



Appeal Decision

Site visit made on 21 March 2026

by **A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 13 April 2026

Appeal Ref: APP/L5240/X/24/3340113

16 Elgin Road Croydon CR0 6XA

- 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 Qasim Gulamhusein (Marlpark 16 CR0 Ltd) against the decision of the Council of the London Borough of Croydon.
 - The application Ref 23/04446/LP, dated 28 November 2023, was refused by decision dated 23 January 2024.
 - The application was made under section 192(1)(a) of the Act.
 - The proposed development for which a certificate of lawful use is described in the application as follows: *for the installation of cupboards, worktops and sinks*¹.
 - An application for costs is made by the appellant against the Council and that decision is attached at the end of this Decision.
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Decision

1. The appeal is dismissed.

Reasons

2. The main issue to consider is whether the decision to refuse the LDC was well-founded. In this appeal, the onus is firmly upon the appellant, and the legal test is on the balance of probabilities. Planning merits are not relevant at any stage and the assessment involves a discussion of the relevant facts and planning law. The fundamental question to answer is this: if this proposed development had occurred, on the application date, would it have been lawful for planning purposes? The word “lawful” has a specific meaning, which I return to later.
3. There is extensive planning history. Of direct relevance is a previous LDC application for existing operation confirming the lawfulness of installing and retaining interior fixtures, specifically cupboards, countertops, and sinks resembling kitchen installations within the bedrooms of the first and second floor maisonette at the appeal property. This was refused and subsequently dismissed on appeal².
4. The information before me includes illustrative drawings and images showing the proposed cupboard, worktop and sink and the case advanced by the appellant’s agent is that the proposed internal work, which comprises installation of furniture resembling kitchen units devoid of any cooking or food heating facility within each room at first and second floor level, does not amount to development requiring express permission. There is significant debate about the purpose and function behind the cupboards, sinks and worktops, but the appellant seeks a declaration certifying that the proposed work would be lawful at the date of the LDC application.

¹ For clarity’s sake, I have taken this description from the appellant’s statement.

² Appeal ref APP/L5240/X/23/3333963 and same prefix ending in 24/3333944 dismissed on 3 April 2025.

5. Amongst other things, “development” includes the carrying out of building or other operations or the making of any material change in the use of any buildings or other land³. The words “building operations” are also defined in s55(1A) of the Act. However, the appeal parties place too much emphasis on the application of permitted development rights in the GPDO⁴ but those provisions encompass development like the enlargement, improvement or alterations of a dwellinghouse.
6. Of relevance is s55(2) sub (a)(i)(ii) of the Act⁵ and that excludes from the definition of development works for the maintenance, improvement, or other alteration of any building which affect only the interior of the building. Looking at the evidence in the round, the work comprised in the installation of the proposed units can reasonably be described as other operations normally undertaken by a person carrying on business as a builder. However, these operations involve the installation of interior furniture and fixtures specifically cupboards, worktops and sinks within the bedrooms of the first and second floor maisonette. I too concur with the previous s191(1) Inspector that the work falls within scope of the internal work exemption and thus do not amount to development requiring planning permission.
7. The next step is to consider if the installation of the units proposed might trigger a change in the use of each bedroom requiring a materiality assessment, due to the definition given by the Courts to the word “dwelling”⁶. The proposed cupboards, worktops and sinks would resemble a kitchen but, as the agent points out, the units proposed would exclude any cooking facility: there would be communal kitchens. To function as a cooking facility, the units would need to include items or equipment that enable food to be heated sufficiently to prepare meals for sustenance purposes without the user having to eat elsewhere. Common sense dictates an appliance such as oven, hob, grill, hotplate or microwave would fulfil that purpose; a kettle and sandwich toaster would probably not. In any event, installing a cooking facility in each bedroom may trigger a change in use as each unit of accommodation would have independent facilities for cooking, washing and sleeping. However, contrary to the Council’s approach, that is not what is proposed in this LDC application.
8. Unfortunately for the appellant, there is a problem. Section 191(2) of the Act explains that uses and operations are lawful if – (a) no enforcement action may 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. This definition equally applies to proposed use and operations, and both limbs must be satisfied to achieve lawfulness. This is because s191 sub (2) begins with the words “...For the purposes of this Act...” [my emphasis]. My approach is consistent with the Planning Practice Guidance (PPG)⁷.
9. On 21 March 2023 the local planning authority (LPA) issued an enforcement notice alleging a material change of use of the ground floor flat into 3 self-contained flats and the change of use of the first and second floor maisonette into 5 self-contained flats. An appeal against the notice was not made within time and, consequently, the enforcement notice took effect on 27 April 2023, so was in force at the time of the LDC application before me. The second requirement of the enforcement notice includes removing all kitchens, including sinks, kitchen cupboards and cookers from the first and second floor maisonette, apart from one kitchen.

