



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 16 February 2026

Appeal Ref: APP/X1165/X/25/3358970

55 Chatsworth Road, Torquay TQ1 3BJ

- 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 Nicholas Doherty against the decision of Torbay Council.
 - The application ref P/2024/0615, dated 10 September 2024, was refused by notice dated 5 December 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 as a four bedroom house arranged over ground and first floor and use of basement as a two bedroom residential flat.
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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.
3. The Council "...does not consider that it is appropriate to introduce new information at the appeal stage...". An appeal is determined, however, on the basis of 'all the evidence now available'. The Appellant is entitled to bring forward evidence, in addition to that submitted at application stage, in support of his appeal. There is no statutory requirement to consult third parties in LDC applications and appeals.
4. For the claimed existing use to be lawful the Appellant must submit sufficient precise and unambiguous evidence to demonstrate, on the balance of probability, that the use of 55 Chatsworth Road as a four bedroom house and a two bedroom flat subsisted continuously for the four year period prior to the date of the application; 10 September 2020 to 10 September 2024.

Reasons

5. 55 Chatsworth Road is a four bedroom house above a two-bedroom basement flat. The Appellant and his family have occupied the house since 2008; the Council has not questioned their occupation of the house. Evidence indicates that Mr D Metcalfe occupied the basement flat from 1 August 2017 to 17 February 2022. He entered into an Assured Shorthold Tenancy (AST) Agreement on 1 August 2017 which continued on a monthly basis until the end of his tenancy, and he was billed for Council Tax for 'Basement Flat'. Mr Metcalfe was a tenant for over four years and there can be no doubt that he paid his rent, Council Tax and utility bills.

6. Mr J Jacob and his family have occupied the basement flat since 8 May 2022. There is an AST Agreement in evidence for this tenancy which is on the same basis as that for Mr Metcalfe. Mr Jacob was billed for Council Tax for 'Basement Flat' and there is no reason to doubt that he paid, and is paying, rent, Council Tax and utility bills.. The flat was unoccupied from 17 February 2022 to 8 May 2022; a period of about sixteen weeks. It is normal to expect there to be a gap between tenancies but, in this case, the Appellant took the opportunity to improve the energy efficiency of the property and thus its EPC rating. It is reasonable to expect that this work took sixteen weeks.

7. The appeal is supported a Statutory Declaration by the Appellant and by signed letters from Mr Metcalfe, Mr Jacobs and Mr and Mrs Barker, who live next door and who confirm the sub-division of the property and its occupation, particularly of the basement flat, by Mr Metcalfe and then by Mr Jacobs and his family. The sixteen week gap in tenancies has been adequately explained. The Appellant has provided sufficient precise and unambiguous evidence to demonstrate, on the balance of probability, that the use of 55 Chatsworth Road as a four bedroom house and a two bedroom flat subsisted continuously for the four year period prior to the date of the application.

8. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for use as a four bedroom house arranged over ground and first floor and use of basement as a two bedroom residential flat at 55 Chatsworth Road, Torquay 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 10 September 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 subsisted continuously for four years and is immune from enforcement action.

Signed

John Braithwaite

Inspector

Date: 16 February 2026

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First Schedule

Use as a four bedroom house arranged over ground and first floor and use of basement as a two bedroom residential flat

Second Schedule

Land at 55 Chatsworth Road, Torquay TQ1 3BJ

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 operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations 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: 16 February 2026

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Land at 55 Chatsworth Road, Torquay TQ1 3BJ

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Scale: Not to Scale

