



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 30 October 2025

Appeal Ref: APP/H1840/X/24/3351277

Flat 3, 45 High Street, Pershore, Worcestershire WR10 1EU

- 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 Mr Murat Isgin against the decision of Wychavon District Council.
 - The application ref W/24/00272/CLE, dated 11 February 2024, was refused by notice dated 18 July 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended) ("the Act").
 - The use for which an LDC is sought is described as "this building has 3 residential flats on the first and second floors and 2 commercial shops on the ground floor for over 10 years. The new freeholder purchased this building as described more than 1 year ago. The reason for this application is that the freeholder received a notice letter from the council about flat 3. Because, Flat 3 has no official records".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to visit the site as, in this case, the determination is based on the evidence submitted. The parties were contacted regarding this matter and given the opportunity to comment on the appropriateness of the proposed approach. No objections were received.
3. The use for which the Certificate of Lawfulness is sought was originally described by the appellant in broader terms as displayed in the banner heading above. However, pursuant to Section 191(4) of the Act, the Council amended the description in its decision notice to 'Certificate of Lawfulness for the existing use of Flat 3 as residential'. I consider this revised description to more accurately reflect the nature of the existing use sought on the date of the application. Accordingly, my decision is based on the Council's modified description."
4. An application under s191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land is lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may 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 ii) they do not constitute a contravention of any enforcement notice then in force.
5. Section 115 of The Levelling Up and Regeneration Act 2023, which came into force on 25 April 2024, makes amendments to section 171B(1) and 171B(2) of the Act. These amendments extend the time in which local planning authorities can

take enforcement action against unauthorised developments in England from 4 years to 10 years.

6. Transitional provisions contained in Regulation 5 of the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 preserves the old time limits for cases in which the unauthorised development was substantially completed prior to 25th April 2024, or where the change of use to a single dwelling occurred prior to 25th April 2024. Thus, as the application was made before this date, the time limit remains as 4 years.
7. For the avoidance of doubt, the planning merits of the use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the Act. The decision is based strictly on submitted factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Main Issue

8. The main issue is whether the council's refusal to issue a Certificate of Lawfulness was well-founded. This turns on whether the appellant can show that the lawful use sought has continued for 4 years prior to the date of the application, that is 11 February 2024, without any material interruption or intervening uses. This is required to establish immunity from enforcement action under s171B(2) of the Act.

Reasons

9. The appellant states that they purchased the property at auction as a mixed-use building, comprising two commercial shops on the ground floor and three residential flats on the upper floors. The appellant contends that Flat 3 which is on the first floor, has been used as a single dwelling since 2014, which would far exceed the required four-year period. In support of their claim the appellant has submitted documents and information as part of the LDC application and this appeal. The Council has not provided any contradictory evidence.
10. To support their claim, the appellant's statement of case refers to them providing 'robust documentary evidence', including Council Tax records, utility bills and tenancy agreements spanning the relevant period over four years. However, copies of these have not been supplied.
11. The appellant has provided a copy of the purchase agreement for 45 High Street, Pershore dated 21 October 2020 for the online auction on 3 November 2020. Information in the form of a document entitled 'Special Conditions of Sale' lists the property for sale with an agreed completion date of 15 December 2020. It includes details of current tenants in Shop 1, Shop 2, Flat 45C, Flat 1 and Flat 2 and references the fact that the property is sold subject to and with the benefit of these tenancies. Whether Flat 45C is Flat 3 is unclear. Nevertheless, the tenant of Flat 45C is listed as having a term lasting 6 months from 1 September 2020 to 1 March 2021.
12. A copy of auctioneer terms for solely online purchases is also provided. However, there is no direct association with the appeal property, and its relevance is not known.

13. Property information details sourced by the appellant from the Gov.uk website show that three flats at 45 High Street, Pershore are banded as A for Council Tax purposes. The information provides that the banding for Flat 1 was with effect from 1 May 2001, Flat 2 from 1 September 2017 and Flat 3 from 25 August 2022.
14. The LDC application form states that the use of Flat 3 as a single dwellinghouse began on 1 January 2014. However, from the appellant's supporting documents that accompanied their appeal, there is nothing to support this claim. While there is reference to a tenant occupying Flat 3 in September 2020, there is no further evidence to corroborate this. It seems that the only firm evidence that has been provided is in the form of the Council Tax banding which suggest that the residential use of Flat 3 commenced in August 2022.
15. Section 191(4) of the Act indicates that if, on an application under that section, the local planning authority is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. Otherwise, they shall refuse the application.
16. The appellant's own evidence does not have to be corroborated by independent evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, their evidence alone may be sufficient to justify the grant of a certificate.
17. However, the burden of proof falls squarely with the appellant to demonstrate their case, on the balance of probabilities, with evidence that is sufficiently precise and unambiguous. In the absence of such evidence, I am not satisfied that the use had sustained for the requisite period to be immune from enforcement action having operated as such on a consistent basis without any intervening uses for more than 4 years before the date of the LDC application.
18. In the event that the appellant is able to present more substantial and cogent evidence, it would remain open for them to make a resubmission with a more detailed LDC application. It would then fall for the Council to reassess the claim.

Conclusion

19. For the reasons given above, I conclude that on the available evidence, the Council's refusal to grant an LDC for the existing use of flat 3 as residential was well-founded and that the appeal cannot succeed. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR