



Appeal Decisions

Site visit made on 4 January 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2023

Appeal A Ref: APP/L5810/W/21/3289357

341 Upper Richmond Road West, East Sheen, London, SW14 8QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Curran Properties Ltd against the decision of Richmond Upon Thames London Borough Council.
 - The application Ref 21/2272/GPD13, dated 22 June 2021, was refused by notice dated 20 August 2021.
 - The development proposed is prior approval for the partial change of use of the ground floor at 341 to residential use.
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Appeal B Ref: APP/L5810/X/21/3289354

341 Upper Richmond Road West, East Sheen, London, SW14 8QN

- 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 Curran Properties Ltd against the decision of Richmond Upon Thames London Borough Council.
 - The application ref 21/3509/PS192, dated 6 October 2021, was refused by notice dated 5 November 2021.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is creation of a mezzanine floor.
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Appeal C Ref: APP/L5810/X/22/3290451

341 Upper Richmond Road West, East Sheen, London, SW14 8QN

- 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.
 - The appeal is made by Curran Properties Ltd against the decision of Richmond Upon Thames London Borough Council.
 - The application ref 21/4043/PS192, dated 18 November 2021, was refused by notice dated 7 January 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is addition of a mezzanine floor to consented ground floor studio flat upon the establishment of residential use.
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Decisions

Appeal A

1. The appeal is allowed and prior approval is deemed to be granted under the provisions of Article 3(1) and Schedule 2, Part 3, Class M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the partial change of use of the ground floor at 341 to residential use at 341 Upper Richmond Road West, East Sheen, London, SW14 8QN in accordance with the application Ref 21/2272/GPD13 made on 22 June 2021, and the details submitted with it, including plan numbers 1484.02.03.Exg.001; 1484.02.03.Exg.002; 1484.01.03.Exg02.022.A Rev A; 1484.01.03.Exg02.060; 1484.01.03.Exg02.061; 1484.04.03.Pln06.022-M.A Rev A; 1484.04.03.Pln06.022.A Rev A; 1484.04.03.Pln06.040; 1484.04.03.Pln06.060; and 1484.04.03.Pln06.061, and subject to the conditions of paragraph M.2(3).

Appeal B

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

Appeal C

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

Applications for costs

4. Applications for costs in respect of Appeals A, B and C were made by Mr Mike Curran against Richmond Upon Thames London Borough Council. Those applications are the subject of separate decisions.

Preliminary Matters

Appeal A

5. I have taken the description of development from the appeal form rather than the application form, as it sets out the use proposed.
6. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force on 1 September 2020, amending the Town and Country Planning (Use Classes) Order 1987. The amendments to the Use Class Order created a new commercial, business and service use class (Class E), which incorporates the previous shops (A1), financial and professional services (A2) and offices (B1) use classes.
7. As from 1 August 2021, a new 'Class MA' was brought into effect in Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), which provides permitted development rights for a change of use of a building from a use falling within Class E to a use falling within Class C3 (dwellinghouses).
8. However, in this case, the Council's determination was applied for in advance of the 31 July 2021 deadline set out under paragraph M.2(3)(c) to Part 3 of the GPDO. That means that transitional provisions apply and the appeal should be

determined in accordance with the GPDO that was in force immediately before 1 August 2021.

9. Subject to limitations and conditions, Schedule 2, Part 3, Class M of that GDPO permits the change of use of a building from a use falling within Class A1 (shops) or Class A2 (financial and professional services) to a use falling within Class C3 (dwellinghouses), along with building operations reasonably necessary to convert the building.

Appeals B and C

10. An application under s192(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act) seeks to ascertain whether: (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land would be lawful.
11. I have noted the appellant's reasons for making the applications, including the lack of space in the studio unit, floor to ceiling heights and levels of daylight. I have also noted his submissions that he is a responsible local developer helping to maintain the vitality and viability of the high street. However, such considerations relate to the planning merits and can form no part of the assessment of an application for a LDC, which must be considered in the light of the facts and the law.
12. The burden of proof lies with the appellant to make his case and the relevant test is 'the balance of probabilities' (that it is more probable than not).

Appeal B

13. The appeal form cites application reference number 21/4043/PS192. However, that reference is also cited in the appeal form for Appeal C. All other documentation cite application reference number 21/3509/PS192 for Appeal B. I have therefore determined the appeal on the basis of the application allocated the latter reference number.

