



Appeal Decision

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2025

Appeal Ref: APP/B5480/X/24/3346459

Land at 199-201 Rush Green Road, Romford, Havering RM7 0JR

- 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 Mr Rav Virk against the decision of the Council of the London Borough of Havering.
 - The application ref E0013.24, dated 3 August 2022, was refused by notice dated 15 May 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 a use as two self contained flats.
-

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 considerations 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.
3. Despite the description of the appeal site given above, the appellant has confirmed that the LDC application subject of this appeal relates to the studio flat and one bedroom flat to the rear of the first floor of Nos 199 and 201, annotated as 'Flat 199b' and 'Flat 201b' at their entrance on the drawing number 199,201 FP 01 revision a.

Main Issue

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. The main issue is whether the Council's decision to refuse to grant a LDC is well founded.
5. Whilst I note the objection of an interested party, the planning merits of the use for which the certificate is sought is not relevant in this case. My decision is based on the facts of the case and judicial authority.

6. Having regard to the case made by both parties, I have identified the main consideration as being whether or not, on the date the LDC application was made, the use of the units identified as Nos 199b and 201b as two self-contained flats has continued substantially uninterrupted for a period of four years or more beginning with the date of the breach. The date of the breach is the date the use as two flats first commenced.
7. Whilst I note reference to the four years prior to the date of the LDC application, any four year period between the date of the breach and the date of the LDC application 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 appeal includes statutory declarations from previous occupiers of the flats in question. The Council have questioned the status of the statutory declarations. Whilst I note the Council's comments, I am not persuaded that the detail in the declarations is not sufficient to identify the witnessing solicitor. I have no reason to find that these statements 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. Even if not declared in accordance with the relevant legislation, I have no doubt that the witnesses provided the statements on the understanding that there would be certain consequences, should they provide evidence that is false or misleading.
10. In addition to the declarations, the appellant has provided documentary evidence that was, as far as I can see, before the previous Inspector¹. This includes copies of tenancy agreements for the two flats in question. There are also utility bills, gas safety certificates and insurance documents, together with a letter from a person employed to maintain the property and a letter from the Council.

Reasons

11. The letter from Mandeep Singh Ubhi provides a brief chronology of the properties at Nos 199-201 and his involvement in their maintenance and other works. He describes having maintained the properties since 2012, which included gas safety checks (copies of which have been provided) and works to the bathrooms within the four flats he describes. Mr Singh Ubhi refers to the ownership of the property changing from Mr Derek Farmer to the Virk Group Ltd, which it is reasonable to assume is represented in this case by the appellant, Mr Rav Virk. Although Mr Singh Ubhi does not say when the change of ownership took place, he describes his continued involvement in works to the 4 flats.

¹ Appeals reference APP/B5480/X/22/3312637 and APP/B5480/X/23/3317082

12. The statutory declaration of Brian Martin is precise in describing his residency of No 199b for around 7 and a half years, between August 2014 and March 2022. The evidence of Mr Martin is consistent with the tenancy agreements between Mr Martin and Derek Farmer. The first is dated 17 August 2014, which is when Mr Martin says he commenced his residency of the property. Whilst I note that a tenancy agreement has been provided for all but two of the years of Mr Martin's occupation of No 199b, this does little to cast doubt on the clear evidence of Mr Martin. Indeed, there is nothing to suggest that Mr Martin's occupation of No 199b did not continue during the period August 2015 to August 2017.
13. The statutory declaration of Justin Lee is similarly precise in describing his residency of No 201b for ten years, between February 2012 and February 2022. The tenancy agreements between Mr Lee and Mr Farmer do nothing but corroborate the evidence of Mr Lee. Again, the absence of agreements for a number of the ten years is not detrimental to Mr Lee's evidence. Indeed, where there is no change to the terms of a tenancy, it is not unusual for a tenant's occupation of a property to continue beyond the period of a tenancy agreement, and without a new agreement having been signed.
14. I note the comments of the previous Inspector, regarding a lack of a plan to show the part of the property that is the subject of the tenancy agreements. However, Mr Martin describes the flat at No 199b as a 'studio compact size apartment' on the 1st floor. This description is consistent with the flat labelled No 199b on drawing number 199,201 FP 01 revision a. Indeed, the other flat above No 199 is not a studio flat. Mr Martin also refers to the other flats at first floor level above Nos 199-201. Similarly, Mr Lee's description of the flat at No 201b is consistent with that shown on the 199,201 FP 01 revision a drawing.
15. Mr Singh Ubhi also describes all 4 flats during his work at the properties. In particular, he describes 201b as located to the rear of No 201, which is consistent with its location on the above-mentioned drawing. He also describes No 199b, differentiating this 'Studio Flat/apartment' from the 1 bedroom flat at No 199a.
16. I entirely agree with the previous Inspector regarding the usefulness of the tenancy agreements, utility bills, gas safety certificates and insurance certificates as evidence on their own of the lawfulness of the use of either flat. However, considered together with the statutory declarations and letter, referred to above, these documents entirely corroborate the evidence of Mr Martin and Mr Lee, in that they demonstrate the existence of the accommodation they describe living in during the periods specified. The documents also corroborate the evidence of Mr Singh Ubhi.
17. For the purposes of section 171B(2)² of the 1990 Act, the evidence does not clearly identify the date of the breach in the case of either flat. Nevertheless, I find the appellant's evidence to be sufficiently precise and unambiguous in demonstrating that, on the balance of probability, the use of Nos 199b and 201b as self-contained flats continued for a period of more than 4 years from August 2014 in the case of No 199b, and from February 2012 in the case of No 201b. Furthermore, there is nothing to suggest that there was any substantial interruption in the use of either flat during these periods.

