



Appeal Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2025

Appeal Ref: APP/D1780/X/24/3345380

101 St Denys Road, Southampton SO17 2FS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Aki Iiyas against the decision of Southampton City Council.
 - The application Ref 23/01600/ELDC, dated 6 December 2023, was refused by notice dated 16 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 is sought is: Use of first floor as 2 flats.
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Summary of Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant accepts that it is not essential for me to enter the site to check measurements or other relevant facts. On that basis, injustice does not arise from an assessment on the written evidence only.

Main Issue

3. The main issue is whether the Council's refusal to grant a certificate of lawfulness is well founded.

Reasons

4. The site relates to a terraced property fronting onto St Denys Road.
5. In matters such as this the onus is firmly on the appellant to demonstrate their case on the balance of probabilities that the use of the first floor as 2 flats would be lawful. My assessment is therefore very fact specific, based upon the evidence before me.
6. The evidence is that in May 2020 the Council issued a prior approval¹ which confirmed the conversion of the ground floor shop to a flat would be lawful in accordance with Part M of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order).
7. The evidence of the appellant is that works then commenced to convert the ground floor into a flat in February 2021. At the same time as converting the ground floor, work commenced on the conversion of the first floor into two self-

¹ Council ref 20/00451/PAC3

- contained units. The evidence is accordingly of a single building operation that resulted in the completion of 3 flats in February 2023.
8. The appellant relies on Class G of the Order which was in-force at the time of the commencement of works to demonstrate that the first-floor flats would be lawful.
 9. Whilst there might be little to suggest more generally that two different forms of permitted development cannot be executed simultaneously, Class G was predicated upon, amongst other things, of there being a change of use of a building from a shop (or equivalent) to a mixed use as shop and as up to 2 flats. Class G of the Order is therefore not silent on the need to retain a retail use after the effect.
 10. The result of the single building operation was however 3 flats, not a mixed use. It is asserted that given the flats were not completed until February 2023, the building could have reverted to a shop and therefore the material change of use to residential of the ground floor did not occur until February 2023, when works were complete. However, there is very little technical or structural evidence to support this assertion. Moreover, the need to revert would as a matter of fact and degree demonstrate a material change of use had already been affected, and which is also consistent with the case law² that has been brought to my attention.
 11. There is accordingly very little evidence of a resultant mixed use to demonstrate compliance with Class G of the Order, particularly as the evidence is that all 3 flats were let soon after completion. The appellant has accordingly provided little evidence to demonstrate on the balance of probabilities that it would have been lawful to effectively combine Class G with Part M of the Order.
 12. As a matter of fact and degree, based upon the evidence before me, the appellant has therefore not discharged the necessary burden of proof to demonstrate their case on the balance of probabilities that the 2 first floor flats are lawful.

Conclusion

13. For the reasons given above I conclude that the Council's decision was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

14. The appeal is dismissed.

Paul T Hocking

INSPECTOR

² *Impey v SSE & Lake District SPB* [1981] JPL 363 and [1984] P&CR 157; *Gravesham Borough Council v Secretary of state for the Environment and Another* (1984) 47 P. & C.R. 142; *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15