



Appeal Decision

Inquiry held on 5 November 2025

Site visit held on 4 November 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th November 2025

Appeal Ref: APP/Q5300/X/25/3368877

126 Barrowell Green, Southgate, Enfield, N21 3AX

- 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 Ms Maria Manuella Rodrigues Mendes against the decision of the London Borough of Enfield.
 - The application ref 25/01106/CEU, dated 25 March 2025, was refused by notice dated 2 May 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 use of the property as two separate self-contained units falling within use class C3 of the use classes order.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. At the Inquiry, an application for an award of costs was made by the appellant against the London Borough of Enfield, and an award of costs was made by the London Borough of Enfield against the appellant. These applications are the subject of separate Decisions.

Procedural Matters

3. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that planning merits are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proof in respect of LDC applications made under section 191 of the Act lies with the applicant and the relevant test of the evidence is on the balance of probability.
4. The Planning Practice Guidance states if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
5. A pre-inquiry accompanied site visit was carried out on 4 November 2025. The main parties agreed at the inquiry that it was not necessary for me to visit the appeal site again once the inquiry had been closed. No other interested parties requested that I visit the site again following the closing of the inquiry.

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard to whether on the date of the LDC application the property was lawfully two separate self-contained units falling within use class C3 of the Town and Country Planning (Use Classes) (England) Order 1987 (as amended) (UCO).

Reasons

7. Based on my pre-inquiry accompanied site visit, I am satisfied that in accordance with the legal judgement of *Gravesham BC v SSE & O'Brien* [1983] JPL 306, the downstairs and upstairs areas currently have the distinctive characteristics of being physically capable of being occupied as two separate dwellinghouses in so far that they could afford those that would use them, the facilities required for day-to-day private domestic existence. However, it is important that I emphasise that my site visit post-dates the date of the LDC application.
8. Moreover, and, importantly, it is also necessary to consider how the appeal building, its spaces and its rooms have been used in terms of the identified timeline and from the point of view of determining this LDC appeal. In this regard, it is noteworthy that the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) defines what is a class C3 dwellinghouse. It includes '*a single person or by people to be regarded as forming a single household*' and goes on to state that a single household is to be construed in accordance with section 258 of the Housing Act 2004.
9. The appellant makes the claim that the appeal property has been continuously used as two self-contained residential units falling within use class C3 of the UCO from 27 November 2020. This is outlined in the LDC application form. The appellant does not pursue a case that prior to the 27 November 2020, the appeal property as a whole was being used as two separate and self-contained C3 dwellinghouses.
10. The appellant's evidence includes several internal photographs of the building and a floor plan. The photographs are not dated or labelled, and, in any event, they do not in themselves prove continuous use of the property as two self-contained C3 dwellinghouse units.
11. The appellant seeks to rely on 'Room Rental Agreements', one for Mr Georgiev and one for Mr Gerad. They are both dated 27 November 2020, but the dates when the alleged rental began are not the same. The agreement for Mr Georgiev is 3 January 2021 (postdating 27 November 2020) and for Mr Gerad it is 1 February 2018 (predating the 27 November 2020). In evidence Mr Gerad confirmed that in fact he began living downstairs at the property in February 2018 and only moved upstairs after refurbishment works had been completed after June 2019. There is conflicting evidence about these matters as the appellant's planning application forms relating to two separate planning applications for two 2-bed self-contained flats¹ in the appeal building state that the material change of use had been completed on 7 April 2019.
12. The above demonstrates a lack of precision about when the use claimed began and casts doubt about the reliability of the appellant's evidence. The lack of

¹ Planning application reference Nos. 19/02600 and 19/04105

precision is further compounded in so far that planning enforcement officers visited the appeal property in June 2019 and upon inspection issued a letter to the appellant stating that the upstairs was being used as a house in multiple occupation and the lower part as a self-contained flat. In evidence, the appellant accepted this characterisation, specifically commenting that *'we all had to have somewhere to live, so yes, you could say that'*. The appellant also commented that at this time she had been living upstairs in the front bedroom with her daughter. This evidence does contradict the appellant's version of events that the upstairs had been in use, as currently, since 2018.

