



---

# Appeal Decision

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21<sup>st</sup> October 2020

---

**Appeal Ref: APP/F5540/X/19/3230976**

**8 The Pavement, Popes Lane, South Ealing, London W5 4NG**

- 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 Mr Zulfiqar Ahmed against the decision of the Council of the London Borough of Hounslow.
  - The application Ref 00886/8A/LAW1, dated 3 January 2018, was refused by notice dated 18 December 2018.
  - 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 the use of the rear portion of the ground floor as a self-contained residential unit.
- 

## 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 considered to be lawful.

## Preliminary matter

2. I consider this appeal can be determined without the need for a physical site visit given the written submissions and grounds of appeal pleaded. Both the appellant and the Council have agreed to the appeal proceeding on this basis.
3. The Council has previously served an enforcement notice, requiring this use to cease. That notice was the subject of an appeal<sup>1</sup> on various grounds, including ground (d); that the period of taking enforcement action has passed. That appeal was determined by way of an Inquiry, with the evidence being tested under oath. The appeal succeeded on ground (d) and the notice was quashed on 5 April 2019.
4. Section 191(2)(b) of the Act<sup>2</sup> confirms that uses or operations are lawful at any time if "they do not constitute a contravention of any of the requirements of any enforcement notice then in force". S175(4) states "where an appeal is brought under s174 the enforcement notice shall [subject to any order under s289(4A)] be of no effect pending the final determination or withdrawal of the appeal". As the notice had been appealed, it ceased to be in force at the time the LDC was applied for.
5. There is inconsistency between the site address as set out in the application form and the Council's decision notice. The application form and the previous enforcement appeal identify the site as "8 The Pavement". Whereas, the appellant's evidence identifies "8A The Pavement" as being a first-floor self-

---

<sup>1</sup> APP/F5540/C/18/3192575

<sup>2</sup> Town and Country Planning Act 1990 as amended

contained residential unit. This appeal relates only to the use of the ground floor and I therefore find the application form to be correct.

## Reasons

6. The **main issue** is whether the Council's refusal to issue a LDC is well founded. This turns on whether the appellant can show, on the balance of probability, that the change of use of the rear portion of the ground floor as a self-contained residential unit took place more than 4 years before the date of the application (ie on or before 3 January 2014) and has continued without material interruption thereafter, so as to be immune from enforcement.
7. The burden of proof rests with the appellant and the evidence must be sufficiently precise and unambiguous. There should also be no evidence that contradicts the appellant's version of events.
8. The appellant has provided a substantial amount of evidence to support his claim. This includes, amongst other things, sworn declarations from himself, various family members, statements from neighbours, council tax documentation and tenancy agreements. While aspects of the appellant's evidence are ambiguous and contradictory, aspects such as the Council's moving-in notification and the statutory declarations give credence to the ground floor residential use commencing before the relevant date and continuing without material interruption.
9. The evidence has previously been tested at Inquiry and it is generally accepted that the person who hears the evidence is the one best placed to judge its veracity<sup>3</sup>. The previous Inspector attached considerable weight to the statutory declarations relating to when the ground floor was occupied residentially and attached very significant weight to the Council's moving-in notification dated 26 July 2013. The lengths the appellant had gone to address the matter through the two prior approval and two LDC applications were also considered of note. I find no reason to deviate from the previous Inspector's findings on the evidence and concur that, on the balance of probability, the use commenced before the relevant date.

## Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the rear portion of the ground floor as a self-contained residential unit was 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.

*M Madge*

INSPECTOR

---

<sup>3</sup> *Biogen v Medeva* [1997] RPC 1 at paragraph 54

---

# 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 3 January 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged with a broken black line 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 use of the rear portion of the ground floor as a self-contained residential unit began more than 4 years before the date of the application and continued thereafter; and

The use does not contravene the requirements of any enforcement notice in force.

Signed

*M Madge*  
Inspector

Date

Reference: APP/F5540/X/19/3230976

## **First Schedule**

The use of the rear portion of the ground floor as a self-contained residential unit.

## **Second Schedule**

Land at 8 The Pavement, Popes Lane, South Ealing, London W5 4NG

## 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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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:

**by M Madge DipTP MRTPI**

**Land at: 8 The Pavement, Popes Lane, South Ealing, London W5 2NG**

**Reference: APP/F5540/X/19/3230976**

Not to Scale