Background – Appeals A, B and C

14. The appeals relate to a former bank. Planning permission was granted in April 2020 for, amongst other things, the change of use of part of the ground, first and second floors from Class A2 to Class C3 residential use along with operational development to create six flats¹.
15. An application for the prior approval of the Council was also granted in July 2020 for the part change of use of the ground floor from A2 (financial institution) to C3 (residential studio unit) with associated fenestration alterations².
16. A further application was approved in November 2021 for the change of use of the remainder of the ground floor from Class E (formerly Class A2) to flexible Class E, F.1 and F.2, excluding day nursery³.

¹ Ref: 20/0303/FUL

² Ref: 20/1405/GPD13

³ Ref: 20/2519/FUL

Appeal A

Main Issues

17. The main issues are whether prior approval is deemed to be granted, and, if not, whether the prior approval application was made before beginning the development as required by Class M Condition M.2(1).

Reasons

18. As explained, part of the appeal site benefits from a prior approval for a residential studio unit. The proposed retains the ground floor area of the residential studio unit but with a mezzanine floor directly above it and extending into the adjacent commercial space within the building.
19. It is undisputed that the Class M limitations set out in paragraph M.1 are met. The matter in dispute is Condition M.2(1) which is that *'where the development proposed is development under Class M(a) together with development under Class M(b), development is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required...'*
20. Article 7 of the GPDO states that *'Where, in relation to development permitted by any Class in Schedule 2 which is expressed to be subject to prior approval, an application has been made to a local planning authority for such approval or a determination as to whether such approval is required, the decision in relation to the application must be made by the authority— (a) within the period specified in the relevant provision of Schedule 2., or (c) within such longer period as may be agreed by the applicant and the authority in writing'*.
21. Class W of Schedule 2 sets out the procedure for applications for prior approval under Part 3 and states in sub-paragraph 11(c) that the development must not begin before the expiry of 56 days following the date on which the application under sub-paragraph 11(2) was received by the local planning authority without the authority notifying the applicant as to whether prior approval is given or refused.
22. The effect of Article 7 and Class W of Schedule 2 is that if the local planning authority does not make a determination or notify the appellant of their decision within the 56 day statutory period, prior approval is then deemed to be granted.
23. The statutory period for determination as to whether prior approval is required will not start unless and until all the required information has been received. The appellant has highlighted in his cost application, rather than his grounds of appeal, that the application for prior approval was submitted on 22 June 2021. The Council also record that as the date of receiving the application.
24. However, it appears that the drawings were rejected by the Council and amended plans were submitted before the application was validated on 28 June 2021. Extracts of the submitted proposed ground and first floor plans appear to differ from those subsequently validated only in annotation and shading of the area related to the prior approval application.

25. The appellant submits that the original drawings satisfied the relevant requirement of the GPDO, so the application was valid on submission and should have been determined within 56 days, that is, by 17 August 2021. The Council's decision notice is dated 20 August 2021.
26. I agree that the plans, in conjunction with the submitted supporting statement were sufficient for the purposes of meeting the application requirements set in sub-paragraph 2 of Class W of Part 3 of Schedule 2 of the GPDO.
27. However, it is reasonable to assume, in the absence of evidence to the contrary, that following the Council's rejection of the initial drawings, the appellant subsequently submitted amended plans. By doing so, it raises the question as to whether the appellant initially accepted that the Council did not have all of the required information to trigger the start of the statutory period for determination. At the same time, the Council may have assumed the appellant's position to be just that. I say may have, because the Council has not made any submissions on the issue of whether prior approval was deemed to be granted, nor has it claimed that an extension of time was agreed.
28. Nevertheless, where an application for a determination as to whether prior approval is required complies with the statutory requirements and is valid, the statutory period runs from that date. In *Murrell*⁴, it was held in that the prior approval procedure is attended by the minimum of formalities and handling mistakes by the local planning authority involved and the fact that the applicant submitted a new form and further plans (as requested) did not stop the clock running. On the expiry of the statutory period, permission had been deemed to be granted.
29. On the balance of probabilities, the same can be applied to the circumstances of this case. The Council failed to issue a decision in the statutory period and the principle established in *Murrell* holds good. Therefore, the appeal should be allowed on the basis that prior approval is deemed to be granted by the GPDO.
30. As prior approval is deemed to be granted, then it does not matter whether the prior approval application was made 'before beginning the development' as required by Condition M.2(1). The Council's failure to refuse the application within the statutory period means that I cannot address any questions of lawfulness or about the prior approval matters. For the same reasons, the Council's suggested conditions cannot be imposed, even if I considered them necessary. Nevertheless, the prior approval is subject to the conditions of paragraph M.2(3) of the GPDO.

