
Appeal Decision

Site visit made on 18 September 2025

by Chris Preston BA (Hons) Town and Country Planning, Bachelor of Planning (BPI)

an Inspector appointed by the Secretary of State

Decision date: 6 October 2025

Appeal Ref: APP/N1920/X/25/3365712

141 Buckingham Road, BOREHAMWOOD, Hertfordshire, WD6 2QX

- 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 Caroline Lawrence against the decision of Hertsmere Borough Council.
 - The application ref 24/1669/CLE, dated 4 February 2025, was refused by notice dated 16 April 2025.
 - 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 described on the application form as: A single storey flat roofed one bedroom dwelling, formally a garage.
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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. Under s191 of the Town and Country Planning Act 1990 (the Act), if a person wishes to establish whether an existing development is lawful they may make an application to the planning authority specifying the land and describing the use, operations or any other matter that is considered to be lawful. The description given in the application form (as set out in the banner heading above) is ambiguous in terms of whether the certificate was sought for an existing use or for operational development. The wording doesn't actually describe an act of development.

3. However, from reading the supporting information it is clear that a certificate is sought in relation to the conversion and material change of use of a garage to a single storey, one bedroom, dwelling with a flat roof. That would fall under s191(1)(a) of the Act and I have determined the appeal on that basis.

Reasons

4. An application for a Certificate of Lawfulness Use for a Proposed Use or Development (CLOPUD) is not an application for planning permission. As such my decision makes no comment on the planning merits of the development proposed. The main issue is whether the Council's decision to refuse to grant a CLOPUD was well-founded. The onus rests with an appellant to make their case, on the balance of probability.

5. To be more specific, the main issue in dispute is whether sufficient information has been provided to demonstrate that the building in question had been used continuously

as an independent dwellinghouse for a period of at least four years from the date of the application¹, such that it would be lawful having regard to s191(2)(a) of the Act.

6. The building is situated at the bottom of the garden of No.141 Buckingham Road and there is no dispute that it was in use as a garage/outbuilding before being converted into residential use. There is also no dispute in terms of the layout and facilities provided within the building. It has an open plan living area with built in kitchen units, a separate bedroom to the rear and a toilet/ shower room. The kitchen contains a cooker, fridge freezer, sink and washing machine. In other words, the building is equipped with all of the facilities required for day to day living.

7. The precise date at which the works involved in the conversion took place is not clear from the information before me. However, the building was inspected for the purposes of an Energy Performance Certificate on 19 May 2020 and the assessor's report describes the building as a detached bungalow and refers to hot water, heating, and lighting being in place.

8. The evidence, which is not disputed by the Council, shows that the first tenant paid a deposit on 28 August 2020. An inventory was carried out in August 2020 and the associated report and photographs depict that all of the utilities and facilities described above were in situ at that time². That evidence tallies with the statutory declarations of the first tenant and the appellant, who is also the landlord, both of which state that the tenant moved into the property on 28 August 2020. That evidence is supported by bank statements and the tenancy agreement, amongst other things.

9. The Council does not dispute that the tenant moved into the property at that time. Nor do they dispute that she has continued to live there since. Bank statements depicting rent being paid by the named tenant have been provided from that point onwards, in addition to annual renewals of the tenancy agreement. Thus, it is clear that the property had been in residential use for more than four years at the time the application was made. It had all of the facilities to support independent living but that does not necessarily entail that a separate planning unit has been formed depending upon how such a building is occupied. If there is close inter-dependence between the occupation and that of the main house, as may often be the case in a "granny annex" occupied by a member of the same household that may not be the case depending on the specific circumstances. The key matter in dispute in this case is whether the building is and has been occupied independently of the main dwelling.

10. The Council points to the absence of Council Tax registration, the lack of separate utility metering or accounts and the lack of a distinct postal address. Whilst separate metering can be an indicator that a unit is occupied independently, its absence does not necessarily dictate that an occupant lives as part of the household of the original property. It is not uncommon for residents in flats or similar properties to a single rental payment which includes an element for utility bills.

11. Similarly, the failure to register the property for Council Tax purposes is not, of itself, an indication of how it has actually been used, just in the same way that a property that is registered as a dwelling may not necessarily be used in such a manner. Consequently, neither of those matters shed any great light on how the property has actually been occupied.

