

Appeal Decision

Site visit made on 18 August 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 1st September 2025

APP/J2373/X/24/3349760

No. 77 Warbreck Drive, Blackpool FY2 9RZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by Blackpool Borough Council to grant a certificate of lawful use or development.
- The appeal was made by Mrs Diane Greenwood.
- The application, reference 24/0115, was made on 6 March 2024 under s.191(1)(a) of the Act. It was refused by a notice dated 13 May 2024.
- The Application for a Certificate of Lawful Development was for: Use of premises as 3 Self-contained permanent flats at No. 77 Warbreck Drive, Blackpool FY2 9RZ.

Summary of decision: The appeal is allowed and a certificate of lawful use is issued in the terms set out below in the Formal Decision.

Appeal property

1. The appeal property, No. 77 Warbreck Drive, Blackpool, is a 2 storey mid-terrace house with rooms within the pitched roof in a street of terraced housing.
2. During my site visit, I saw the accommodation inside No. 77 consisted of one self-contained 2 bedroom flat on the ground floor, with a small self-contained studio and a one bedroom self-contained flat on the first floor. The rooms on the second floor were not occupied and form no part of the lawful use application.

Application

3. S.191(1) of the Act provides that if any person wishes to ascertain whether (a) any existing use of buildings or other land is lawful; they may make an application for the purpose to the Local Planning Authority. Where that application is refused or deemed to have been refused and an appeal made, the burden of proof to show that the decision was not well founded lies with the appellant. The test of the evidence is made on the balance of probabilities.
4. The Appellant Mrs Greenwood said she bought No. 77 Warbreck Drive in December 2015. It was then set up as a 6-bedroom guest house. She originally applied for planning permission for conversion to a dwelling. However, Mrs Greenwood decided to renovate and convert No. 77 into 3 self-contained flats. She said the 3 flats on the ground and first floors had been let and had been in continuous occupation since 2016.
5. Mrs Greenwood's application for a certificate of lawful use was made on 6 March 2024. In the application, she needed to show that use of the 3 self-contained flats in the property at No. 77 Warbreck Drive had started at least 4 years before the date of the application. That is, from on or before 6 March 2020 and that the use had continued throughout the subsequent 4-year period.

Considerations

6. The Council's report on the application said there were a number of date gaps in the supplied letting agreements. The agreements did not cover all of the flats for the whole of the period in question. It was not evident that the breach of planning control occurred continuously between 2016 and 2023. For the relevant period March 2020 to March 2024, 3 of the tenancy agreements were relevant. They related to Flat 1 and the ground floor flat. There was no evidence submitted for the 3rd flat. In relation to Flat 1, the most recent agreement expired on 18 January 2022. For the ground floor flat, the latest agreement expired on 30 May 2023. In the event that the evidence demonstrated the contended breach occurred at some point, it was not clear from the agreements that the breach occurred continuously throughout the relevant period, or was continuing now.
7. Mrs Greenwood provided further evidence in answer to the Council officer's report on the application that had assessed shortcomings in her evidence of a continuous use of No. 77 over the requisite period. In that rebuttal, Mrs Greenwood attached copies of a number of tenancy agreements, backed up by several Statutory Declarations. Tenancy agreements for the 2-bedroom ground floor flat ran from 9 March 2019 to September 2021, followed by another agreement for the period 15 September 2021 to May 2022 and another from 31 May 2022 to September 2023. The last tenancy agreement for the ground floor flat was for the period 23 September 2023 to the present. The tenancy agreement for the Studio flat was for the period 22 June 2019 to the present. For Flat 3, (on the first floor), there were 2 tenancy agreements – from 21 September 2019 to October 2021 and another from 27 October 2021 to the present.
8. In my view, the statutory declarations appeared to show that a continuous residential occupation of the 3 self-contained flats at No. 77 over the relevant period had occurred. In the case of the tenant of the Studio flat, who had entered into an assured shorthold tenancy agreement on 22 June 2019 and had remained under a revised tenancy agreement of 12 August 2023, had remained in occupation at least to the date of the declaration, 2 August 2024. For the first floor flat, a statutory declaration of occupancy by a tenant from 27 October 2021 to date was submitted. For the 2 bedroomed ground floor flat, a statutory declaration showed occupancy from March 2019 to May 2022, another statutory declaration showed occupancy from 23 September 2023 to date. The statutory declaration gap between 31 May 2022 and September 2023 was filled by an assured tenancy agreement for occupation by another tenant.
9. There were also statutory declarations made by 3 contractors who had carried out maintenance and fire checks at No 77 over the years. However, whilst confirming occupation and use of the flats at No. 77, they provided no evidence of continuity of use.
10. The Council did not respond to Mrs Greenwood's additional evidence.
11. In my view, the tenancy agreements and statutory declarations submitted by Mrs Greenwood sufficiently fill the residency gaps suggested by the Council officer's report to conclude that, on the balance of probabilities, the 3 separate flats/studio on the ground and first floors of No. 77 Warbreck Drive had been continuously occupied during the requisite 4-year period to establish the lawfulness of that use.

Conclusion

12. I consider the evidence of a lawful use of No. 77 Warbreck Drive, Blackpool FY2 9RZ as 3 Self-contained permanent flats sufficient for me to issue a certificate of lawfulness. The evidence provided satisfies the provisions of Section 191(1)(a) read with Section 171B(3) of the Act.

FORMAL DECISION

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the use of the ground and first floors of No. 77 Warbreck Drive, Blackpool FY2 9RZ as 3 Self-contained permanent flats was not well founded and that the appeal should succeed. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is a copy of the plan submitted with the application.

John Whalley

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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 6 March 2024 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, was lawful within the meaning of section 191(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Use of premises as 3 Self-contained permanent flats on the ground and first floors of No. 77 Warbreck Drive, Blackpool FY2 9RZ had become lawful due to the passage of time.

John Whalley

INSPECTOR

Date: 1st September 2025

Reference: APP/J2373/X/24/3349760

First Schedule

Use of the ground and first floors as 3 Self-contained permanent flats.

Second Schedule

No. 77 Warbreck Drive, Blackpool FY2 9RZ.

IMPORTANT NOTES OVERLEAF

NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule was lawful on the certified date and thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 191(6) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

Appeal reference: APP/J2373/X/24/3349760 Date: 1st September 2025

No. 77 Warbreck Drive, Blackpool FY2 9RZ



Plan attached to the Lawful Development Certificate – no scale

John Whalley

INSPECTOR