



Appeal Decision

Site visit made on 07 October 2025

by Chris Preston BA (Hons), BPI, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th November 2025

Appeal Ref: APP/B1415/X/25/3368376

Flat 1B, 26 EVERSFIELD PLACE, ST. LEONARDS-ON-SEA, TN37 6BY

- 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 Arthur M Cahill against the decision of Hastings Borough Council.
 - The application ref: HS/EX/25/00123, dated 19 March 2025, was refused by notice dated 13 May 2025.
 - The application was made under section 191(1) (a) & (b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is described on the application form as: We wish to confirm that the use of the property as separate residential dwelling and installation of double-glazed windows is lawful due to the passage of time. It remains a residential property and will retain a bedroom, bathroom /toilet and hallway with the new addition of its own kitchen. A period of over four years has passed.
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Decision

1. The appeal is dismissed.

Reasons

2. An application for a Certificate of Lawfulness for an Existing Use or Development (CLUED) is not an application for planning permission. As such, the planning merits of the development are not relevant to my decision. The main issue is whether the Council's decision to refuse to grant a CLUED was well-founded. The onus rests with an appellant to make their case, on the balance of probability.
3. With any application for a CLUED it is important that the development for which a certificate is sought is framed precisely¹. In this case there is confusion within the appeal documents as to the nature of the development for which a CLUED is sought and that appeared to evolve during the consideration of the application.
4. In the banner heading, above, I have taken the description of the development for which a CLUED is sought from the application form submitted to the Council. That description is an extract taken from the application form which provides a summary of the "Existing Use, Building Works or Activity" for which a CLUED is sought. For clarity, I have set out the full description given in the annex at the end of this decision.
5. The full description contains extraneous detail relating to works at the neighbouring property, 27 Eversfield Place, which do not appear to be directly relevant to the CLUED in this case. Then follows a summary of the planning history of the flat 1B and reference to a building control consent to separate the

¹ Planning Practice Guidance Paragraph: 005 Reference ID: 17c-005-20140306

upper and lower level of the flat. The final paragraph makes clear that the CLUED was sought on the basis that the use of the property as a separate dwelling was lawful, in addition to confirmation that double glazed windows installed at the property were lawful due to the passage of time.

6. Under the “Grounds for the Application for a Lawful Development Certificate” section of the application form, the appellant ticked that “building works were completed more than four years before the date of the application” and that “the use as a single dwellinghouse began more than four years before the date of this application”. Under the section “Please State Why a Lawful Development Certificate Should be Granted” the appellant confirmed that a CLUED was sought for the continued use of the lower section of Flat 1B (referred to as Flat 1D by the appellant) as a private residential dwelling; that “remedial works” to isolate it from the upper section had been completed more than four years previously and that the same was true for the installation of the windows.
7. From reading the delegated officer report it appears that there was discussion between the appellant and the Council as to the description of development for which a CLUED was sought. The report states that *“Following a request of evidence demonstrating the use of the area referred to as Flat 1D as a separate residential unit for a period of at least four years, the applicant disclosed that the area referred to as Flat 1D has never been occupied as a separate unit and is not yet habitable as it lacks a kitchen, shower room/ toilet and separate utilities. The applicant subsequently requested an amendment to the description to refer to the works to physically separate the maisonette to a separate unit”*.
8. The hint from that quote is that the appellant had accepted that the use was not lawful because it had never actually commenced. The Council amended the description and its decision notice describes the nature of the application as “Physical separation of the lower level of the maisonette – to be known as Flat 1D (formerly part of Flat 1B) as a self-contained residential unit (Class C3), along with associated installation of double-glazed windows, including those installed at the upper level of the former maisonette (amended description)”.
9. On its face that description isn’t substantially different to that set out on the application form and it still refers to the use of the lower ground floor, referred to as Flat 1D, as a separate self-contained residential unit, in addition to the physical separation and the installation of windows at the lower and upper level of the flat.
10. On the appeal form, the appellant still refers to the use of the lower ground floor and appears to seek confirmation that its use as an independent unit of occupation is lawful², notwithstanding that he accepts the lower ground floor is uninhabitable on the same form. In his rebuttal statement he confirms that the application was made under sections 191(1) (a) and (b) of the Town and Country Planning Act 1990 (the Act), with subsection (a) relating to the use of the building and (b) relating to operations carried out.
11. Given the continued reference to s191(1)(a) it would appear that a CLUED is being sought in respect of the use of the lower ground floor. That does cause confusion, in light of the appellant’s admission that the lower ground floor has never actually been occupied as an independent unit. However, in the absence of any formal

² Paragraph 1 “Introduction” of the Appeal Statement set out on the appeal form.

correspondence from the appellant seeking to withdraw that part of the application I must consider the appeal accordingly.

