



Appeal Decision

Site visit made on 30 September 2025

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2025

Appeal Ref: APP/Q1445/X/24/3350525

33 Buckingham Street, Brighton BN1 3LT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Raouf Properties Ltd against the decision of Brighton and Hove City Council.
- The application ref BH2024/00736, dated 20 March 2024, was refused by notice dated 15 May 2024.
- The application was made under section 191(1)(a) of the 1990 Act (as amended).
- The use for which a certificate of lawful use or development is sought is as use as 7no self-contained flats (C3).

Formal Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the use as seven self-contained flats (C3) which is found to be lawful.

Preliminary Matters

2. An application under s191(1)(a) of the 1990 Act can only confirm whether an existing use of land is lawful. In this instance, the existing use is said to be the use of the property as seven self-contained residential units, and I have determined the appeal on this basis.
3. In an LDC application, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities¹. The Planning Practice Guidance (PPG) states the 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 their evidence alone is sufficiently precise and unambiguous².
4. The provisions of the Levelling Up and Regeneration Act, which came into effect on 25 April 2024, mean all unauthorised uses are now subject to the ten year bar. However, as the application, in this instance, was made on 20 March 2024, the four year bar still applies for unauthorised residential uses. To demonstrate immunity from planning control, the appellant must therefore show that the use has continued on an uninterrupted basis for at least four years from the date of when the LDC application was made. Accordingly, the material date here is 20 March 2020.
5. As part of the appeal, the appellants have submitted three Statutory Declarations (SD) as further evidence to corroborate their claim that the use as seven self-

¹ Thrasyvoulou v SSE & Hackney LBC (No 1) [1984] JPL 732

² Lawful Development Certificates Paragraph: 006 Reference ID: 17c-006-20140306

contained flats is immune from enforcement action and that an LDC should be issued at the site. The Council claims that had this information been submitted at the application stage it may have been sufficient for them to arrive at an alternative conclusion. Therefore, I have given due consideration to the guidance in the 'Procedural Guide: Planning Appeals - England' (2025), and the 'Wheatcroft Principles' referred to in the guidance³, along with other case law⁴ in deciding whether to accept the updated information.

6. I consider the additional information does not alter the proposal before me as it is essentially the same as the scheme that was considered by the Council. The additional details contained in the SDs only provide useful clarification in respect to anomalies highlighted by the Council in their determination of the application. The submitted SDs provides an updated picture in regard to the information already submitted to clarify the existing position and has therefore not been used to evolve the scheme⁵. Consequently, I am satisfied the submitted details do not alter the consideration of the appeal, where anyone involved in the process would be prejudiced or impacted should I accept the updated details. Furthermore, the Council has also had the opportunity to consider the updated details.

Main Issue

7. The main issue is whether the Council's refusal to grant an LDC for the claimed use was well-founded.

Reasons

8. The appeal relates to an alleged change of use of the property at 33 Buckingham Street, Brighton BN1 3LT to a use as seven self-contained residential units. From the evidence before me, the owner of the property (Dr. Layth Raouf) purchased the property in 1998 as a bedsit with six units on the ground, first and second floors with some shared facilities. The owner converted the property to seven self-contained units, through the removal of shared facilities and utilising the loft space as a further unit.
9. Following my site observations, it was apparent that each unit was accessed via a separate lockable door, and there are no longer any shared facilities at the premises. Each unit was relatively small and consists of a private bedroom, with a bed, storage units and en-suite facilities including a toilet, shower and basin. They also contained a small kitchenette, providing private cooking facilities, and as such would meet the definition of a self-contained flat as set out in the Housing Act 2004⁶.
10. The appellant has submitted a significant amount of information in respect to various Assured Shorthold Tenancy (AST) Agreements and Leases as part of their evidence, which highlight the obligations associated with the various tenants at the property. The submitted ASTs provide evidence in how the flats have been used and the length of time that the tenants have been in residence at each flat. It is unlikely tenants would have entered into the AST agreements unless they resided at the property for the timeframes indicated. Based on the evidence submitted, the property appears to have been used for separate accommodation for some time.

