



Appeal Decision

Site visit made on 30 January 2026

by Jean Russell MA FRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2026

Appeal Ref: APP/K0940/X/25/3374489

Rose Grove, Derwent House, Fernleigh Road, Grange-over-Sands, LA11 7HT

- The appeal is made by Mr Ken Ogilvie under section 195 of the Town and Country Planning Act 1990 (as amended) against the decision of Westmorland and Furness Council to refuse to grant a certificate of lawful use or development (LDC).
- The LDC application (ref: 2025/1317/LDEX) was dated 11 July 2025 and refused by notice dated 19 September 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990. The existing use for which for which a certificate of lawful use or development is sought is described below.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

The Existing Use

2. Derwent House is a semi-detached building that was probably constructed and last lawfully used as a single dwellinghouse. The property has been subdivided so that the basement is laid out as a flat known as Rose Grove. There is no dispute that, since the flat includes all the facilities required for private day-to-day living and is occupied as a residence, it is being used as a separate dwelling.
3. It was clear from the application that a lawful development certificate (LDC) is sought in respect of 'the appeal flat'. However, the description of the use was not precise and somewhat overloaded with information as to why the use might be lawful. I shall exercise my powers to modify the description under s191(4) of the Town and Country Planning Act 1990 (TCPA90). I have decided this appeal on the basis that an LDC is sought for 'the existing use of the basement of Derwent House as a self-contained one bedroom flat'.

Lawfulness and the Main Issue for this Appeal

4. The purpose of an LDC application or appeal is to ascertain whether an existing or proposed use or development was or would have been lawful on the date of the application, being 11 July 2025 in this instance. Under s191(2) of the TCPA90, uses are lawful at any time if no enforcement action may be taken in respect of them, perhaps because they did not require planning permission or the time for enforcement action has expired¹.

¹ It is also necessary that the uses do not constitute a contravention of any of the requirements of any enforcement notice in force, but that is not relevant here.

5. Under s55(3) of the TCPA90, the use **as** two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of the building so used. There is no dispute that, on the date of the LDC application, planning permission was required but not granted for the material change of use that took place when Derwent House was subdivided.
6. The main issue for this appeal is whether it was too late on 11 July 2025 for enforcement action to be taken against the existing use of the basement as a self-contained one bedroom flat. The onus is on the appellant to make their case on the balance of probabilities.

Reasons

The Time for Taking Enforcement Action

7. The time limits for taking enforcement action are set out under s171B of the TCPA90, which was amended via s115 of the Levelling-Up and Regeneration Act 2023 with effect from 25 April 2024. The amendments were subject to transitional arrangements set out in the Planning Act 2008 (Commencement no.8) and Levelling-up and Regeneration Act 2023 (Commencement no.4 and Transitional Provisions) Regulations 2024, which I shall refer to as the 2024 Regulations.
8. As amended, s171B(2) of the TCPA90 provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, as the appeal flat is, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. However, the 2024 Regulations provide that the amendments to s171B(2) do not apply where the breach occurred before the day on which s115 came into force.
9. In other words, where a change of use of a building to use as a single dwelling took place before 25 April 2024, s171B(2) of the TCPA90 should be applied without the s115 amendment, whereby no enforcement action may be taken after the end of the period of **four years** beginning with the date of the breach.
10. I do not dispute the appellant's claim that Derwent House was subdivided before his late sister bought the whole property in 2000. There is no evidence of the flat actually being in separate residential use until 18 February 2007, but uncontested evidence from the letting agent suggests that the dwelling was then let to a tenant named Jackson. I find that the change of use of the building probably took place before 25 April 2024 such that the 'immunity period' is four years.
11. The four year clock must be counted forward from the date of the breach, not back from the date of the LDC application. Crucially, it is necessary for the appellant to show that the use of the basement as a self-contained flat probably took place for a four year period without significant interruption. Once use as a dwellinghouse has become lawful, it does not matter if, say, the occupier chooses to live abroad for three months of the year. However, a use cannot be dormant if it is not lawful.
12. The appeal flat is small and rented out, and so it is not surprising that there has been a high turnover of occupiers. I must consider whether each gap between one tenant leaving and another moving in amounted to a significant interruption to the use, as a matter of fact and degree, which served to reset the four year clock. The test is whether the Council could have taken enforcement action at any time.

