



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 23 February 2026

Appeal Ref: APP/L3625/X/25/3359216

The Gatehouse, 3 Duxhurst Lane, Reigate RH2 8QQ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Will Green against the decision of Reigate and Banstead Borough Council.
 - The application ref 24/01946/CLE, dated 1 November 2024, was refused by notice dated 12 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 independent dwelling.
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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. To be lawful the dwelling must have gained immunity from enforcement action by the date of the application. The Council applied a four year immunity period when considering and refusing the application. In their appeal statement, however, they argue that a ten year immunity period should be applied and do so by reference to *SoSfCLG & another v Welwyn Hatfield B C [2011] UKSC 15*, which related to the concealment of a dwelling within a barn for which planning permission had been granted. There was, therefore, in that case, a question of whether the erection of a dwelling had occurred or the change of use of a building for use as a dwelling.
4. More importantly, the Council considers whether it is section 171B(2) or section 171B(3) of the Act that is relevant. Section 171B(1) of the Act relates to the carrying out of building operations, section 171B(2) relates to the change of use of any building to a dwellinghouse, and section 171B(3) relates to any other breaches of planning control, which includes changes of use of land or buildings. The development in this case is the construction and use of a dwelling so it falls to be considered under section 171B(1). Sections 171B(2) and 171B(3) of the Act are not relevant.
5. The immunity period for all breaches of planning control introduced by the Levelling-up and Regeneration Act 2023 with effect from 25 April 2024 is ten years. However, transitional provisions are in place so if the dwellinghouse was substantially complete before that date then the previous four year immunity period applies. In this

regard there is no suggestion that the dwelling was not substantially complete and in use before 25 April 2024. The onus of proof is on the Appellant who must provide sufficient precise and unambiguous evidence to justify a conclusion, on the balance of probability, that the use of 'The Gatehouse' as an independent dwelling subsisted continuously through the four year period prior to the date of the application.

6. 3 Duxhurst Lane is a detached dwelling set in substantial grounds. The Gatehouse is a separate building in the grounds and set apart from the dwelling. The building, to be lawful as an independent dwelling must have been occupied as such throughout the four year period prior to the date of the application. 3 Duxhurst Lane is the home of Mr P Green and the building has been built on land in his ownership. The building, which is a dwelling known as The Gatehouse, is occupied by Mr W Green, the Appellant and son of Mr P Green, and Ms A Dryden. The Appellant has provided a Statutory Declaration, sworn before a Solicitor and dated 22 October 2024. The Council has not provided any evidence to contradict the evidence in the Declaration.

7. The Appellant declares that The Gatehouse was self-built and is connected to mains electricity and water; radiators and water are heated by bottle gas and foul sewage is to a septic tank. Dated photographs in the Declaration show The Gatehouse in various stages of construction during 2019, and evidence substantiates the Declaration that the Appellant and Ms Dryden first occupied the dwelling on 10 December 2019. The Appellant has declared that "...we have continued to live there ever since". The dates of substantial completion and first occupation of The Gatehouse are not in doubt, nor is the fact that it has been occupied by The Appellant and Ms Dryden up to the date of the application; a period of more than four years.

8. The Council, however, maintain "...that there is a degree of dependence..." of The Gatehouse on 3 Duxhurst Lane "...which would indicate that it cannot be considered as an independent dwelling". They refer to the fact that The Gatehouse is not separately metered for utility services and is not registered for the payment of Council Tax. They also refer to occupation of The Gatehouse being within the same family as occupation of 3 Duxhurst Lane, and to the sharing of a garden. The Appellant and Ms Dryden pay for gas bottles and for broadband and tv services. The Appellant's father pays for electricity and water but this is parental generosity and is not relevant, and the sharing of a garden is a matter of fact and is not unusual, particularly in the countryside. Payment of Council Tax is not determinative of occupation or use of a dwelling.

9. The Gatehouse is located where it is because a parent, Mr P Green, has been able to provide a site for his son, Mr W Green, to build a home for himself and his partner. The evidence of the Appellant in his Statutory Declaration is compelling and justifies a conclusion, despite the familial link, that The Gatehouse is occupied as an independent dwelling. Sufficient precise and unambiguous evidence has been submitted to conclude, on the balance of probability, that the use of 'The Gatehouse' as an independent dwelling subsisted continuously through the four year period prior to the date of the application.

10. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for an independent dwelling at The Gatehouse, 3 Duxhurst Lane, Reigate 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 1 November 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 subsisted throughout the four year period prior to the date of the application.

Signed

John Braithwaite

Inspector

Date: 23 February 2026

Reference: APP/L3625/X/25/3359216

First Schedule

Independent dwelling

Second Schedule

Land at The Gatehouse, 3 Duxhurst Lane, Reigate RH2 8QQ

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: 23 February 2026

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Scale: Not to Scale