³ Bernard Wheatcroft Ltd v SSE and Another (1982) 43 P. & C.R. 233.

⁴ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

⁵ Section 16 of the Procedural Guide: Planning Appeals – England June 2025

⁶ Section 254(8)

11. I acknowledge that there are some small gaps between flats being occupied, which could be explained by changes in tenants, but this is to be expected where a premises provides short term tenancy agreements. Furthermore, it is not unusual for a tenancy to continue on a rolling basis once the fixed term in an AST has expired. Nevertheless, the submitted ASTs are tangible evidence of each of the flats having been tenanted over a period of more than four years.
12. The submitted SDs provide further clarification in respect to the use of the flats, and in particular the queries raised by the Council regarding the same tenant residing at both flats 3 and 4 simultaneously. The SDs have been made under the provisions of the Statutory Declarations Act 1835 and have been witnessed by a solicitor and I have no reason to believe that the SD evidence is not authentic.
13. The SD signed by Petros Tziamas clarifies that he was a tenant in Flat 3 from June 2016 until December 2020. Mr. Tziamas then moved to Flat 4 (next door) until the signed date of the SD. This is confirmed by Dr. Layth Raouf's SD, who clarifies that Mr. Tziamas had his extended family residing in Flat 3, and the subsequent lack of space meant he needed to move to Flat 4 in order to accommodate all the occupants. The third SD is made by Aqaba Lee Raouf, a general maintenance employee of the appellants. They affirm that to the best of their knowledge the property has been rented and used as seven self-contained flats since they commenced employment in April 2017. The Council has advanced little by way of clear or compelling evidence to contradict the appellant's SDs or to make their version of events less than probable.
14. The Council refers to an anomaly in the Council Tax records associated with the property, however I have no Council Tax records before me. Furthermore, there may be a number of reasons why the lack of these records does not accurately reflect the actual use in planning terms.
15. Ideally, the provision of addressed utility bills, services or other correspondence would have provided significant assistance in verifying that the site has been used as seven separate residences. Again, I do not have this evidence before me. It is unclear why this information should not be readily available given the purported separate residential uses, particularly in the light of the number of tenants that have claimed residence at the site. Nevertheless, it is well-established that an appellant's evidence should not be rejected simply because it is not corroborated by independent evidence.
16. Overall, based on the evidence before me, and having regard to the evidence already made available, the absence of details concerning utilities and services does not create any significant uncertainty over the use of the property as seven self-contained residential units for the relevant period, given the abundance of information made available. Based on the submitted information and lack of evidence to the contrary, I must therefore conclude that the ground floor, first floor, second floor and roof space at 33 Buckingham Street have been occupied continuously as seven independent, self-contained residential units for the requisite four year period. Accordingly, the appellant has therefore discharged the burden of proof.

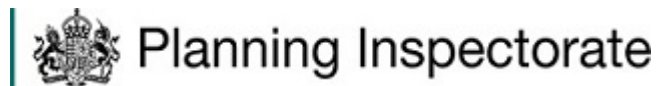
Conclusion

17. For the reasons given above, and on the evidence now available, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use

as seven self-contained residential units 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.

Robert Naylor

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 20 March 2024 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 appellant has demonstrated their case on the balance of probabilities that the use of the building as seven self-contained flats has been continuously occupied for a period of more than 4 years.

Signed

Robert Naylor

Inspector

Date: 20 October 2025

Reference: APP/Q1445/X/24/3350525

First Schedule

The use as seven self-contained flats (C3)

Second Schedule

Land at 33 Buckingham Street, Brighton BN1 3LT

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 /operations 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: 20 October 2025

by Robert Naylor

Land at: 33 Buckingham Street, Brighton BN1 3LT

Reference: APP/Q1445/X/24/3350525

Scale: Not to Scale