¹ As per the time limits set out at s171B of the Act and The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

² Inventory & Check In report, prepared by SM Professional Inventories on behalf of Kings Langley Estates, 28 August 2020

12. In terms of the address, telephone bills and banks statements provided by the tenant show the address as 141 Buckingham Road with no indication that the letters were sent to a separate address related to the building in question. The inventory referred to above identifies that a key was provided for the letterbox which is attached to the outside wall of No.141. Thus, it would appear that mail for both properties is delivered to that letterbox.

13. Having been provided with a key to the box the tenant would be able to collect mail without needing to enter the original dwelling. It is a somewhat unusual arrangement given that letters for both the tenant and landlord are delivered to the same letterbox. That would require mail to be sorted depending upon which occupant it was intended for. However, it does not indicate any particular reliance upon the original dwelling or suggest any wider connection between the occupants in my view.

14. The building has two access doors, one which opens onto the street and another which opens directly into the back garden of the original dwelling. At the time of my visit I accessed the property from the front but the Council note that when officers visited the front door was blocked with furniture such that the tenant must have used the rear door to enter, a fact not denied by the appellant. That would require the tenant to pass through the rear garden. I note that the property inventory provided the code for the lock on the garden gate, presumably for that purpose.

15. That indicates that there is a degree of sharing of the space associated with the original dwelling. However, it is not uncommon for properties to share space or for gardens to the rear of terraced dwellings to have a right of way across them for residents to reach their dwellings further along the row. The fact that the tenant may pass through the garden is not determinative in my view.

16. I can only determine the appeal on the evidence before me. What that shows is a property that has all of the facilities capable of independent occupation that had been let to the same tenant for a period of more than four years on the date the application was made. The statutory declaration from the appellant confirms that the tenant has not had access to the main property or its facilities and, vice versa, that the landlord has not had access to the appeal property or its facilities.

17. The matters raised by the Council do not indicate any sharing of basic facilities or any reliance on the original property to meet the day to day needs of the tenant. The fact that a lease has been signed is indicative that the occupant is not a close family member or someone who would otherwise reside as part of the wider household. The Council has no evidence of its own to indicate that the appellant's statutory declaration in that regard is inaccurate or false.

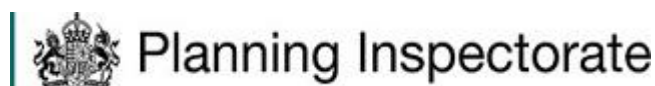
18. The relevant test in such cases is the balance of probability. That is not the same as beyond reasonable doubt, as would apply in criminal cases. On the evidence before me it appears more likely than not that the property has been let to the tenant who lives independently of the original dwelling, with all of the facilities required for day to day existence. To all intents and purposes the tenant has occupied the property as a separate dwellinghouse and has done so for more than four years prior to the date of the application.

19. It follows that the material change of use of the former garage to a single storey, one bedroom, dwelling with a flat roof is lawful on account of the passage of time, having regard to s171B of the Act.

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use 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 Act (as amended)

Chris Preston

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 4 February 2025 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 former garage/outbuilding was converted into a self-contained dwellinghouse and first occupied for that purpose in August 2020, more than four years prior to the date of the application and has subsequently occupied continually for that same purpose. Accordingly, no enforcement action could be taken against the material change of use to a separate dwellinghouse having regard to the provisions of s171B of the Town and Country Planning Act 1990 (the Act), and *The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024*. It follows that the use is lawful having regard to s191(2)(a) of the Act.

Signed

Chris Preston

Inspector

Date: **6 October 2025**

Reference: APP/N1920/X/25/3365712

First Schedule

The conversion and material change of use of a garage to a single storey, one bedroom, dwelling with a flat roof.

Second Schedule

Land at 141 Buckingham Road, BOREHAMWOOD, WD6 2QX

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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **6 October 2025**

by **Chris Preston**

Land at: 141 Buckingham Road, BOREHAMWOOD, WD6 2QX

Reference: APP/N1920/X/25/3365712

Scale: Not to Scale

