

Appeal Decision

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 June 2025

Appeal Ref: APP/A5270/X/24/3349971

45A Gunnersbury Avenue, London W5 4LP

- 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 Ms S Basnayake against the decision of the Council of the London Borough of Ealing.
 - The application ref 241018CPE, dated 5 March 2024, was refused by notice dated 30 April 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 the use of a former pool building as a self-contained dwellinghouse.
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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.

Preliminary Matters

2. Having considered the evidence submitted, the main consideration in this case, and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the parties were, however, sought on this matter before my determination of the appeal. No objections to this were raised.

The Development Subject of the Appeal

3. The description of development used in the header above has been taken from the LDC application form. This is repeated in the appeal form. Despite this, the Council's decision notice refers in the reasons for refusal to the use of 'the dwelling' as two self-contained flats. I believe this to be an error as the description of the 'proposal' in the decision notice is the same as that used in the application form. The officer's report also considers the same.

Main Issue and Main Consideration

4. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. The main issue is whether the Council's decision to refuse to grant a LDC is well founded.
5. The Council does not dispute that the building in question is used for the purposes stated in the LDC application. Section 171B(2) of the 1990 Act sets out the

relevant time limits for a breach of planning control consisting of a change of use of any building to a use as a single dwellinghouse. This states that no enforcement action may be taken after the end of the period of 4 years (this being the relevant time limit¹ in this case) beginning with the date of the breach. The appellant suggests that the breach comprising the material change of use of the former pool house took place in October 2019.

6. In view of the above, the main consideration is whether or not, on the date the LDC application was made, the use of the former pool house as a single dwellinghouse had continued substantially uninterrupted for a period of 4 years or more beginning with the date on which the use commenced.
7. Whilst I note the Council's particular reference to the four years prior to the date of the LDC application, any four year period after the date of the breach can be relied upon in order to demonstrate the continuity and, therefore, the lawfulness of the use.
8. The test of the evidence is the balance of probability and the burden of proof is on the appellant. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises that, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

The Evidence

9. The appellant's evidence in support of this case is primarily in the form of statutory declarations from the appellant herself and several other witnesses. These are the appellant's building and letting agent, Mark Shepherd; building, plumbing and carpentry trades people; and two occupiers of the property, Steve Dent and Mladen Malinic.
10. The Council have not suggested that the statutory declarations have not been suitably declared in accordance with the relevant legislation. Accordingly, I have determined this appeal, mindful of the substantial weight that is carried by evidence provided in such statutory declarations, in view of the sanctions that could be imposed should these contain false or misleading evidence.
11. In addition to the declarations, the appellant has provided copies of tenancy agreements for the property. Some of the witnesses have also referred to documentary evidence which has been annexed to their declarations.

Reasons

12. The appellant says that she is the freehold owner of 45 Gunnersbury Avenue, which includes No 45A. She has referred to the progressive change of use of the main property at No 45 to 5 self-contained flats. She suggests that in 2019 'the pool house was converted to a self contained dwelling' which is now known as 45A

¹ Having regard to section 171B(2) of the 1990 Act and section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

Gunnersbury Avenue and that Mark Shepherd of Masma Ltd and OES Ltd oversaw these works.

