



Appeal Decision

Site visit made on 31 July 2025

by Grahame J Kean BA (Hons), Solicitor (HRA), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 August 2025

Appeal Ref: APP/K5600/X/24/3356894

10 Radley Mews, LONDON, W8 6JP

- 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 Frances Williams against the decision of Royal Borough of Kensington and Chelsea.
 - The application ref CL/24/05472, dated 9 August 2024, was refused by notice dated 15 November 2024.
 - 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: installation of white painted timber windows to rear of property.
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Decision

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

Preliminary matter

2. I have omitted the wording “to match adjacent properties in the Mews” from the description of the proposal since it is not relevant to the matters to be assessed.

Legal framework and background

3. Section 191(2) of the 1990 Act states that a use is lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and it does not constitute a contravention of the requirements of any enforcement notice then in force.
4. The main issue is whether the Council’s refusal to grant an LDC in respect of the proposed operation was well-founded. The planning merits of the development are not relevant. The onus of proof is on the appellant and the standard is the balance of probabilities.

Reasons

5. The Council’s appeal statement was adamant that the appellant failed to provide evidence that prior to July 2024 the appeal property was a single dwelling house. It appears that it was on that basis that it refused the application, stating in terms:

“Based on information provided and given the Council’s records the applicant has failed to provide sufficiently precise and unambiguous information to demonstrate that on the balance of probability the lawful use of the whole building is a

dwellinghouse. The proposed development does not comply with the limits and conditions of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and would therefore not be lawful if begun at the time of the application and planning permission would be required.”

6. However, the Council has now granted a LDC based on an existing use application made by the appellant under s191 of the 1990 Act. It is now clear from the terms of that LDC, dated 14 April 2025, that the use of building, ie 10 Radley Mews, as single residential dwelling is lawful for the following reason:

“The information submitted by the applicant demonstrates with sufficiently precise and unambiguous evidence, on the balance of probabilities, that the use of building known as '10 Radley Mews' as single residential dwelling is lawful. Use as such is, therefore, lawful under the Town and Country Planning Act 1990.”

7. I have been given no good reason to disagree with that assessment. In its final comments the Council distinguishes between the appealed application now before me and the application that led to the April 2025 LDC, saying that the latter was *“supported by a sworn affidavit”* considered sufficient to confirm that the use of 10 Radley Mews as a single residential dwelling is lawful, adding *“...as such, the LPA raises no further comments or concerns in this regard.”* It does seem to me however, that sufficient evidence had already been provided that was not convincingly contradicted by the Council, such that a reasonable inference could have been drawn that it was indeed in use as a single dwelling.
8. However, there may be other reasons for refusal of the appealed application as the Council’s wording is ambiguous. It stated in its delegated report that the appeal site is *“covered by an Article IV [sic] which restricts change of use from commercial to residential use”*. Nonetheless, if this were a separate objection it can no longer constitute a well-founded reason in light of the April LDC.
9. Secondly, the report alleged that the proposal would fail *“to comply with criteria A. - the enlargement, improvement or other alteration of a dwellinghouse - of Class A, Part 1, Schedule 2 of the Town and Country...”* The sentence is unfinished, and the Council did not specify how the proposal would not be permitted development in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) or fail to meet the criteria in Class A.
10. It is obvious that concerns were expressed by local residents about potential overlooking and privacy issues, but the officer’s delegated report felt it could *“only consider if the proposals comply with the conditions and limitations set out within the relevant legislation as detailed in section 2 of this report”*. It did not bother to go on and assess the lawfulness of the proposal against these conditions on the basis that the premises were, as indeed they turned out to be, a dwelling which would therefore benefit from Class A rights if those conditions and limitations were met.
11. Class A permits an enlargement, improvement or other alteration of a dwelling subject to, among other things, Condition A.3 which as far as relevant states:
*“A.3 Development is permitted by Class A subject to the following conditions—
(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse...”*

