



Appeal Decisions

Site visit made on 11 February 2026

by **Siobhan Watson BA(Hons), MCD, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 February 2026

Appeal Ref: APP/H5960/X/24/3356608

Flat First and Second Floors, 82 Northcote Road, London, SW11 6QN

- 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 SLC Property Ltd against the decision of the Council of the London Borough of Wandsworth.
 - The application ref 2024/2887, dated 21 August 2024, was refused by notice dated 16 October 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The use for which a certificate of lawful use or development is sought is the use of the flat roof for ancillary residential purposes associated with the existing flat at 82 Northcote Road.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a Lawful Development Certificate (LDC) was well-founded. This turns on whether the use for which a certificate is sought was lawful on the date the application was made.

Reasons

3. For the purposes of the Act, uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. Thus, failure on either (a) or (b) means that the use and/or operations were not lawful on the date of the application and a certificate cannot be issued. The burden of proof falls on the appellant and the standard of proof is the balance of probability.
5. My attention has not been drawn to any enforcement notice served in relation to the development.
6. Time limits for enforcement are set out in s171B of the Act but transitional arrangements apply for development that occurred before 25 April 2024¹. Nevertheless, the transitional arrangements make no practical difference to this

¹ The time limits for taking enforcement action are set out in section 171B of the Town and Country Planning Act 1990 (see also The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 for transitional arrangements).

Appeal because the time limit would have been 10 years under the previous legislation anyway. That was set out under s171B(3) which specified a ten-year period for “any other breach of planning control”. The 4-year rule, advocated by both parties, applied to operational development and the change of use to a single dwellinghouse. As the terrace is incidental to a dwellinghouse, the development is not the change of use to a single dwellinghouse. Therefore, it is my assessment that the 10-year under s171B(3) rule applies.

7. The appellant says that the roof has been used by the flat for residential purposes for over 20 years. He says that it can only be used by the flat because only the flat has a door onto the terrace. Google Earth images have been provided by the appellant which show objects on the roof. These are dated December 2003, December 2006, July 2013, July 2015, April 2017, May 2018, June 2019, April 2020, and March 2021.
8. However, these show only one date in each of the years that the photos were taken. Moreover, whilst I accept that the only door to the roof is via the flat, I do not accept that the objects placed on the roof are domestic objects because the appellant’s photos are of such poor quality that it is impossible to discern from them what the objects are. Furthermore, the Council has provided photographs of the roof which they say are dated June 2014 and April 2017 which show what appears to be stacks of white boxes on the roof. These do not look like domestic objects at all. The Council also disputes the Appellant’s April 2020 image.
9. The onus of proof is firmly on the appellant to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate. Overall, I find that the appellant’s evidence, on the balance of probabilities, does not meet this requirement. My conclusion would have been the same even if I agreed with the parties that the 4-year rule applied. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Conclusion

10. For the reasons given above I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of “use of flat roof for ancillary residential purposes associated with the existing flat at 82 Northcote Road” was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Siobhán Watson

INSPECTOR