Conclusion on Appeal A

31. For the reasons given above, I conclude that the appeal should be allowed and prior approval is deemed to be granted.

Appeal B

Main Issue

32. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded.

⁴ *Murrell v SSCLG* [2010] EWCA Civ 1367

Reasons

33. The description of the LDC as set out in the application forms is the '*creation of a mezzanine floor*'. Such works, as shown on the plans, only affect the interior of the building and therefore do not amount to development requiring planning permission. The Council do not seek to argue otherwise.
34. However, the appellant has provided an email from the Council which sought to change the description to confirm the proposed use of the mezzanine floor, which he agreed, albeit he says to avoid delays and to be cooperative⁵. That description is not the same as that set out in the Council's decision notice, which is '*Certificate of lawfulness to the use of the mezzanine level as residential use associated with the consented ground floor residential studio flat*'. The description given in the appeal form similarly refers to the '*proposed use of mezzanine floor in existing ground floor residential studio flat*'.
35. Both of those descriptions imply an existing mezzanine floor rather than reflect that is what was proposed. Nevertheless, as the plans show its use for residential purposes and submissions are made on that basis, I will consider the appeal under sections 192(1)(a) and 192(1)(b) of the 1990 Act, so as to consider both the proposed use and operations.
36. The Council refer to Condition U0084942 of the residential studio unit prior approval scheme which states that development under Class M is permitted subject to the condition that the applicant/ developer shall notify the local planning authority in writing of the completion of the development as soon as reasonably practicable after completion. The Council say that at the time of the application it had not received such confirmation.
37. The Council also refer to Class W(12) of the GPDO, which sets out the procedure for applications for prior approval under Part 3, and states that the development must be carried out in accordance with the approved details. The Council similarly say that at the time of the application it was unclear the development had been carried out in accordance with the approved details.
38. Where prior approval is expressly granted, as in the residential studio unit prior approval scheme, the development subsequently undertaken is only lawful if it is carried out in accordance with the submitted plans and it is in fact permitted development. Class W(12) does not state that the development must be carried out in accordance with what is required by Class W(2) to accompany the application. Consequently, if the appellant provided more information than that which was required, Class W(12) still requires him to carry out the development in accordance with what was approved.
39. On the basis of the above, the Council state that it was unable to ascertain the lawful residential use of the premises nor the use associated with the mezzanine level forming part of the application.
40. Whilst a site visit could have clarified the position, the appellant asserts that the residential studio unit prior approval scheme was not implemented. Consequently, the residential use was not lawful. It therefore follows, that the

⁵ The description suggested was '*Certificate of lawfulness to establish proposed use of mezzanine floor in existing ground floor residential studio flat as residential use*'.

use of a mezzanine for residential purposes, at the time of the application, would also not have been lawful, on the balance of probabilities.

41. Even if the residential studio unit prior approval scheme was lawful, having been undertaken in accordance with the submitted plans, the LDC plans show an 'L' shaped mezzanine floor level not just above it but also extending into the physically separate commercial space of the former bank, which, as detailed above, was granted planning permission for flexible commercial floorspace.
42. Whilst the application site boundary encompasses the whole of the building, that is not necessarily determinative of the planning unit, which, as held in *Burdle*⁶, is usually the unit of accommodation. The extent of the residential planning unit as established by the residential studio unit prior approval scheme is clear; it is delineated by the dashed red line annotated as the '*proposed change of use from A2 to C3 to form one studio flat*'. The same plan annotates the adjoining space as remaining commercial floorspace. It is a physically separate area previously used and with approval for different and unrelated purposes. The mezzanine would therefore have straddled two different primary uses (residential and commercial) and two separate planning units.
43. I fully appreciate that the existing ground level floorspace of the commercial unit would be physically unaffected, nevertheless, new residential floorspace would be created within a commercial planning unit with a different primary use. It makes no difference if that is presently 'airspace'. Therefore, there would be a material change of use of part of the flexible commercial unit to a residential use, which would amount to development requiring planning permission.
44. I will therefore grant a LDC solely for the creation of a mezzanine floor, as originally sought, but not for its use for residential purposes.