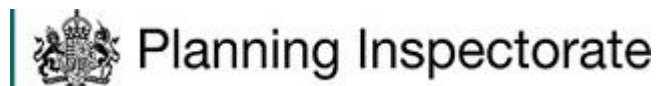
12. It would have been helpful if, in its final comments, instead of observing laconically that *“the physical works to the property which are subject to this appeal remain within the purview of the Inspectorate for decision-making”*, - and knowing that an LDC for an existing dwelling had been granted on the very same day as it made those final comments, the Council had offered its view as to whether Condition A.3 would be complied with.
13. I have considered the plans accompanying the application and visited the exterior of the front elevation of the property. Interestingly, and as is common with many of these mews properties, the ground floor frontage retains its large timber carriage doors, reflecting its industrial past. In any event, the proposed rear elevations plan does clearly show the new windows constructed with materials that would match those used in the upper floor of the front elevation of the dwelling. Overall, the proposal would comply with Condition A.3 and would constitute development permitted under Class A.

Conclusion

14. 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 installation of white painted timber windows to rear of property 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).

Grahame J Kean

INSPECTOR



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 9 August 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown on Plan A4-24-5998-10 attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development is permitted under Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 and would comply with Condition A.3, in particular, the materials used in the exterior work would be of a similar appearance to those used in the construction of the exterior of the existing dwelling house.

Signed

Grahame Kean

Inspector

Date: 4 August 2025

Reference: APP/X5990/X/24/3338289

First Schedule

Installation of white painted timber windows to rear of property to match adjacent properties in the Mews.

Second Schedule

10 Radley Mews, LONDON, W8 6JP

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 operation 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 operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plans. 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.

Plans

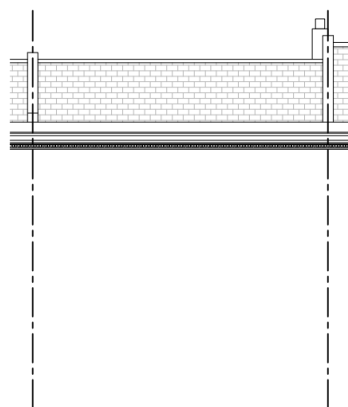
This the plan No A4-24-5998-10 referred to in this decision dated: 4 August 2025

by **Grahame J Kean BA (Hons), Solicitor (HRA), MRTPI**

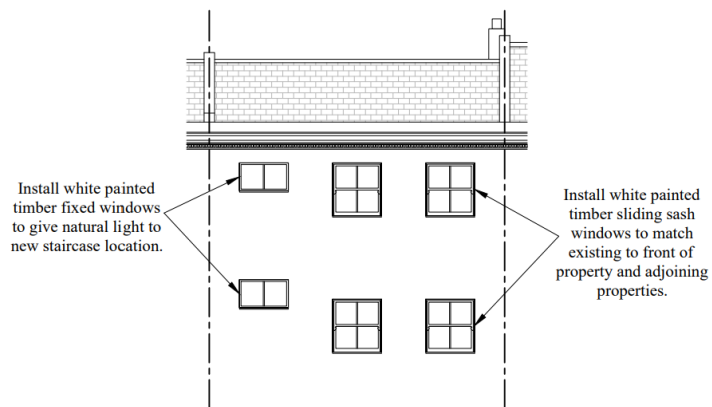
Land at: 10 Radley Mews, London W8 6JP

Reference: APP/X5990/X/24/3338289

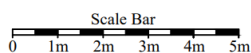
Scale: Not to Scale



Existing Rear Elevation



Proposed Rear Elevation



Rev	By	Date	Description

4 Mortlake Terrace
Kew
Richmond
Surrey
TW9 3DT

Tel & Fax: (0208) 3322989

© Victoriana

Drawn By: A.P. Scale: 1:100 Date: 06-08-24

Drawing No: A4-24-5998-10

10 Radley Mews
Kensington
W8 6JP