³ Section 55(1) of the Act.

⁴ Article 3, schedule 2, part 1, class A to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

⁵ Section 55(2)(a) of the Act which states: The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land— (a) the carrying out for the maintenance, improvement or other alteration of any building of works which— (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.

⁶ *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.

⁷ As explained in the PPG at paragraph: 003 Reference ID: 17c-003-20140306.

Clearly, the proposed cupboards and sinks fall within the scope of step 2) given their design and layout.

10. The agent questions whether the extant enforcement notice is relevant in the context of this appeal and questions its applicability. However, s285(1) of the Act states that the validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.
11. Nonetheless, the appellant vehemently argues that the extant notice has been fully complied with. They submit that, as the proposal would not include any cooking facility within each room, installing the proposed cupboards, worktops and sinks would be materially different from the ones previously installed and they would be differently located. I disagree with the agent's submissions.
12. The meaning and effect of s181(1) of the Act is a complete answer. Compliance with any of the requirements contained in an enforcement notice shall not discharge the notice because once a notice comes into force, it's always a notice and runs with the land. Sub-section (3) states that, if any development is carried out on land by way of reinstating or restoring buildings or works which have been altered in compliance with an enforcement notice, the latter shall be deemed to apply to the buildings or works as it applied before they were reinstated or restored. As I have already said elsewhere, the proposed work falls within the scope of the extant enforcement notice even if the units would be devoid of any cooking facility. Consequently, the proposed internal work, which would result in the installation of kitchen style cupboards, worktops and sinks, cannot be lawful as enforcement action may be taken in respect of them. Contrary to the agent's submissions, I find that the inclusion of the proposed units within the bedrooms would constitute a breach of the requirements of the in-force enforcement notice.
13. Three separate planning permissions have been granted on 19 March 2026. The first is for the change of use from two maisonettes to a 7-person house in multiple occupation (HMO). The second is the proposed change of use of existing upper floor maisonette to small HMO, providing 6 bedrooms for up to 6 residents, and the erection of a side and rear dormer window. The third is for the change of use to the ground floor maisonette to small HMO (four person) and the erection of a single-storey side and rear extension and enlargement of existing basement⁸. I have no reason to doubt the claim that all three layouts approved by the Council include bedroom arrangements incorporating facilities of the type previously described in the LDC applications. The agent argues that these fittings are analogous to, or derived from, kitchen units. The submission is that in granting these planning permissions, the Council has necessarily accepted that the inclusion of such facilities within individual rooms does not result in the creation of self-contained residential units.
14. However, the officer reports clearly explain why each scheme is acceptable on its individual merits having regard to development plan policies. Different considerations apply when assessing the LDC application. Nevertheless, there seems to be tension between the approved scheme and the requirements of the extant enforcement notice given the layout and configuration of the approved plans. Be that as it may, that potential inconsistency is addressed by operation of law (s180 of the Act). As I have already said elsewhere, for this appeal the date of the LDC application is critical and on that date the operations involved in the installation of the proposed cupboards, sinks and worktops would have been unlawful.
15. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me, irrespective of the

⁸ Council ref: 25/03559/FUL, 25/03561/FUL and 25/03562/FUL.