13. In addition to the above, and following Housing Officer inspections in 2021 and 2023, it is noteworthy that such officers found that the property was being lived in by the appellant with *'two lodgers'*. The appellant does not dispute that such a use would not require an HMO license, and this is presumably why the Housing Licensing service did not take any further action. It is noteworthy that at this time, the appellant confirmed, as part of a telephone conversation with enforcement officers in May 2022, that Mr Gerad and Mr Georgiev were living at the time as *'lodgers'*. In my judgement, this cast sufficient doubt about any claim that the property was in use as two separate C3 dwellinghouses at this time.
14. The above reference to *'lodgers'* does not, in my judgement, suggest that the property has been used as two separate use class C3 dwellinghouse units up to the date of the LDC application and particularly when it is considered alongside the two *'Room Rental Agreements'*. The words *'when they share the same house'* and *'must give 2 weeks' notice for all parties when leaving or when the room is required back'* appear on the agreements and, notwithstanding comments made at the inquiry by Mr Gerad, they do, in my judgement, suggest that the tenants were not entitled to occupy anything more than a single room in the shared dwellinghouse. I find that the Room Rental Agreements therefore cast sufficient doubt about the claimed use of the appeal building as two separate C3 dwellinghouse units.
15. The appellant's electoral roll evidence does sufficiently demonstrate, in my judgement, that Mr Gerad has been on the electoral roll linked to the appeal property since 1 February 2018, and Mr Georgiev since 1 March 2021. However, this does not in itself provide evidence of actual use of the appeal property.
16. Moreover, there is no distinction made from the Council's Electoral Services Manager between upper and lower floors, or any reference to a *'flat A'* or indeed a *'flat B'*. In the email exchange between the appellant's agent and the Council's Electoral Services Manager, the subject heading which the evidence indicates was completed by the appellant's agent, refers to *'flat B – upper floor of 126 Barrowell Green, London, N21'*. In my judgement, it is clearly an unreasonable position to take that because the Council's Electoral Services Manager did not seek to question what was in the subject header of the emails, it then automatically means that there must have been a *'flat B'* for the time that the named occupants lived at 126 Barrowell Green.
17. While the appellant's agent disagrees with my finding on the above matter, it is noteworthy that at the inquiry I specifically asked the appellant about this matter. She confirmed that the Council write to her at *'126 Barrowell Green'* and have not ever specified separate flats. Despite the clear position of the appellant about this matter, it is surprising that the appellant's agent, in his capacity as both advocate

and witness, continued to pursue this matter and following the appellant being cross examined.