The Use of the Appeal Flat

13. While there is little written evidence of the use overall, the same letting agent has been instructed for many years, and they produced a complete list of tenants of the appeal flat. I find this information helpful because it not only includes when tenancy agreements commenced and their terms, but also when the occupiers actually left, so that the periods of use and non-use are clear. The Council described the evidence as “unverified” but has not contested any of the details.
14. The letting agent suggests that Jackson probably lived in the appeal flat from around 18 February 2007 until 23 December 2010, about three years and 10 months. I am bound to say that was less than four years, and then there was a break of 10 or 11 weeks before McKeown’s tenancy began on 7 March 2011.
15. I take the agent’s point that gaps between letting periods for any property may stretch to several weeks or longer, especially in the winter or other times when the market is slow, given all that is involved in advertising accommodation, preparing it for a new occupier and other administration such as obtaining references. There is no evidence, however, of any such activity to further the use of the appeal flat taking place between December 2010 and March 2011. I find here in favour of the Council that the interruption was enough to restart the four year clock.
16. I find the same in respect of the gaps between McKeown and following tenants, so that the clock started again with Beale. They moved in around 30 January 2015 and stayed for eight months until 29 August of the same year. Fox moved in probably about five days later, on 3 September 2015, and I will not take that gap as material. They stayed here until around 10 October 2018, meaning that the appeal flat was probably used by Beale and then Fox for a cumulative period of three years and nine months.
17. However, there was then another two month gap in occupancy between Fox leaving on 10 October 2018 and Noble’s tenancy beginning on 3 January 2019. Since that period included Christmas, it would be reasonable and realistic to find that it was probably spent marketing, but again it does not matter if I put the clock back to zero.
18. Noble probably lived here for about seven months until 14 July 2019, and there was then a gap of 8 days before Tyrer’s tenancy began on the 22nd of the same month. They lived here for less than one month, until 16 August 2019, but then there was a gap of just three days before Walmsley took occupation on 19 August and lived here about one year and seven months until 18 May 2021. That would create a cumulative total use of two years and three months.
19. The next gap was a fortnight. It seems probable to me that, had the Council knocked on the door at that time, they would have seen a one bedroom flat and found it being advertised or prepared for the new tenant, meaning that they could have taken enforcement action.
20. But even if I discount all prior use, the evidence from the appellant and letting agent is unambiguous: Saxby moved into the appeal flat on 1 June 2021 and has lived here ever since. A Council Tax bill only really shows that Saxby was the occupier of the flat on the date that the bill was issued, 14 March 2023, but the appellant’s evidence does not need to be corroborated in order to be accepted. I

am satisfied that, by the date of the LDC application, the appeal flat had probably been used continuously as such by Saxby for more than four years.

Conclusion

21. I was surprised that the Council described occupation of the flat as “sporadic and very short-term”. The appellant’s evidence is precise and unambiguous, and there is nothing to contradict his version of events. The change of use of Derwent House to create a self-contained one bedroom flat in the basement probably took place in or around February 2007, before amendments to s171B(2) of the TCPA90 came into force. The Council had four years to take enforcement action in respect of the use but, even if all other occupation is discounted, the flat was probably lived in as such without significant interruption from 1 June 2021 until and after 11 July 2025.
22. I conclude that, on the balance of probabilities, enforcement action could not have been taken on the date of the LDC application against the existing use of the basement of Derwent House as a self-contained one bedroom flat, because the use had taken place for a continuous four year period. The Council’s decision to refuse to grant a certificate of lawful use in respect of the appeal flat was not well-founded. I will exercise the powers transferred to me in s195(2) of the Town and Country Planning Act 1990 to allow the appeal and grant an LDC.

Jean Russell

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 11 July 2025, the use described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown edged red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 for the following reason:

The change of use of Derwent House to create a self-contained one bedroom flat in the basement was made without the benefit of planning permission prior to or around February 2007, such the time limit for taking enforcement action was four years as then set out in section 171B(2) of the Town and Country Planning Act 1990.

The existing use of the basement of Derwent House as a self-contained one bedroom flat had taken place for a continuous four year period by 11 July 2025. No enforcement action could then be taken in respect of the use because the time for doing so had expired for the purposes of section 191(2) of the Town and Country Planning Act 1990.

Jean Russell

INSPECTOR

Date: **26 February 2026**

Appeal reference: APP/K0940/X/25/3374489

First Schedule: the existing use of the basement of Derwent House as a self-contained one bedroom flat.

Second Schedule: Rose Grove, Derwent House, Fernleigh Road, Grange-over-Sands, LA11 7HT

IMPORTANT NOTES

This certificate is issued solely for the purpose of s191 of the Town and Country Planning Act 1990 (TCPA90). 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 was not liable to enforcement action under s172 of the TCPA90 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: **26 February 2026**

By Jean Russell MA FRTPI

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NOT TO SCALE

