



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2025

Appeal Ref: APP/R5510/X/24/3353086

45 East Avenue, Hayes UB3 2HP

- 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 Gupta against the decision of the Council of the London Borough of Hillingdon.
 - The application ref 66448/APP/2024/1319, dated 20 May 2024, was refused by notice dated 13 August 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which an LDC is sought is use of the existing building as two self-contained 2 bedroom flats.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Preliminary Matters

2. Determination of the appeal requires an assessment of documentary evidence. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.

Reasons

3. 45 East Avenue is a two-storey mid-terraced property. It was a dwelling but is now two self-contained flats; one at each floor level. To be immune from enforcement action and therefore lawful the two flats must have been occupied continuously for a period of four years. The four year period can have been at any time but if it was not immediately before the date of the application then the use as two flats must then have continued up to that date. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probabilities, that the two flats have been occupied continuously for a four year period.
4. The Appellant has submitted two Statutory Declarations. One by Ms Olejarnik, former tenant of the ground floor flat, who states that "...I was the tenant between January 2013 – June 2023 and was paying the council tax during that period". Ms Olejarnik signed a one year tenancy agreement on 1 January in 2019, 2020, 2021 and 2022 and these agreements are in evidence. No council tax bills for the ground floor flat are in evidence but there is no reason to doubt Ms Olejarnik's statement that she paid council tax during her tenancy. Her occupation of the ground floor flat is supported by many energy bills. Her tenancy was continued by Pankil and Priya who signed a one year tenancy agreement on 31 July 2023. Their tenancy, which is supported by energy bills, will have continued beyond the date of the application.

5. The other Statutory Declaration is by Mr da Silva who states "...that I have been the occupant and rent payer of the (first floor) flat since November 2016, on a recurring tenancy. During my tenancy I have been liable for the Council Tax bills and energy bills". Council tax bills for the first floor flat from 2017/18 up to 2023/24 are in evidence as are tenancy agreements signed on 15 November in 2017 up to 2023, except for 2021. The absence of one tenancy agreement is not important. Occupation of the flat by Mr da Silva and his partner is supported by many energy bills. The tenancy signed in 2023 will have continued beyond the date of the application.

6. Taking all the aforementioned into account the Appellant has provided precise and unambiguous evidence to justify a conclusion, on the balance of probabilities, that the two flats have been occupied continuously for in excess of four years and that occupancy of the two flats continued up to the date of the application.

7. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for use of the existing building as two self-contained 2 bedroom flats at 45 East Avenue, Hayes was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

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 20 May 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black 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 has been continuous for the four year period prior to the date of the application and is thus immune from enforcement action.

Signed

John Braithwaite

Inspector

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First Schedule

Use of the existing building as two self-contained 2 bedroom flats

Second Schedule

Land at 45 East Avenue, Hayes UB3 2HP

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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: 04 December 2025

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Land at: 45 East Avenue, Hayes UB3 2HP

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Scale: Not to Scale

