Appeal Decision

Site visit made on 29 November 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2025

Appeal: APP/C5690/X/24/3355170
302b Brownhill Road, London SE6 1AU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Cheyne Assets Ltd against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/24/134506, dated 10 January 2024, was refused by notice dated 17 July 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990, as amended.
- The development for which a LDC is sought is the use of the property as a self-contained 2 bedroom flat.

Decision

1. The appeal is dismissed.

Background

2. In March 2016, following a proposal submitted to the Council for a single-storey rear extension (ref DC/16/095449) to no 302 Brownhill Road, under the Prior Notification procedure, it was determined that no Prior Approval was required for the intended development. The approved plans indicated that the extension was to be for a kitchen-diner/lounge.

3. It is understood that development commenced later that year, but the extension was built to an enlarged footprint, and wrapped-around the building to partially extend along its side elevation. This allowed for independent access into what was subsequently fitted out as a self-contained residential unit, and became known as no 302b Brownhill Road.

4. The application for the LDC was made on 10 January 2024. As such, it needs to be demonstrated that no 302b had been in use as a self-contained residential unit of occupation continuously for at least four years prior to this date (ie since 10 January 2020). It is stated in the application form that the said use commenced on 1 September 2016.

The legal requirement

5. In an appeal under s195 of the Act, against the refusal of a LDC, the burden of proof is upon the appellants who will need to demonstrate immunity from planning enforcement action on the balance of probability. Accordingly, the key is that the evidence should be precise and unambiguous to this end.

6. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on evidential fact, planning legislation and relevant case law.

Main Issue

7. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

8. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

9. A 'self-contained flat' is defined within s254 of the Housing Act 2004 as a separate set of premises which forms part of a building, either the whole or a material part of the building and in which all three basic amenities – defined as a toilet, personal washing facilities and also cooking facilities - are available for the exclusive use of its occupants.

10. The judgement in *Gravesham BC v SSE & O'Brien* [1982] sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence.

11. Self-contained units are usually characterised by having exclusive use of all facilities within their own physical envelope. In this particular instance the Council has not challenged the assertion that an additional self-contained residential unit has been created, only that insufficient evidence has been produced to demonstrate that no 302b has been used continuously as such for the requisite minimum period of four years back from the date of the application made to the Council.

12. In the Statutory Declaration of Adewale Ogunyemi, the Managing Director of Amenity Estates – who have managed both nos 302 and 302b Brownhill Road – he says that, on 1 September 2016, he recalls that Yakup Ulas, the co-owner of no 302, visited Mr Ogunyemi's office and explained that he wished to let the property out for rent. Mr Ogunyemi goes on to say that he visited no 302 later that day and also entered the adjoining property, no 302b, where, he states, Mr and Mrs. Ulas resided, to discuss matters.

13. Mr Ulas died in April 2020, but his wife, Aysal Ulas, produced a Witness Statement in support of the LDC application. The assertions are largely consistent with Mr Ogunyemi's account of events but further, in explaining the circumstances, she says that after works commenced to erect the extension it was decided to build the extension larger than the structure approved in order to create a self-contained two-bed flat. She goes on to say that, by September 2016, all works were completed and she and her husband moved into the new flat, subsequently instructing Amenity Estates to market no 302 for letting.

14. Apparently Mrs Ulas sold the property in March 2022 to Cheyne Assets Ltd, the appellants in this appeal, and of which Mr Ogunyemi is also a director.

15. Mr Ogunwami, in his Statutory Declaration, also says that from, at least 27 February 2017 until 21 March 2022 both nos 302 and 302b were occupied as two separate self-contained homes by two separate families. In terms of the current appeal the occupation of no 302 is not relevant but, importantly, no real mention is made as to the use and occupation of 302b in the period following March 2022 up until the time the application for the LDC was made in January 2024.

16. Whilst I am, therefore, satisfied, on the various evidence produced by the appellant, that, on the balance of probabilities, Mrs Ulas resided at 302b from September 2016 until March 2022, and have therefore discharged the burden of proof for this period of time, I have no evidence, either corroborated or otherwise, as to who has occupied no 302b, and for what purpose, or whether the property lay vacant following its sale and Mrs Ulas vacating the property.

17. A LDC is a way to regularise a situation where there was an unlawful use without formal planning permission, but only if that use has been continuous for the requisite period. Nonetheless, a LDC cannot necessarily be issued for a use which has ceased for a significant period of time, or certainly for an unauthorised use of premises which, when ceased, was changed to a materially different use as, even if it had been continuous for over four years, it would be no longer possible to claim immunity from enforcement action.

18. I note that, regarding the creation of no 302b as a separate and independent residential property, an application was made to the Land Registry in June 2023. It was subsequently registered, accordingly. The property is also registered for Council tax purposes. However, this is not conclusive of a continuing use for class (C3) residential purposes.

19. Accordingly, to complete the picture, supporting and compelling evidence should have been provided to account for the use and occupation of no 302b following Mrs Ulas's departure. I am not, therefore, saying that the residential use claimed could not be considered as lawful at the date the LDC application was made, only that the evidence provided by the appellant, is not complete in this regard. As such, lawfulness, has not been sufficiently demonstrated.

20. For the reasons given above I conclude, on the evidence available, that, on the balance of probability, the use was not lawful on 10 January 2024, within the meaning of section 191(2) of the Town and Country Planning Act 1990.

21. Accordingly, I will exercise my powers under section 195(3) of the Act.

Timothy C King

INSPECTOR