



Appeal Decision

Site visit made on 2 December 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 January 2026

Appeal Ref: APP/D3640/X/24/3354121

55 Deepcut Bridge Road, Deepcut, Camberley GU16 6QT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Robert Wehrli against the decision of Surrey Heath Borough Council.
- The application ref 24/0471/CEU, dated 24 May 2024, was refused by notice dated 13 September 2024.
- The application was made under section 191(1)(a) of the 1990 Act (as amended).
- The use for which a certificate of lawful use or development is sought is the existing use of the floorspace as a self-contained residential unit.

Formal Decision

1. The appeal is dismissed.

Preliminary Matters

2. An application under section 191(1)(a) of the 1990 Act can only confirm whether an existing use of land is lawful. In this instance, the LDC application is seeking confirmation as to a claim of immunity for a change of use of the existing use of floorspace as a 1-bed self-contained residential unit, and I have determined the appeal on this basis.
3. In an LDC application, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities¹. The Planning Practice Guidance (PPG) states the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous².
4. As part of the appeal, the appellants have submitted two updated Statutory Declarations (SD) as further evidence to corroborate their claim that the use as a 1-bed self-contained unit is immune from enforcement action and that an LDC should be issued at the site. I have given due consideration to the guidance in the 'Procedural Guide: Planning Appeals - England' (2025), and the 'Wheatcroft Principles' referred to in the guidance³, along with other case law⁴ in deciding whether to accept the updated information.

¹ *Thrasyvoulou v SSE & Hackney LBC (No 1)* [1984] JPL 732

² Lawful Development Certificates Paragraph: 006 Reference ID: 17c-006-20140306

³ *Bernard Wheatcroft Ltd v SSE and Another* (1982) 43 P. & C.R. 233.

⁴ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

5. I consider the updated information does not alter the proposal before me as it is essentially the same as the scheme that was considered by the Council. The additional details contained in the SDs only provide useful clarification in respect to anomalies highlighted by the Council in their determination of the application. The submitted SDs provides an updated picture in regard to the information already submitted to clarify the existing position and has therefore not been used to evolve the scheme⁵.
6. Consequently, I am satisfied the submitted details do not alter the consideration of the appeal, where anyone involved in the process would be prejudiced or impacted should I accept the updated details. Furthermore, the Council has had the opportunity to consider this updated information.

Main Issue

7. The main issue is whether the decision of Surrey Heath Borough Council to refuse to grant an LDC for the claimed use was well-founded.

Reasons

8. Planning permission has been granted at the site⁶ to convert part of the existing ground floor retail (A1) unit and first and second floors, 4 bedroom apartment (C3) into 4 one bedroom flats, and these works have been completed. From the information before me, the appellants applied for an LDC for a change of use of the remaining A1 floorspace, which was to be retained as part of the permission, to the use as a 1-bed self-contained residential unit. The appellants claim that this use has been continuous since October 2019 and thus would be lawful and immune from enforcement action. However, the Council maintains its reason for refusing the application, which essentially is that insufficient evidence has been provided to support this claim.
9. I acknowledge that the appellant's evidence is limited having only included an invoice for the installation of a pay-as-you-go electricity meter at the property, and four Statutory Declarations (SD). Nevertheless, the SDs have been made under the provisions of the Statutory Declarations Act 1835 and have been witnessed by a solicitor, and I have no reason to believe that the SD evidence is not authentic.
10. Two of the SDs are from Mr Luke Thurlow and Mr Harvey Walker which state that they were tenants at the property subject to the LDC from 2021-2023 and 2024 until the present time, respectively. Both confirm that the appeal site contained the three basic amenities⁷ and these were available for the exclusive use of these occupants. As such, the use of the appeal site would meet the definition of a self-contained unit as set out in the Housing Act 2004⁸. However, these SDs do not cover the requisite four year time frame.
11. A further two SDs were submitted to accompany the LDC application by Mr Robert Wehrli and Mr John Trusler, which have subsequently been updated as part of this appeal. Mr Wehrli is the appellant and the owner of the property who confirms that the appeal site has been used as a self-contained residential unit from October 2019. Mr Wehrli confirms the aforementioned tenants occupied the unit during the

