (eg kitchen, wc/shower room). It is clear from the 'Special Letting Terms' in the later Tenancy Agreements that the electricity is separately metered in Blackthorn Cottage and the Landlord supplies the tenant with a meter reading on a quarterly basis for them to make payment to the relevant supplier. The landlord pays the Council Tax and water rates.

The Annex has its own curtilage, including a separate shed/store and land to the front used for parking although this is not separated from Brock Hill Cottage. It shares an access and drive with Blackthorn Cottage (which has two accesses) from Chawridge Lane. There is sufficient space to park without impinging on the access or parking space required by the Cottage. There is an "in and out" drive for which access could be kept separate for each dwelling, if required. There is currently no physical barrier between the two.

The information contained in Tara Perry, the applicant, statement dated 09.10.2012 explains the history of the garage building, date of purchase and occupancy, which is corroborated by tenancy agreements. She explains the reason for the gap between July and October 2008 was due to redecoration and the search for a new tenant by the previous owner.

Council records indicate that Council Tax for the Annex has only been paid from 17 March 2010 when it was brought onto the Council Tax Valuation List. No one has been listed on the electoral register until August 2012. These do not cover the required 4 year period so do not support the applicant's claims.

The question of Blackthorn Cottage not being separately fully occupied during the whole of the 4 year qualifying period arises as the occupation of one of the two dwellings on the site may not represent a breach of planning control if they could have been considered incidental to one another.

The applicant's agent stated that the need for the two dwellings to be occupied independently from one another for a continuous four year period is incorrect. They say the correct question is how has the annex been occupied and is the Annex linked to the main house. The courts are insistent that each case is considered on its own merits as a matter of fact and degree. They look at whether there is any functional and physical separation of activity on the site.

It is clear that the former garage has been physically altered so that two separate residences have been formed and that the Annex has all the necessary facilities and accommodation for entirely separate and individual use. There is no physical connection with the main dwelling. The annex is designed so that the occupier can lead an entirely separate life to the occupier of the main house.

The occupation of the Annex has been continuous for a period of four years. It is physically separate from Blackthorn Cottage, apart from the possible sharing of one of the driveways. There is no suggestion of any current or historical connection, during the 4 year qualifying period, between the occupier of the annex and main house therefore it has not been occupied incidental to the main dwelling.

The findings of the Arun DC v FSS [2006] case are that the '4 year rule' is the relevant period to consider in this case as the use relates to the creation of an additional dwellinghouse. On the basis of the information supplied it appears that the use of the Annex as a separate dwelling house has existed for 4 years prior to the submission of this application and has therefore 'on the balance of probabilities' acquired lawfulness.

5.0 Recommendation

(i) That, on the basis of the evidence available and on the balance of probability it has been demonstrated that the change of use of The Annex at Blackthorn Cottage, Chawridge Lane, Winkfield, Berkshire from an ancillary building to Blackthorn Cottage to an independent private dwelling commenced in excess of 4 years prior to the date of the application and has continued without break since commencement and is not in breach of any enforcement action and is therefore considered lawful for the purposes of S.191 of Town and Country Planning Act 1990.

First Schedule

The residential occupation of the land and building shown edged red on the site location plan attached hereto as a single dwellinghouse.

Second Schedule

Land and building known as The Annex, Blackthorn Cottage, Chawridge Lane, Winkfield, Windsor, Berkshire SL4 4QR

This recommendation had been agreed by Legal confirmed by e-mail dated 5 December 2012.

CASE OFFICER'S CONCLUSION:

RECOMMENDATION:

[For approvals state s106 requirements, conditions, informatives and summary. For refusals state reasons.]

Recommendation: **APPROVE**

Date of Recommendation: 06.12.2012

01. The residential occupation of the land and building shown edged red on the site location plan attached hereto as a single dwellinghouse.
02. Land and building known as The Annex, Blackthorn Cottage, Chawridge Lane, Winkfield, Windsor, Berkshire SL4 4QR
03. On the basis of the evidence available and on the balance of probability it has been demonstrated that the change of use of The Annex at Blackthorn Cottage, Chawridge Lane, Winkfield, Berkshire from an ancillary building to Blackthorn Cottage to an independent private dwelling commenced in excess of 4 years prior to the date of the application and has continued without break since commencement and is not in breach of any enforcement action and is therefore considered lawful for the purposes of S.191 of Town and Country Planning Act 1990.

<p>Note: Under the BFBC's scheme of delegation this application has been considered in accordance with the Human Rights Act 1998.</p>						
Decision Notice to?	Parish Council	Compliance	LAO	Other	Specify	
Notes for WP Administrator:-			Date Legal Agreement Signed			
PI App Monitoring Check List	Yes / No	Temporary Register	Yes / No	Telecom Register	Yes / No	
CHECKED – Case Officer	DATE 06/12/12	Team Leader/Section Head <i>J. Polnik</i> 6.12.12		DECISION DATE 06/12/12		