18. Given the above, I do not find that the electoral roll evidence of the appellant is sufficiently precise or unambiguous to demonstrate a continuous four-year use of the appeal building as two separate self-contained C3 dwellinghouses. Moreover, while the floor plan submitted with the LDC application may show what appears to be two separate dwellinghouses in physical terms, this does not in itself give an indication of who uses the space or how or indeed provide details of a continuous use timeline.
19. Even if I had found that the appellant's collective evidence was sufficiently precise and unambiguous to demonstrate continuous use of the property as two self-contained flats for four years, it is, in any event, noteworthy that Mr Gerad and Mr Georgiev do not live together as a '*single household*' in accordance with the definition of use class C3 and section 258 of the Housing Act 2004. They are neither related nor a couple. Therefore, and, by definition, it cannot be claimed that the upstairs has been in use as a separate self-contained C3 dwellinghouse for the period it is claimed that such space has been occupied by Mr Gerad and Mr Georgiev.
20. The appellant has referred to the existence of two external doorbells and two electrical metre boxes in the hallway of the appeal property. I was able to see these as part of my pre-inquiry accompanied site visit. At the inquiry, I asked the appellant when these were respectively installed and by whom. The appellant said that she was not entirely sure, but that it may have been '*sometime in 2020*'. She could not say who installed them. While the doorbells and two electrical metre boxes are in place now, the evidence before me is not sufficiently precise and unambiguous to demonstrate that these were in place when the LDC application was made, or indeed before then, and for a continuous period of four years.
21. The appellant refers to the planning applications for two 2-bed flats at the appeal property which include the word '*retrospective*' in the respective descriptions of development. While I accept that this may be interpreted as suggesting that the planning application development had occurred at this time, the way that a planning application is considered is not the same as an LDC application. It is not unusual for descriptions of development to reflect what is referenced by the applicant in his/her planning application form and, in this case, the appellants planning application forms do indeed refer to the word '*retrospective*'. I acknowledge that the planning applications were refused on policy grounds only, but I cannot see why the Council would have needed to refuse planning permission also on the basis that the planning application development was not in fact retrospective.
22. I acknowledge that in a letter dated 2 July 2019 the Planning Enforcement Officer commented that following a site visit which was carried out on 20 June 2019, the investigation had revealed that there was '*a house in multiple occupation on the upper floor and conversion of the ground floor to a self-contained residential unit*'. The site visit of 20 June 2019 was clearly a snapshot in time. While the appellant has focussed very much on the comment made about '*conversion of the ground floor to a self-contained residential unit*', there is nothing in this letter which states that the appeal property was in use as two separate self-contained units falling within use class C3 of the UCO. Moreover, this evidence needs to be considered in the round, and I have found that other written evidence is either contradicted by

witness accounts at the inquiry and/or that it is not sufficiently precise and unambiguous for the reasons stated.

23. The appellant has referred to an LDC appeal decision made elsewhere. This is distinguishable from the LDC application which is the subject of this appeal given the collective evidence and documents that were considered by the Council in reaching its decision. I have determined this appeal on the evidence that is before me and on the balance of probability.
24. Based on the collective evidence that is before me, including my questioning of the witnesses following the administering of affirmations, as well as the submitted statutory declarations and witness statements, I conclude, on the balance of probability, that the evidence is not sufficiently precise or unambiguous to demonstrate four years continuous use of the appeal property as two self-contained dwellinghouses falling within use class C3 of the UCO. Consequently, the Council's decision to refuse the LDC application was well founded.
25. In closing submissions, the appellant has reminded me of my powers to amend the LDC description of development as per section 191(4) of the Act and to accordingly issue an LDC. This power is acknowledged. However, firstly the appellant does not state how or why the description of development for the LDC application should be amended, and, secondly, the appellant's evidence as a whole not only fails to demonstrate precisely and unambiguously a continuous four year use of the appeal building as two use class C3 dwellinghouses, but also for any other alternative use(s) and relative to the undisputed established lawful use of the appeal building as one use class C3 dwellinghouse falling within a single planning unit. Even if this was otherwise, the appellant has failed to demonstrate that the use of the upper floors by Mr Gerad and Mr Georgiev meets the definition of a use class C3 dwellinghouse as they cannot have occupied such space as a single household given the definition in section 258 of the Housing Act 2004.

Overall Conclusion

26. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for two separate self-contained units falling within use class C3 of the Town and Country Planning (Use Classes Order) 1987 (as amended) is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended)

D Hartley

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Giles Atkinson, Barrister, Six Pump Court

He called

Karolina Grebowiec-Hall, Decisions Manager, London Borough of Enfield

FOR THE APPELLANT:

Mr Giuseppe Nicastro LLB (Hons) Law, G Nicastro Limited.

He called

Manuela Maria Rodrigues-Mendes

Vintsislav Georgiev

Jeff Gerad

Giuseppe Nicastro was also a witness

OTHER INTERESTED PERSONS:

None

DOCUMENTS SUBMITTED AT THE INQUIRY

Council's Closing Submissions

Appellant's Closing Submissions

Appellant's Application for Costs

Legal judgement of Westminster Renslade Limited v Secretary of State for the Environment and Another (1983)