



Appeal Decision

Site visit made on 21 May 2025

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 August 2025

Appeal Ref: APP/K5600/X/23/3330023

1-2 Victoria Grove, London, W8 5RW

- 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 K Khalil of Birwari Ltd against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application ref CL/23/03097, dated 15 May 2023, was refused by notice dated 5 September 2023.
 - 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 as five self-contained flats.
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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. Whilst the LDC application form refers to the property subject of the LDC application as 1-2 Victoria Grove, the LDC is sought for the use of the first and second floors only at this address. I have determined the appeal on this basis.
3. Some of the documents that were before the Council when it determined the LDC application subject of this appeal were not submitted by the appellant with the appeal. These were a number of the tenancy agreements that are referred to in the officer report and in the Council's statement of case. It is essential that I see all documents upon which the Council made its decision. Accordingly, a request was made for these documents, and I have had regard to these in reaching my decision.

Main Issue and Main Considerations

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. Having visited the site, I noted the presence of 5 self-contained units of accommodation, all accessed from internal stairways from Victoria Grove. The

layout was broadly in accordance with the layout plan I have received, and I am satisfied that each of the units comprised the facilities required for day to day private domestic existence.

6. It is agreed that the relevant time limit¹ in this case is 4 years. Accordingly, the main consideration is whether, on the date the LDC application was made, the use of the first and second floor of the appeal property as five self-contained flats had continued substantially uninterrupted for a period of 4 years or more beginning with the date of the breach.
7. 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.

Reasons

8. Dr Kadhim Khalil of Birwari Ltd (the appellant) has provided a statutory declaration signed by them, in which they confirm that they are the owner of the appeal site, that the works to convert the first and second floors of the appeal site into 5 self contained flats commenced on 12 October 2018, and that the works were completed on 6 March 2019. They say that the flats were first let and occupied in March and April 2019. In view of this, the suggestion is that the date of the breach (i.e. the date the material change of use of the first and second floors to 5 self contained flats took place) is March/April 2019. Dr Khalil goes on to state that, since the flats were first occupied, they have been let and occupied without interruption to the present time.
9. As the owner of the property at the time of the breach and to date, Dr Khalil is well placed to provide a first hand account of the works carried out at the site and how the relevant parts of the appeal site have been used. Furthermore, I am mindful of the significant 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.
10. The Council call the status of this document into question, pointing out that it had not been 'certified by a solicitor'. I note that the declaration has been counter signed by Mr I. Schindler who I am told is a Commissioner for Oaths. The indication is that Dr Khalil signed the document in the presence of Mr Schindler. I have been given no reason to find that Mr Schindler is not appropriately qualified or that the document does not carry with it the sanctions referred to above. Accordingly, I attribute substantial weight to the statements made in this declaration.
11. In support of the statutory declaration, a series of tenancy agreements have been provided that relate to each of the flats in question. On the whole, the terms of these agreements cover the period starting from March 2019 in the case of flats 1,

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.

4 and 5, and April 2019 in the case of flats 2 and 3. The terms then cover up until June 2023 at the earliest.

12. In the documents I have been provided with for flat 2, I cannot see any overlap in the terms of the tenancy agreements, or any gaps in the terms. With regard to flat 4, there is an agreement dated 29 July 2022, but the term of this agreement is not specified. Nevertheless, the appellant refers to the expiry of the agreement term on 29th July 2022 for flat 4 and says that the use continued beyond this date. They describe this as a periodic tenancy. As it is not unusual for a tenant to continue to occupy a property following the expiry of the term of a tenancy agreement, I find this to be a plausible explanation in this case.
13. The Council refer to a contradiction in the appellant's case, with regard to utilities for the flats. The tenancy agreements state that all bills are included in the rent. However, in their initial statement of case the appellant indicates utility bills are paid by the tenants of the flats. In their final comments, the appellant says that 'the boiler and electricity for 1-2 Victoria Grove is centrally provided' and that 'there are no bills for each individual flat'. I acknowledge this apparent internal contradiction within the appellant's case. However, their final comments are consistent with what is stated in the tenancy agreements. Furthermore, this matter relates to the provision and payment of utilities, rather than the use of the flats themselves.
14. I have noted the tenancy agreement documents that have not been signed by the individual stated at the start of the agreement. The appellant has explained that in these circumstances the flats were sublet, where the agreements were signed by the individual who sublet the flat to the individual stated on the front page of the document. Whilst I find this to be a plausible explanation for the inconsistency here, it does introduce a degree of ambiguity in the evidence, in terms of the status of the agreements. Nevertheless, this does not contradict the appellant's case and the statements made in Dr Khalil's statutory declaration, with regard to the continuity of the use of the flats in question.
15. I note the Council's concerns with regard to the lack of any first hand evidence from any of the occupiers of the flats in question. It also refers to the lack of other such corroboratory evidence, including dated photographs and any documents relating to the works necessary for the change of use to have occurred. I acknowledge that such evidence would assist in adding weight to the appellant's case. Nevertheless, I am satisfied that the statutory declaration provided by Dr Khalil, as corroborated by the tenancy agreements provided, is sufficiently precise and unambiguous. Whilst there may be some inconsistency in the evidence, this is not sufficient to make the appellant's version of events less than probable. Furthermore, there is also a lack of evidence to contradict the appellant's case.
16. Having considered the evidence as a whole, I am satisfied that the appellant has discharged the burden of proof that is upon them. Accordingly, I find it more likely than not that on the date the LDC application was made the use of the first and second floor of the appeal property as five self-contained flats had continued substantially uninterrupted for a period of 4 years or more beginning with the date of the breach.

Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use as five 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



Planning Inspectorate

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 15 May 2023 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, the use of the first and second floor of the property as five self-contained flats had continued substantially uninterrupted for a period of 4 years or more beginning with the date of the breach and that the use was lawful at the time the application for a lawful development certificate was made.

Signed

J Moss

INSPECTOR

Date: 11 August 2025

Reference: APP/K5600/X/23/3330023

First Schedule

Use as five self-contained flats.

Second Schedule

First and second floors of 1-2 Victoria Grove, London, W8 5RW

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.



Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 11 August 2025

by J Moss BSc (Hons) DipTP MRTPI

Land at: **First and second floors of 1-2 Victoria Grove, London, W8 5RW**

Reference: **APP/K5600/X/23/3330023**

Scale: Not to scale