Conclusion

45. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC 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.

Appeal C

Main Issue

46. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded.

Reasons

47. The development for which the LDC is sought is described as the '*addition of a mezzanine floor to consented ground floor studio flat upon the establishment of residential use*'.

⁶ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

48. As in Appeal B, the Council's position is that the construction of a mezzanine level, taken in isolation, would be considered as internal works and as such would not amount to development requiring planning permission. I agree.
49. However, the Council raise issue that the application was accompanied by a supporting statement and site location plan only, with the latter highlighting the entire site in red, including external areas, and a rectangular shape in blue. In that regard, the Council draws attention to the 'Guidance on information requirements and validation' which states that the application site should be clearly edged in red and a blue line should be drawn around any other land owned by the applicant.
50. On that basis the Council considered the application to relate to all of the land within the red line boundary, which does not benefit in its entirety for planning permission for residential use. Its reason for refusing the application is that in the absence of sufficient information detailing the siting of the proposed mezzanine level and the consented ground floor studio flat, there was insufficient evidence to confirm the lawfulness of the proposed works.
51. I note the appellant's criticisms of that approach, nevertheless, a revised plan has been submitted with the appeal and that annotates precisely the position of the approved studio unit within the red line boundary.
52. The supporting statement argues that that the space designated for the residential studio unit prior approval scheme remains in Class A2 use (now Class E) and that there has been no material change of use. The statement explains that the question which was being put to the Council was whether it would be lawful to add a mezzanine level upon implementation and after the commencement of residential use resulting from the residential studio unit prior approval scheme. It was framed as a hypothetical question as it was not claimed that the residential use had started in the studio unit.
53. To specifically answer that question, if the residential studio unit prior approval scheme is lawfully undertaken in accordance with the submitted plans, the creation of a mezzanine in that space would not amount to development requiring planning permission. Nor would its use for residential purposes.
54. I therefore find that the addition of a mezzanine floor to consented ground floor studio flat upon the establishment of residential use would be lawful.

Conclusion

55. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC 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.

Richard S Jones

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/L5810/W/21/3289357	Curran Properties Ltd.
Appeal B	APP/L5810/X/21/3289354	Curran Properties Ltd.
Appeal C	APP/L5810/X/22/3290451	Curran Properties Ltd.



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 6 October 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The creation of a mezzanine floor only affects the interior of the building and is exempted from the definition of development, requiring planning permission, by section 55(2) of the Town and Country Planning Act 1990 as amended.

Signed

Richard S Jones

INSPECTOR

Date: [21 April 2023]

Reference: APP/L5810/X/21/3289354

First Schedule

Creation of a mezzanine floor

Second Schedule

341 Upper Richmond Road West, East Sheen, London, SW14 8QN

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: [21 April 2023]

by Richard S Jones BA(Hons), BTP, MRTPI

Land at: 341 Upper Richmond Road West, East Sheen, London, SW14 8QN

Reference: APP/L5810/X/21/3289354

Scale: Not to Scale



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Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 18 November 2021 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The creation of a mezzanine floor only affects the interior of the building and is exempted from the definition of development, requiring planning permission, by section 55(2) of the Town and Country Planning Act 1990 as amended.

An application for the prior approval of the Council was granted in July 2020 for the part change of use of the ground floor from A2 (financial institution) to C3 (residential studio unit) with associated fenestration alterations (Ref: 20/1405/GPD13). If that residential studio unit prior approval scheme is lawfully undertaken in accordance with the submitted plans, the creation of a mezzanine in that space would not amount to development requiring planning permission. Nor would its use for residential purposes.

Signed

Richard S Jones

INSPECTOR

Date: [21 April 2023]

Reference: APP/L5810/X/22/3290451

First Schedule

Addition of a mezzanine floor to consented ground floor studio flat upon the establishment of residential use

Second Schedule

341 Upper Richmond Road West, East Sheen, London, SW14 8QN

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use and operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, 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 and 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: [21 April 2023]

by **Richard S Jones BA(Hons), BTP, MRTPI**

Land at: 341 Upper Richmond Road West, East Sheen, London, SW14 8QN

Reference: APP/L5810/X/22/3290451

Scale: Not to Scale

