



Appeal Decision

Site visit made on 3 February 2025

by **A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Appeal Ref: APP/Q1445/X/24/3352528

32 Vardean Gardens, BRIGHTON, BN1 6WL

- 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 Mrs Kath Black against the decision of Brighton & Hove City Council.
 - The application ref BH2024/01657, dated 3 July 2024, was refused by notice dated 13 September 2024.
 - 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 provision of private swimming lessons in addition to domestic use.
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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 found to be lawful.

Main Issue

2. The main issue is whether the Council's decision was well-founded. That will turn on whether the appellant has proved on the balance of probability that the use of the property changed to use for private swimming lessons in addition to domestic use on or before 3 July 2014 and that the use then continued without significant interruption for 10 years after the date of the change.

Reasons

3. In an appeal relating to a LDC the onus of proving the relevant facts rests with the appellant, and the standard of evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
4. It is common ground that the evidence is sufficient to demonstrate that the use of the pool for private swimming lessons started in June 2014 and that on the balance of probability lessons were taking place for a ten year period. However, the evidence is also that there was a period of 8 months where Covid financial support payments were received and that during the period between 5 November 2020 to 30 June 2021 no private lessons were able to take place due to pandemic lockdown restrictions. Consequently, the main consideration here is whether the period of 8 months should be considered as an interruption in the 10 year period for the purposes of s171(b) as a matter of fact and degree.

5. Case law¹ has established that the cessation of an activity of use for a period of time is sufficient to stop the immunity period and therefore may result in enforcement action being taken. Indeed, an interruption in the ten year period can take the form of some cessation in activity or change to the character of the use or size of the planning unit. The break must be minor if it is not to be fatal to a LDC under s191 of the Act. A short suspension in activity during a change of ownership or period of illness, or non-material fluctuations in the scale of a use will not usually stop the clock.
6. It was held in *Thurrock BC v SSETR & Holding [2002] EWCA Civ 226* that a use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. In this case, 8 months break is a substantial continuous period, but during that period the appellant continued to receive financial support grants and clearly intended to resume activity on site when allowed to do so under pandemic rules. Therefore, whilst the activity taking place on site did cease for the pandemic, the actual use of the land cannot said to have ceased because in my judgement at any time during that 8 month period the Council could quite legitimately have taken enforcement action against the use for which the LDC is being sought.
7. Although the *Miles* case and a recent appeal reference APP/E5330/X/22/3293510 sets out circumstances where an Inspector found that a use had been forced to cease due to Covid-related lockdowns, for a period of 9 months, I have determined the current appeal on its own merits, taking account of the specific circumstances of the case and the use for which the LDC is being sought. In my judgement, in these particular circumstances it would be unreasonable to withhold granting a LDC.

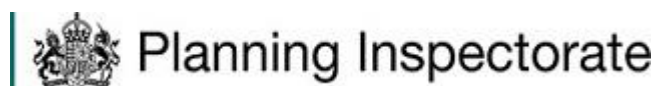
Conclusion

8. 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 for private swimming lessons is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

A A Phillips

INSPECTOR

¹ Miles v NAW & Caerphilly CBC [2007] EWHC 10 (Admin); JPL 1235



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 July 2024 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:

The use of the property changed to use for private swimming lessons in addition to domestic use on or before 3 July 2014 and that the use then continued without significant interruption for 10 years after the date of the change.

Signed

A A Phillips

INSPECTOR

Date: 28 February 2025

Reference: APP/Q1445/X/24/3352528

First Schedule

Provision of private swimming lessons in addition to domestic use.

Second Schedule

Land at 32 Varndean Gardens, BRIGHTON, BN1 6WL

IMPORTANT NOTES – SEE OVER

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 this decision dated: 28 February 2025

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Land at: 32 Varndean Gardens, BRIGHTON, BN1 6WL

Reference: APP/Q1445/X/24/3352528

Scale: Not to Scale

