



Appeal Decision

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2025

Appeal Ref: APP/C1625/X/24/3337580

**10 Canons Court Mews, Bradley Green, Wotton-Under-Edge, Gloucestershire
GL12 7PN**

- 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 Nicola Atkins & Mr Stephen Jones against the decision of Stroud District Council.
 - The application ref S.23/1931/CPE, dated 29 September 2023, was refused by notice dated 1 December 2023.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 (as amended).
 - The failure to comply with any condition or limitation for which a certificate of lawful use or development is sought is the lawful use of the property as an unfettered permanent residential dwelling (Use Class C3) in breach of Condition 6 of planning permission Ref S.00/2019, which restricts its use to a holiday unit, each period of occupation not to exceed 28 days.
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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 matter constituting a failure to comply with a condition which is found to be lawful.

Applications for costs

2. An application for costs was made in respect of the appeal by the appellants against the Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue, as usual in LDC appeals, is whether the Council's decision to refuse a LDC was well-founded.
4. The outcome of the appeal turns on considering relevant aspects of planning legislation including evidence provided and not on assessing matters of planning merit that would normally require a visual site inspection of the premises. I have therefore been able to determine the appeal without a site visit. Neither side has been prejudiced by this course of action.

Reasons

5. S171B of the Act sets the time limits or immunity periods for enforcement action and therefore lawful development. For breach of conditions, s171B(3) sets out that this is 10 years.
6. However, the appellant argues that the 4-year immunity period rather than the 10-year period applies here. But paragraph 4.39 of the appellant's appeal statement

acknowledges that the use of the property as a single dwelling on a permanent basis and its use for tourism accommodation (as per the original permission S.00/2019 dated 17/07/2002) have materially different planning impacts, which indicates a material change of use.

7. The appellant's citing of the *Arun*¹ judgement is misplaced because the issue in that case concerned the use of an extension to a dwelling as a (second) new dwelling. That is not the case here. The original 2002 permission here, to which Condition 6 is attached restricting the use of the 12 holiday units – the appeal property being one of such – grants permission for these 12 dwellings for holiday occupation (i.e. no period longer than 28 days) and not permanent dwellings.
8. It is only by the use of such conditions that the occupation of such C3 dwellings can be restricted to holiday occupancy. It would make the (pre-2024 change) immunity periods in s171B nonsensical if such restrictive occupancy conditions only had a 4-year immunity period when all other conditions had a 10-year immunity period. The (pre-2024) s171B(2) referring to '*the change of use of any building to use as a single dwelling house*' clearly only refers to buildings which were previously not used as dwellings (my emphasis). The 12 units here, including the appeal property, have only ever been dwellings, albeit with holiday occupancy restrictions. Consequently, the appellant needs to evidence a 10-year period of continuous occupation of the property as an unrestricted permanent dwelling, as s171B(3) states.
9. The Council's refusal is founded on the breach of the condition not been for a 10-year continuous period, in particular that there were three substantial periods when the property was unoccupied (periods A, B & C). It appears to accept now², in view of the appellant's evidence submitted at appeal, that in period B (between 5 July and 5 December 2021) and period C (7 January to 19 February 2023) the appeal property was in fact occupied for permanent (as opposed to holiday) residential purposes. However, it still maintains that there was no such permanent residential occupation in period A (19 March to 25 August 2016, a period of over 5 months).
10. Mrs Atkins states, as set out in paragraph 4.14 of the appellants' appeal statement, that it took some time to clear the property after her mother's death in August 2015 and her step-father leaving the property on 18 March 2016 because of her need to attend hospital to secure treatment for a serious health condition during this 5-month plus period of time. She and her brother, Mr Jones, both state in their affidavits that they paid reduced rate Council Tax for the property during this period. Evidence that they paid Council tax during this period is set out on Attachment 2a as part of their appeal submissions. Indeed, this document sets out that Council Tax was paid continuously since 30 March 2007 to the date on which the LDC application was submitted in September 2023.
11. Evidence that Council tax was paid is not sufficient in itself to establish residential occupancy, but combined with the above explanation as to why the property was not re-let sooner, I am satisfied that this 5 month plus gap in permanent residential occupancy occurred not because the unauthorised use ceased or that holiday letting (re)commenced during this period, but simply for the reasons Mrs Atkins states. Caselaw confirms that periods of time that can constitute 'de minimis' gaps

¹ *First Secretary of State v Arun District Council & another* [2006] EWCA Civ 1172

² Based on Section 4.0 of its appeal statement dated 14 March 2024

in use or occupation are often a question of fact and degree to be considered in light of all the relevant circumstances.

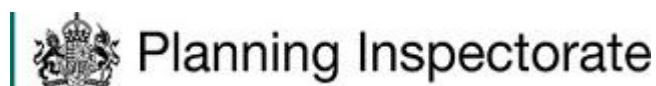
12. LDCs fall to be determined on the balance of probability. Although the onus is on the appellant to demonstrate the lawfulness of the permanent residential use of the appeal property, this is the only period that the Council now disputes in that it maintains the breach of Condition 6 has not occurred continuously for a 10-year period.
13. Planning Practice Guidance sets out that appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal provided the evidence alone is sufficiently precise and unambiguous.
14. There is no such evidence from the Council or others to contradict what the appellants have said. I consider the appellants' version of events to be credible and to explain why there was such a long gap (from 19 March to 25 August 2016) before the property was let on an Assured Shorthold Tenancy, on the balance of probability. Consequently, I conclude that there has been a continuous 10-year breach of Condition 6 of the original 2002 planning permission for the appeal property and that the lawful use of the property is as a permanent unrestricted Class C3 dwelling house.

Conclusion

15. 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 the use of the property as an unfettered permanent dwelling was 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).

Nick Fagan

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 29 September 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:

The property has been used for a continuous 10-year period prior to the submission of the LDC application as a permanent dwelling, and not for holiday accommodation, contrary to Condition 6 of the original planning permission for the wider site LPA Ref S.00/2019 dated 17/07/2002.

Signed

Nick Fagan

Inspector

Date: 29 August 2025

Reference: APP/C1625/X/24/3337580

First Schedule

Use of the property as an unfettered permanent residential dwelling (Use Class C3) in breach of Condition 6 of planning permission Ref S.00/2019, which restricts its use to a holiday unit.

Second Schedule

Land at 10 Canons Court Mews, Bradley Green, Wotton-Under-Edge, Gloucestershire GL12 7PN

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 29 August 2025

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Land at: 10 Canons Court Mews, Bradley Green, Wotton-Under-Edge, Gloucestershire GL12 7PN

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Scale: As per scale bar below