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

18. There is nothing from the Council to contradict the appellant's claims or to change the conclusion above. Accordingly, mindful of the weight that should be attributed to evidence in the form of a statutory declaration, I find it more likely than not that the use of No 199b as a self-contained flat became lawful in August 2018 and the use of No 201b as a self-contained flat became lawful in February 2016. Both flats can, therefore, be described as benefiting from established use rights at these times.
19. Once established, there are particular circumstances where a lawful use of land or a building might be lost. These include, for example, where a material change of use of the land to some other use has occurred. It might also be extinguished by the creation of a new planning unit. In the case of a dwellinghouse, which would include the self-contained flats subject of this appeal, it is not necessary for an occupier to be continuously or even regularly present in order for the building to remain in use as a dwellinghouse.
20. I acknowledge that the majority of the appellant's evidence relates to the period of Mr Martin and Mr Lee's occupation of the flats, which ended in March 2022 in the case of No 199b and February 2022 in the case of No 201b. These periods ended only a few months prior to the date the LDC application was made, which is the relevant date for the purposes of determining the lawfulness of the use.
21. Nevertheless, Mr Singh Ubhi describes working on the four flats after their ownership changed to Virk Group Ltd, which is likely to have been after the occupation of Nos 199b and 201b by Mr Martin and Mr Lee. Indeed, there is no suggestion that, after Mr Martin and Mr Lee ceased their occupation of the flats in question, there had been any change in the use of these properties or any change to the planning units comprised in Nos 199b and 201b. Accordingly, there is no evidence to demonstrate that the lawful use of the flats has been lost since it was established.
22. Bringing all of the above together, it has been demonstrated that, on the balance of probability, the use of Nos 199b and 201b as self-contained flats was lawful on the date the LDC application was made.

Conclusion

23. For the reasons given above, and on the evidence now available, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use of Nos 199b and 201b as two self-contained flats 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 3 August 2022 the use 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, 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, the use of 199b and 201b as self-contained flats had continued substantially uninterrupted for a period of more than four years from the date the use commenced. It is, therefore, more likely than not that the use of Nos 199b and 201b as two self-contained flats was lawful on the date the LDC application was made.

Signed

J Moss

Inspector

Date: 19 June 2025

Reference: APP/B5480/X/24/3346459

First Schedule

The use as two a self-contained flats.

Second Schedule

The flats known as Nos 199b and 201b, identified edged in black on the plan attached to this certificate, at the rear of the first floor of 199-201 Rush Green Road, Romford, Havering RM7 0JR.

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: 19 June 2025

by J Moss BSc (Hons) DipTP MRTPI

Flats known as Nos 199b and 201b at the rear of the first floor of 199-201 Rush Green Road, Romford, Havering RM7 0JR.

Reference: APP/B5480/X/24/3346459

Scale: Not to scale