⁵ Section 16 of the Procedural Guide: Planning Appeals – England June 2025

⁶ Surrey Heath Borough Council Planning Ref: 19/0187

⁷ Toilet, personal washing facilities, and cooking facilities

⁸ Section 254(8)

specified times and also states that the unit was rented to two further tenants, Mr Ben MacArthur from October 2019 until May 2021, and Mr Criag Riches between February 2023 and January 2024. Based on the submitted information this would provide an uninterrupted period of four years that tenants have occupied the premises. However, other than Mr Wehrli's SD I have been presented with no further details in respect to either of these alleged tenants.

12. Mr John Trusler states that he was employed by the appellant to install a bathroom and kitchen facilities into the premises and to convert the appeal site to residential accommodation. Mr Trusler further states he has undertaken general maintenance at the property and to the best of his knowledge the property has been rented and occupied as a self-contained unit since October 2019. The Council has advanced little by way of clear or compelling evidence to contradict the appellant's SDs or to make their version of events less than probable.
13. However, the appellants' submitted information is lacking in copies of Assured Shorthold Tenancy (AST) Agreements and Leases, council tax records, postal addresses, utility bills and expenditure etc. This type of evidence would assist in providing substantive information showing that the appeal site was rented, occupied and supplied with separate services, which would provide additional assistance in verifying the appellant's claim in respect to the site being used as a single residence.
14. It is unclear why this information should not be readily available given the purported separate residential use, particularly in the light of the number of tenants who have claimed to have resided at the site. I appreciate that a lack of council tax records is by no means conclusive of how the unit has been used in practice, and there may be several reasons why the lack of these records does not accurately reflect the actual use in planning terms.
15. However, there is insufficient detail before me in respect of any AST agreements, or similar, which would detail how much rent is, what it covers and how it is to be collected. Furthermore, any such agreement would be required to highlight how utility bills and other services are to be paid and who is responsible. I acknowledge that the appellant has supplied an invoice for the installation of a pay-as-you-go electricity meter, however there are no details of how, when or to whom any electricity usage has been paid. Providing separate services, such as electricity, would be an essential component within a tenanted unit, as it would provide clarity for the tenants and landlord on who owes what, given the multiple residential units within the property itself.
16. Even if, no formal agreements such as ASTs existed, details regarding rent payments should be available either through bank statements, invoices or rent books which would highlight the rent payments made to the appellant from the various tenants from October 2019 until the present.
17. There are no details supplied to me in regard to other correspondence addressed to any of the tenants claimed to have resided in the unit, which would provide credence to the claim that the use has occurred on an uninterrupted basis for the required time frame. This information should be readily available given the purported separate residential use, particularly in the light of Mr Wehrli's claimed 4 year term of tenants occupying the appeal site. Consequently, I am unclear why

these records would be unavailable at the time of either the LDC application or the submission of this appeal.

18. Overall, the submitted evidence is inconsistent, lacks detail, and is not sufficiently precise and unambiguous for me to conclude, on the balance of probability, that the use as a 1-bed self-contained unit has been uninterrupted for four years from the date the LDC was made. From my site observations, it is clear that the conversion to a residential unit has indeed taken place, nevertheless, based on the evidence presented, the dates of this use are inconclusive, and the appellant has failed to provide the necessary evidence for an LDC to be issued at this stage.

Conclusion

19. For the reasons given above, and on the evidence now available, I conclude that the Council's refusal to grant a certificate of lawful use for the existing use of the floorspace as a self-contained residential unit is well-founded, and consequently the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

Robert Naylor

INSPECTOR