



Appeal Decision

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2025

Appeal Ref: APP/U5360/X/24/3340570

94 Queens Drive, Hackney, London N4 2HW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Finsbury Park Estates Ltd against the Council of the London Borough of Hackney.
 - The application ref 2023/2635 is dated 15 November 2023.
 - 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 the use of the property as 5 self-contained residential flats.
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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. The appeal is a consequence of the Council's failure to determine the LDC within the prescribed time period. Nevertheless, I have had regard to the parties' submissions, and notably, the Council explains that it considers the use as applied for to be lawful based on the evidence submitted on the date of the LDC. Further, the Council confirms that it will not be seeking to take any enforcement action against the use applied for, as it considers, on the balance of probabilities, that the use is immune from enforcement action due to the passage of time.

Main Issue

3. The main issue is whether, on the balance of probability, 94 Queens Drive has been in use as five self-contained flats for a continuous period of four years, and as such, the time for enforcement action has expired or for any other reason.

Reasons

4. 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.
5. 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)(a) confirms that a use is 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.

6. S191(4) of the Act 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. The relevant date for ascertaining whether the existing development is lawful is the date of the LDC application.
7. The director of the appellant company confirms in his statutory declaration that the property was purchased by the appellant company on 13 September 2019 and that it was inspected prior to this date on or before 15 March 2019. A former co-owner of the property confirms in his statutory declaration that the property comprised of four self-contained flats between the early 1970s and by 1994 the basement flat was completed to make five self-contained units. After this point, the former co-owner confirms that the property continued to be used like this until the property was sold in September 2019.
8. The evidence explains that a one-bedroom basement flat is accessed from the rear garden using a side path; that there is a one-bedroom flat which is accessed from the flank elevation and with its accommodation split across the ground and first floors; two one-bedroom flats on the ground and first floors; and a two-bedroom second-floor flat in the property.
9. Energy Performance Certificates (EPC) have been provided for four of the flats, save for the first-floor flat because the previous owner occupied it until the sale. The EPCs were issued between 26 August 2016 and 9 January 2019. This supports the statutory declaration submitted. There are also four assured tenancy agreements (ATS), three of which are dated in December 2019, with the fourth in February 2020. The ATs relate to the flats on the ground floor up because the basement flat experienced flood damage in October 2019, which required remedial works to be carried out. This also corroborates the statutory declaration.
10. I conclude that, while the EPCs and ATC's are not complete, collectively they, together with the statutory declarations, show, on the balance of probabilities, that the use as applied for has been proven for the relevant time period on the date of the LDC. The Council has confirmed that it will not be taking any enforcement action in respect of the use nor is there any other reason not to issue a certificate.

Conclusion

11. For the reasons given above, I conclude, on the evidence now available, that had the Council refused to grant a certificate of lawful use or development in respect of the use of the property as 5 self-contained residential flats, that refusal would not have been well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

Andrew McGlone

INSPECTOR

Plan

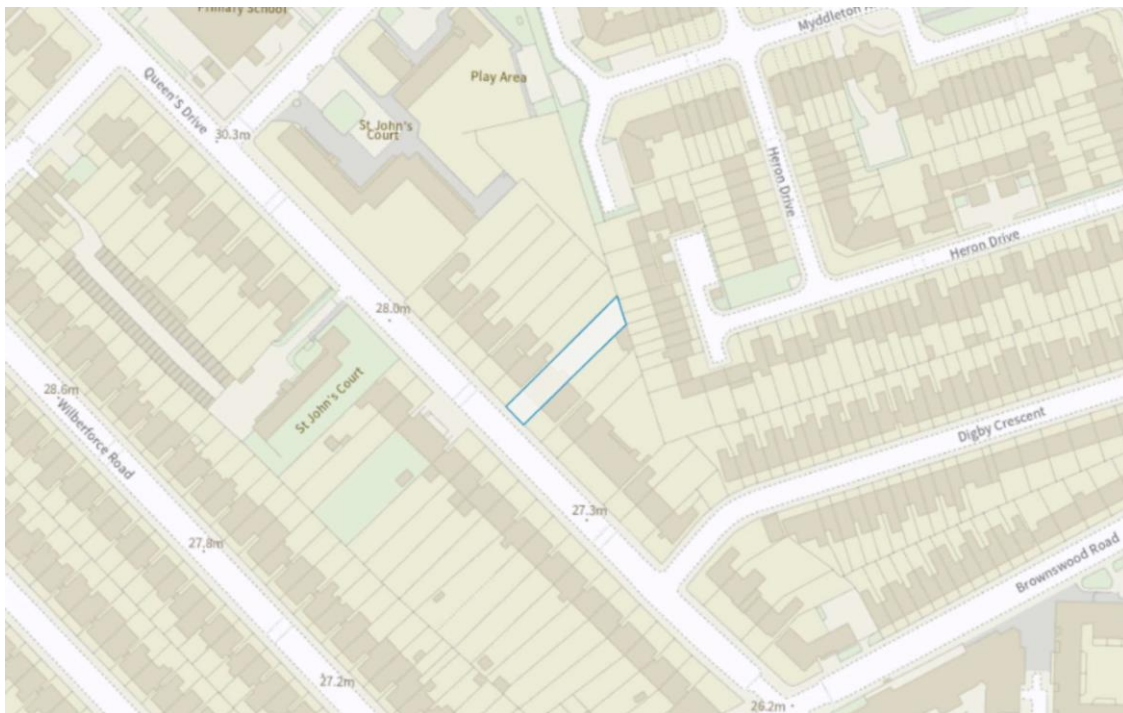
This is the plan referred to in the Lawful Development Certificate dated: 21 November 2025

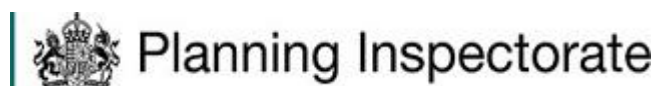
by **Andrew McGlone**

Land at: 94 Queens Drive, Hackney, London N4 2HW

Reference: APP/U5360/X/24/3340570

Scale: Not to Scale





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 15 November 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in blue 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 use falls within Class C3(a) of The Town and Country Planning (Use Classes) Order 1987 (as amended).

Signed

Andrew McGlone

Inspector

Date: 21 November 2025

Reference: APP/U5360/X/24/3340570

First Schedule

Use of the property as 5 self-contained residential flats.

Second Schedule

Land at 94 Queens Drive, Hackney, London N4 2HW.

IMPORTANT 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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /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.