
Appeal Decision

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 11th May 2026

Appeal Ref: APP/Q1445/X/24/3352748

35 Devonshire Place, Brighton BN2 1QB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Dr Layth Raouf of Raouf Properties Ltd against the decision of Brighton & Hove City Council.
 - The application ref no: BH2024/01137, dated 2 February 2024, was refused by a notice dated 9 July 2024.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a LDC is sought is twelve self-contained apartments.
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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.

Preliminary Matters

2. Given the nature of the dispute in this case, I did not consider a site visit to be necessary. Accordingly, I have made my decision based on the submitted information and plans but without visiting the site.
3. The Council commented that the appellant has put forward additional evidence beyond that submitted as part of the application. However, in section 195 appeals, the parties and interested persons may submit additional evidence which was not before the authority at the time of its decision.
4. Any relevant new evidence advanced at the appeal should be considered since the purpose of the LDC provisions are to enable the making of an objective decision based on the best facts and evidence available when the decision is taken. The description of the use and the application date, in the banner heading above, are taken from the application form.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

6. My decision rests on the facts of the case, on relevant planning law and judicial authority. The appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. In order for an LDC to be granted under section 191 of the 1990 Act, the burden of proof is with the appellant, and the appropriate test of the evidence is the balance of probabilities.

The onus is firmly on the appellant to show that the use as twelve self-contained apartments was lawful at the time the LDC application was made.

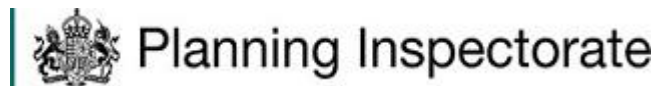
7. Section 191(2) of the 1990 Act states that *'For the purposes of this Act uses and operations are lawful at any time if— (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement 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.'* In this case there is no evidence before me to indicate that there were any requirements of an enforcement notice in force at the date of the LDC application.
8. Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, where that breach took place before 25 April 2024, by virtue of section 171B(2) of the 1990 Act, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The development subject of this appeal is the change of use of a building to use as twelve apartments i.e. dwelling houses. The appeal is accompanied by floor plans showing the building divided into twelve separate self-contained units of accommodation. The date of the LDC application is the 2 February 2024 therefore the appellant needs to show, on the balance of probability, that the material change of use to twelve self-contained apartments began on or before 2 February 2020 and has continued for at least 4 years thereafter without significant interruption.
9. The appeal was accompanied by a comprehensive set of documents that includes: a letter from the managing agent; Council Tax details for each unit; several Assured Shorthold Tenancy Agreements (ASTs) for each unit, of various dates between 2009 and 2024; letters to guarantors; extracts from a rent book and bank statements and the floor plans cited above. The Council Tax details for each unit correspond with the floor plans. Whilst the letter from the managing agent is not in the form of a statutory declaration the details within it correspond to the particulars within the ASTs. In my judgement, the evidence now submitted shows that all twelve units of accommodation have been in use for more than 4 years and that any break in use has not been significant.
10. When considered holistically the submitted evidence indicates with sufficient precision and unambiguity that as a matter of fact and degree and on the balance of probabilities the use of the property as twelve self-contained apartments began more than four years before the date of the LDC application and has been continuous thereafter. There is no evidence which contradicts or makes the appellant's version of events less than probable.

Conclusion

11. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a LDC for the existing use as twelve self-contained apartments is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.

D Boffin

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 2 February 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and 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 available evidence demonstrates that, on the balance of probabilities, the use of the property as twelve self-contained apartments began more than four years before the date of the LDC application and has been continuous thereafter.

Signed

D Boffin

Inspector

Date: 11th May 2026

Reference: APP/Q1445/X/24/3352748

First Schedule

Twelve self-contained apartments

Second Schedule

Land at 35 Devonshire Place, Brighton BN2 1QB

IMPORTANT NOTES – SEE OVER

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 use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, 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: 11th May 2026

by D Boffin

Land at: 35 Devonshire Place, Brighton BN2 1QB

Reference: APP/Q1445/X/24/3352748

Scale: Not to Scale



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