13. This account is corroborated by Mark Shepherd in his statutory declaration. He is the director of Masma Ltd, a construction company, and OES Ltd, a tenancy service company. In his declaration he sets out the involvement of his company in the conversion works of the appeal building.
14. The statutory declarations of Peter Smith, Milenko Malinic and Charlie Mizzen also corroborate the appellant's claims with regard to the works of conversion of the pool house building. These are all trades people who say that they carried out works to the building and observed works being carried out. The works they describe are consistent with those necessary to allow the building to be used as a dwellinghouse.
15. Whilst I note that the gas safety certificate refers to No 45, rather than to No 45A, Charlie Mizzen says that this was issued by them to enable the pool house building to be occupied by tenants. Some of the invoices for interior works and painting, dated May, July and October 2019, make specific reference to the pool house. Whilst other of the invoices provided refer to No 45, I have no reason to believe that these do not relate to the pool house building.
16. In view of the above, I find it more likely than not that the works necessary for the pool house building to be used as a dwellinghouse were carried out and completed by October 2019.
17. Moving on to the first use of the building as a dwellinghouse, the appellant explains that works to the main property at No 45 were necessary and that these works would render Flat 1 within it 'inaccessible and uninhabitable'. Accordingly, she says that the occupiers of this flat moved into the pool house building in October 2019, following its conversion. The appellant says that they continued to occupy the pool house building until May 2020.
18. Whilst I note that the 31 May 2018 tenancy agreement has not been fully completed, this is of little consequence, seeing as this does not relate to the appeal building in question. Furthermore, the appellant's claims are consistent with the more detailed account of Mark Shepherd, who refers to the works to No 45 and that the move of the occupiers of Flat 1 to the pool house building was intended to be temporary. I find the explanation for the lack of a tenancy agreement for the first occupiers of the pool house building to be plausible.
19. The appellant's evidence is also corroborated by that of Milenko Malinic, who indicates that he observed the continued use of the pool house building during the time he continued to work on the main property at No 45 up until July 2020. Indeed, they refer to the tenants of the building changing at some point during this period.
20. Mark Shepherd says that the change of tenants of the pool house building took place in May 2020. The statutory declaration of Steve Dent corroborates this. He says that his company entered into a tenancy agreement for the building, so as to provide accommodation for his employees. He says that his employees moved

into the building on 10 May 2020 and occupied it 'as their home continuously for the period of 10 May 2020 until 9 April 2019'. Steve Dent has provided a copy of the tenancy agreement he signed for the building.

21. Milenko Malinic refers to the subsequent occupation of the building by his brother, who he says he helped move into the building on 10 April 2021. This is also corroborated by Mark Shepherd, who says that Mr Malinic's occupation continues. In his statutory declaration, Mladen Malinic confirms that he is the current occupier of No 45A. He says that he moved into the building on 10 April 2021 and that he has continuously occupied the property with his children, as his family home, since 10 April 2021.
22. Mladen Malinic has provided a copy of the tenancy agreement signed by him in April 2021. Whilst this may only be a 12 month agreement from April 2021, this does not contradict his claim that he continued to occupy the building with his family beyond the 12 month period.
23. The Council refer to the lack of utility bills, bank statements and council tax records to support the statutory declarations provided by the appellant. I do not consider the lack of such corroboratory evidence to be fatal to the appellant's case. I say this, having regard to the numerous detailed accounts of those with a knowledge of the use of the appeal building since its use as a dwellinghouse first commenced in October 2019. I am also mindful of the weight that should be attributed to this evidence, having regard to how it has been given.
24. Having regard to the above, I find the appellant's evidence to be sufficiently precise and unambiguous. It has been demonstrated that, on the balance of probability, on the date the LDC application was made, the occupation and use of the pool house building as a dwellinghouse had continued substantially uninterrupted from October 2019. I have been provided with no evidence to demonstrate that the appellant's version of events is less than probable. It is, therefore, more likely than not that the use of No 45A as a dwellinghouse was lawful on the date the LDC application was made.

Conclusion

25. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use of a former pool building as a self-contained dwellinghouse 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.

J Moss

INSPECTOR

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 5 March 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:

It has been demonstrated that, on the balance of probability, on the date the LDC application was made, the occupation and use of the pool house building as a dwellinghouse had continued substantially uninterrupted from October 2019. It is, therefore, more likely than not that the use of No 45A as a dwellinghouse was lawful on the date the LDC application was made.

Signed

J Moss

Inspector

Date: 4 June 2025

Reference: APP/A5270/X/24/3349971

First Schedule

The use of a former pool building as a self-contained dwellinghouse.

Second Schedule

Land at 45A Gunnersbury Avenue, London W5 4LP

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 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: 4 June 2025

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Scale: Not to scale