Council's muddled approach. Nonetheless, as the PPG says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

16. For the reasons given above, I conclude that the Council's refusal to grant the LDC for the installation of cupboards, worktops and sinks is well founded albeit for different reasons. The appeal should fail, and I will exercise accordingly the powers transferred to me in section 195(3) of the Act as amended.

Costs application

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Qasim Gulamhusein (Marlpark 16 CR0 Ltd) for a full award of costs against the Council of the London Borough of Croydon.
 - The appeal was in connection with an appeal against the refusal of a certificate for proposed development comprising installation of cupboards, worktops and sinks.
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Decisions

1. The application for an award of costs is refused.

Reasons

2. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant alleges the respondent refused, without good reason, the LDC application causing an appeal. The claim is that the respondent repeatedly misapplied and misinterpreted core principles, relying instead on the argument that insufficient evidence had been submitted, placing too much weight on irrelevant considerations and misapplying relevant case law and statutory provisions. The respondent's position in previous applications was that the proposed installations were unlawful, in part because they were said to give rise to self-contained living arrangements or conflict with the enforcement notice. The subsequent grant of planning permission for schemes incorporating comparable room layouts indicates that the earlier position was not robustly founded.
4. It should, however, be kept in mind that the purpose of this application process is not to resolve by investigation every allegation of unreasonable behaviour. Rather it is to decide if an award of costs in respect of the appeal is justified on the available evidence in a particular case. In that context, my appeal Decision explains why the appeal is dismissed and my approach is based on relevant principles and case law. In this case, I have found that the approach taken by both applicant and respondent was fundamentally flawed and I will not repeat the reasons here. However, the matters raised required an exercise of planning judgment having regard to relevant judicial authorities.
5. When determining LDC applications, the planning history of a site can be relevant consideration. As in this case, that history can have a bearing on the outcome of the appeal. I disagree with the argument reference to previous site visits or enforcement investigations is an irrelevant consideration.
6. Acting contrary to, or not following, well-established case law can amount to unreasonable behaviour, but at appeal stage, the respondent addressed relevant issues raised in this appeal and substantiated its reasons for refusing the LDC application. Based on the evidence before me, I am not persuaded that an appeal was totally avoidable. The submissions

indicate to me that there has been a total breakdown of communication between the appeal parties: that is a matter for them to consider. Having refused the LDC application, the applicant exercised their right of appeal. Although the handling of applications or behaviour prior to determination might be indicators of unreasonable behaviour, the respondent submitted sufficient arguments to support its approach and contradict the applicant's case, irrespective of my decision. Nonetheless, it seems the respondent came to a materially different conclusion to the applicant based upon the evidence they presented.

7. As I have already found elsewhere, the applicant's evidence did not, on this occasion, lift the burden because insufficient evidence has been submitted to demonstrate that the proposed works do not conflict with the requirements of an extant enforcement notice. Irrespective of how much weight the respondent applied to the applicant's evidence, the issues raised in the LDC application and on appeal required independent assessment.
8. The applicant is concerned about procedural matters for example the need to provide drawings or images of the proposed units. Be that as it may, such details would assist the decision-maker in their assessment of the evidence and arguments. The success or otherwise of the latter is dependent upon the quality and strength of the applicant's evidence. I remind the appeal parties that planning merits has no role to play in these kinds of applications. I attach limited, if any, weight to the alleged procedural failures.
9. I have carefully considered this application but come to an inescapable conclusion. The respondent's lack of clarity and its approach have not resulted in a totally unavoidable appeal given the matters in dispute between the appeal parties. I find that the perceived unreasonable behaviour did not, on this occasion, result in unnecessary or wasted expense as described in the PPG. It has not been demonstrated that an award of costs, full or partial, is justified in the circumstances.

A U Ghafoor

INSPECTOR