12. The focus of the rebuttal seems to be on the physical internal works and the installation of UPVC windows. The precise nature of the internal works has not been clearly set out other than in general terms relating to the reconfiguration of the property. I imagine new walls and floors would have been required, the internal staircase would have needed to be removed but it is unclear exactly which operations are being referred to.
13. All of the above has resulted in uncertainty relating to the nature of development for which a CLUED is sought. That alone would be sufficient grounds to dismiss the appeal because the uncertainty created. Notwithstanding that point, I am mindful that the appellant submitted the application and appeal himself, unrepresented by an agent. For clarity it is worth concluding on the main points raised, as I understand the respective cases to be, based on the details submitted.
14. The application relates to Flat 1 B, 26 Eversfield Place. The details on the application form note that flat was formed following the grant of planning permission in 1988³. The approved flat was set over two floors, with a toilet, kitchen and rear room on the ground floor and a bedroom, bathroom, toilet and hallway on the lower ground floor.
15. The appellant was granted building regulations approval to split the lower and upper levels into two separate flats on 04 October 2018. He maintains that the lower section has been isolated from the upper section since July 2018 and the Council does not directly dispute that. Whilst the lower ground floor of the maisonette previously contained a bathroom/toilet, bedroom and hallway, the bathroom and toilet have been removed as part of the work. No kitchen has been installed.
16. Planning permission to separate Flat 1B into two units was refused by the Council in August 2024⁴ and dismissed at appeal in February 2025⁵. It would appear that work ceased following that decision and has not progressed to any notable degree since. It remained in a state of disrepair at the time of my site visit. Thus, at the time of the application, the segregated lower ground floor did not contain the facilities required to facilitate day to day living and did not constitute a dwellinghouse, having regard to well-established caselaw. Accordingly, it was not "in use" as a dwellinghouse or separate residential unit at the time the application was made.
17. Whilst that may have been the appellant's intention when work was initiated, the work was never completed and the MCU did not take place. Therefore, I cannot grant a CLUED for the use of the lower ground floor of the property as a separate dwellinghouse because it was not and had not been used as such at the time of the application.
18. Notwithstanding the recognition of the uninhabitable state of the lower ground floor the appellant contends that "the relevant works establishing its separate character were completed well in excess of over four years before the application". I am not entirely clear what that expression means other than to indicate that the two

³ HS/FA/88/00475

⁴ LPA Ref: HS/FA/24/00358

⁵ PINS Ref: APP/B1415/W/24/3349878

elements had been blocked off from one another. As set out above, the application does not precisely identify what those works contained.

