

Appeal Decision

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th September 2025

Appeal Ref: APP/B3410/X/25/3366161

56 Queen Street, Burton-on-Trent, Staffordshire, DE14 3LW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Qamar Zaman against the decision of East Staffordshire Borough Council.
 - The application ref P/2024/01005, dated 24 September 2024, was refused by notice dated 21 November 2024.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is 2 flats for residential use.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the 2 flats for residential use which is found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse a LDC was well-founded.

Reasons

3. An LDC is not an application for planning permission. Its purpose is to enable the appellant and others to ascertain whether specific operations or activities would be lawful. The burden of proof is upon the appellant. The test of the evidence is one of balance of probability. The appeal concerns only the lawfulness of the matter for which the LDC is sought, not its planning merits. The decision is based on the facts of the case and on relevant planning law and judicial authority.
4. An application under s191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land are lawful. S191(2) confirms that uses are 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 they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. S191(4) sets out that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect.
6. With regard to s191(4) of the Act, the relevant date for ascertaining whether the existing development is lawful is the date of the LDC application. Even so, I have had regard to and determined the appeal based on the information that was submitted with the LDC application and during the appeal.

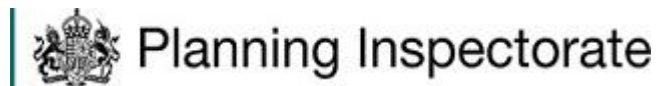
7. Although the appellant purchased the appeal property in 2023, he states that there have been two flats (56a and b) continuously present for over ten years.
8. A damp-proofing report dated 14 January 1986 is addressed to No 56b. The presence of two flats within the appeal property is also confirmed by the valuation letter, dated 19 April 1991, which confirms that the property was split into two self-contained flats, each with the distinctive characteristics of a dwellinghouse to support occupiers' day-to-day living.
9. There is then a large time gap to the testimony of a neighbouring resident who states that there were two flats in No 56 between 2009 and 2010. A further passage of time exists to the tenancy agreements, dated 17 October 2016 for Nos 56a and b, and the separate Electrical Installation Condition Reports for Nos 56a and b, dated 4 December 2018. The occupiers of Nos 56a and b have also stated that they are tenants of the two flats, and they have lived continuously at No 56a or b since April and July 2009, respectively.
10. In addition to the appellant's evidence, the Council has carried out its own investigations since the appeal was lodged. The Council Tax Team have confirmed that the property has been used as two flats (Nos 56a and b) and that is recorded as such on the Council's system since 26 September 2004.
11. The body of evidence submitted does, considering the passage of time in which the use is said to have been taking place, have large gaps in the chronology of events. That said, the evidence is not inconsistent at any point in time, and no contrasting evidence has been provided by the Council. In fact, the Council's evidence corroborates the appellant's evidence.
12. Although detailed sworn affidavits or statutory declarations are helpful and can carry significant weight, they are not essential for an LDC to be issued where sufficiently precise and unambiguous evidence has been provided to support the claims being made. In this particular case, not all of the evidence is individually precise and unambiguous, but collectively, there is sufficient information to show it is more likely than not that the appeal property has been in continuous use as two residential flats for more than ten years on the relevant date. There is also no extant enforcement notice relating to the appeal property or any other reason not to issue a certificate to, at the least, reflect this position.

Conclusion

13. 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 two flats for residential use 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 Act.

Andrew McGlone

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 24 September 2024 the existing 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 evidence shows, on the balance of probabilities, that the land edged in red on the plan attached to this certificate has been used as two residential flats continuously since at least 24 September 2014 without the benefit of planning permission. With regard to sections 171B and 191 of the Town and Country Planning Act 1990 (as amended), no enforcement action could have been taken in respect of the use of the property for two residential flats on the date of the application for a certificate of lawful use or development (24 September 2024). The use of that land as two residential flats falling in the C3 use class as defined by The Town and Country Planning (Use Classes) Order 1987 (as amended) was therefore lawful on the date of that application.

Signed

Andrew McGlone

Inspector

Date: 24 September 2025

Reference: APP/B3410/X/25/3366161

First Schedule

Two flats for residential use.

Second Schedule

Land at 56 Queen Street, Burton-on-Trent, Staffordshire DE14 3LW

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were 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 extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 September 2025

by **Andrew McGlone BSc MCD MRTPI**

Land at: 56 Queen Street, Burton-on-Trent, Staffordshire DE14 3LW

Reference: APP/B3410/X/25/3366161

Scale: Not to Scale

56 Queen Street, DE14 3LW - Ref: (P/2024/01005)

