



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th November 2025

Appeal Ref: APP/D1590/X/24/3340970

39 Hainault Avenue, Westcliff-on-Sea, Southend-on-Sea SS0 9HA

- 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 Stephen Dewberry against the decision of Southend-on-Sea Borough Council.
 - The application ref 23/01005/CLE, dated 14 June 2023, was refused by notice dated 17 October 2023.
 - 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 described as 'House converted into two flats in 1984, used since 2007 as one house. Application under 4-year rule as there is sufficient evidence to prove this.'
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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 extent of the existing use which is found to be lawful.

Preliminary Matters

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the relevant date for determining whether the existing development is lawful, is the date of the application, and the parties have submitted sufficient evidence to understand the nature of the site given the dispute.
3. The description in the banner heading above is taken from the appellant's appeal form since that given on the original application form contained superfluous wording. However, for the purposes of the certificate, I have used the description given on the Council's decision notice in the interests of clarity and brevity.

Main issue

4. The main issue is whether the Council's refusal to issue an LDC was well-founded.

Reasons

Background and Statutory Framework

5. Section 191(2) of the 1990 Act states that uses are 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. Where there has been a breach of planning control consisting of a material change of use of a building to a dwellinghouse, where the use took place before 25 April 2024, by virtue of section 171B(2) of the 1990 Act, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
7. For the appeal to succeed, the appellant would need to demonstrate that the property has been used as a single dwellinghouse on a substantially uninterrupted basis for not less than four years prior to the date of the application.
8. Where an LDC is sought, the onus of proof is on the appellant, and the standard is the balance of probabilities.

The appellant's evidence

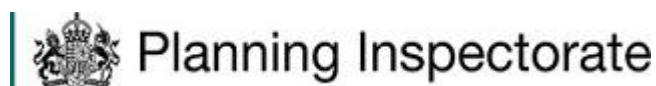
9. The appeal site consists of a terraced house which was converted into two flats in around 1985. The appellant bought the first floor flat in 1985 and later bought the ground floor flat to rent out. The appellant stated that the rental was unsuccessful and in 2007/8 stopped renting and gradually started to use the whole house, redecorating and renovating.
10. This is supported by the email correspondence with Tolhurst Fisher, dated 10 July 2019, in which the appellant stated that around 12 years ago they ceased letting the flat and started using the property as a house.
11. At their visit, the Council observed that the ground floor partition which formed two entrances had been removed. Although no precise evidence has been provided to demonstrate when this occurred, the submitted photographs, dated 7 May 2015 and 11 June 2023 show this. The photographs are dated and other than a comment regarding them not showing the whole property, are unchallenged by the Council and I therefore attach significant weight to them.
12. I acknowledge the letter from someone who has carried out work for the appellant and his wife for over 20 years in which it is stated that he assisted the appellant removing the internal partition wall on his birthday - 19 March 2016. However, whilst I recognise the conflict with dates, it seems likely that the wrong year was given, and this does not diminish the weight I attach to the dated photographs.
13. The Council stated that a kitchen remains in place on the ground and first floor. In response the appellant stated that the kitchen on the first floor is used as a utility room with breakfast and laundry facilities, and there is only one boiler servicing the property, located in the ground floor kitchen.
14. The appellant provided letters from two neighbours, one from next door, and another across the road, who asserted that they have known the appellant and his wife for over 25 years and are certain that they have lived in their property as sole occupants for a long period of time and definitely for more than the past four years.
15. There is also a letter from a decorator who stated that they have known the appellant and his wife for over 25 years and have carried out decorating work for them including when they started to live in the two properties as one house (in around 2008). Whilst the letters are not precise about when the use began, they assist with confirming the appellant's version of events.

16. In a further letter from someone who carried out work on the property in April 2024, it is stated that it could be clearly seen that the appellant and his wife live in the whole property and that situation appears to be well established over many years. Albeit this is of little weight since it does not concern the whole of the relevant period and contains only observations.
17. The documents from MIDAS insurance, HOMETEC, Barclays, Hilltop Spinning and Weaving and British Gas are addressed to 39 Hainault Avenue but do not establish that 39A did not exist at that time. Moreover, the number property request is dated May 2023, and the services were not joined until 2023, so these matters do not support the appellant's case.
18. The existence of separate Council Tax ratings, title deeds, TV licenses, or utilities is not determinative as to whether separate units of residential accommodation exist or not. In any event, the appellant stated that the property has to be lawfully recognised as a single dwellinghouse before these can be changed and although there is no evidence before me to support this position, the Council did not contradict this.
19. Based on the submissions it seems probable that the appellant ceased using the property as two flats in around 2008 and at some point, between 2008 and 2015, the separate entrances were removed. Whether two kitchens remain, it seems highly unlikely that the appellant would have gone to the effort and expense of removing the separate entrances if not to facilitate the use as a single dwellinghouse.
20. Planning Practice Guidance states that 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" – namely what is more likely than not. That balance of the evidence need only be slightly more than half in order to satisfy the test.
21. The appellant is not professionally represented, and the supporting documentary and photographic evidence is not comprehensive, it is nonetheless sufficient to establish the use of the property with a reasonable degree of certainty, and to give credibility to the appellant's account of events.
22. Therefore, as a matter of fact and degree, the evidence presented indicates on the balance of probabilities, that the property has been used as a single dwellinghouse for a continuous period of more than four years before the application date. There is little evidence which contradicts or makes the appellant's version of events less than probable.

Conclusion

23. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for the use as a single dwellinghouse is 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 (as amended).

Felicity Thompson 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 14 June 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and outlined 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 available evidence demonstrates that, on the balance of probabilities, the use of the property as a single dwellinghouse began more than four years before the date of the application and has been continuous thereafter.

Signed

Felicity Thompson

Inspector

Date: 27th November 2025

Reference: APP/D1590/X/24/3340970

First Schedule

Use as a single dwellinghouse

Second Schedule

Land at 39 Hainault Avenue, Westcliff-on-Sea, Southend-on-Sea SS0 9HA

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 /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 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: 27th November 2025

by Felicity Thompson

Land at: 39 Hainault Avenue, Westcliff-on-Sea, Southend-on-Sea SS0 9HA

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Scale: Not to Scale