19. Within his rebuttal statement the appellant contends that the operational development involved in separating the upper and lower sections of the flat is lawful under the terms of s171B(1) of the Act having regard to the length of time since those works were carried out. However, any internal works were clearly integral to the intended conversion of the property into two separate flats. There is no suggestion that the works were undertaken for any other purpose. That work was never completed to a state where residential occupation would be feasible.
20. Therefore, simply because the work on the intended conversion has stalled it does not follow that the internal work that has been undertaken is lawful due to the passage of time. To put matters another way, if the appellant were to carry on, complete work on the conversion of the property and subsequently let it as a separate flat, it is clear that the Council would be able to take enforcement action against both the MCU and the internal works which facilitated that MCU. That is because the time period for taking action would only begin after the MCU had taken place and/or the works had been substantially completed.
21. I am mindful that internal works for the maintenance, improvement or other alteration of a building fall outside the definition of “development” as set out at s.55(2)(a) of the Act, providing that they only affect the interior and do not materially affect the external appearance of the building. Aside from the replacement windows, the physical works in this case are internal and do not impact on the external appearance of the terrace.
22. However, it has long been established that an enforcement notice aimed at a MCU may require the removal of internal works carried out that are integral to an facilitated the MCU even where those works do not require permission of themselves. For that reason, I am not satisfied that the elements of internal work undertaken more than four years prior to the application being made can be considered lawful given that the works were integral to the proposed creation of a separate residential unit and served no other purpose. It would seem perverse if work carried out solely for the purpose of facilitating an unlawful MCU became lawful due to the fact that work stalled part way through the development such that the MCU was never actually initiated.
23. Rather, it appears to me that the development remains partially completed. In those circumstances it is not clear, on the balance of probability, that the internal works have gained immunity from enforcement action. Even if I am wrong on that point and the internal works themselves are immune from enforcement action, I have reservations as to whether a CLUED should be granted in the terms sought by the appellant.
24. Even if the internal works are immune from enforcement action, it does not dictate that the lower ground floor space can lawfully be put to use as a separate residential unit. That would be development for which planning permission would be required. Such permission having been refused and dismissed at appeal.
25. Turning to the replacement windows, the Council correctly point out that the dimensions of the windows provided on the invoice, dated 01 February 2019, do not match the dimensions of the windows shown on the elevational drawings of the building. They are markedly different which casts doubt over whether the invoice

was, in fact, for the windows in the appeal building. The differences are not minor as suggested by the appellant. It is established caselaw that the burden of proof rests with an appellant to make his case in respect of CLUED applications and no satisfactory explanation has been given for the discrepancy identified above.

26. Overall, the evidence presented is unconvincing and the basis for the application appears somewhat confused. The lack of precision alone would be reason enough to dismiss the appeal. Nonetheless, having considered the arguments presented it is clear that the use of the lower ground floor of flat 1B (referred to by the appellant as Flat 1D) as a separate residential unit was not lawful at the time the application was made, nor were the works which were undertaken to facilitate the proposed MCU. Similarly, evidence relating to the replacement windows is unconvincing and contradictory and does not satisfactorily demonstrate that they were installed more than four years prior to the date of the application.
27. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development was 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).

Chris Preston

INSPECTOR

ANNEX

Full description of development for which a CLUED was sought, taken from the application form:

Planning approved the development at our neighbouring property of 27 Eversfield Place for conversion of lower ground & part of ground floor into 2 x self-contained flats under HS/FA/07/00249. Permission was granted for Flats 2 and 8 with conditions on 22/05/07. Both those properties possess double glazed windows and share their courtyard.

In relation 26 Eversfield Place, planning application was made under HS/FA/24/00358 for the conversion of the lower level of a maisonette, formerly part of Flat 1B into an additional residential unit to be known as Basement Flat 1D. The matter was appealed under APP/B1415/W/24/3349878, however the application was not granted on the basis that no daylight sunlight report was available and prospect of sharing the courtyard.

In terms of existing permissions granted for Flat 1b, planning permission was originally granted on 22nd April 1988 under HS/FA/88/00475, inter alia, for the conversion of Flat 1b into a residential maisonette. In accordance with the permissions granted at that time, the lower level of the maisonette consisted of the bedroom, bathroom, toilet and hallway of Flat 1b. The upper level contained the toilet, kitchen and rear room leading onto the rear garden.

In relation to separation of Flat 1b, Building Regulations Permission has been granted to separate the upper and lower floors into two individual units under F/189/1034 on 4th October 2018. Remedial works were carried to Flat 1b and the lower level of the property has been isolated from the upper part following completion 20th July 2018. The installation of double-glazed windows was invoiced on 1st February 2019. Remedial works were substantially completed by 19th May 2019.

The lower level of Flat 1b has remained separated isolated from the upper part from 20th July 2018. In accordance with permissions granted on 22nd April 1988 under HS/FA/88/00475, the lower level of Flat 1b retained a bedroom, bathroom / toilet and hallway.

We wish to apply for a Certificate of Lawfulness for an Existing Use or Development (CLEUD) to confirm that the use of the property as separate residential dwelling and installation of double-glazed windows is lawful due to the passage of time. It remains a residential property and will retain a bedroom, bathroom /toilet and hallway with the new addition of its own kitchen. A period of over four years has passed.