



Appeal Decision

Site visit made on 23 April 2026

by R Merrett BSc(Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 May 2026

Appeal Ref: APP/E5330/X/23/3333335

149A Lee Road, Lewisham, London SE3 9DJ

- 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 Mr Sidney Edel against the decision of Royal Borough of Greenwich.
 - The application, ref 23/2777/CE, dated 21 August 2023, was refused by notice dated 18 October 2023.
 - 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 use of the property as six self-contained flats.
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Decision

1. The appeal is dismissed.

Reasons

2. The appeal site is part of an end of terrace, three storey building. It includes the accommodation at first and second floor levels, but not that at ground level, which is occupied by a beauty salon.
3. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development, require planning permission or because the time for enforcement action has expired (s191(2)).
4. There is a further proviso that the development must not contravene the requirements of any enforcement notice then in force. I have not been told that there was any extant enforcement notice relating to the property at the time of this application.
5. In this case the appellant is relying on the passage of time. In accordance with s171B(2) of the 1990 Act it is therefore necessary to consider whether, on the balance of probability, the claimed use of the property as self-contained flats has continued for a period of four years or more, prior to the date of the application, that being 21 August 2023, so as to be immune from enforcement.
6. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued for the aforementioned four-year period. It must be shown that there has not been any significant interruption in the use, in order to demonstrate the necessary continuity.
7. The appellant referred in their appeal statement to various items of evidence submitted to the Council, in support of the original LDC application. This

supporting evidence includes statutory declarations, from the appellant and representative of the company managing the property; tenancy agreements for the periods November 2015- November 2016 and June 2020- May 2021; Council tax and bank statement records and a building inspection report dated May 2021.

8. However, this aforementioned evidence has not been re-submitted in support of the appeal. My assessment of the appellant's case is therefore limited to descriptions of the relevant evidence, given by the appellant and the Council.
9. There would appear to be no dispute that the appellant's, and managing agent's, sworn evidence refers to the property being used, and continuously occupied, as six self-contained flats since 6 November 2015. It is important to consider the extent to which this is corroborated by other evidence.
10. In this regard the aforementioned building inspection report, recognised use as flats, but not when the conversion to such use actually took place, or any continued occupancy therein.
11. It appears that the tenancy agreements do not name individual tenant occupiers, referring only to an agreement between the landlord and a company tenant /sub-let agent. In any event the agreements cover only the time 2015-16 and 2020-21, and therefore fail to demonstrate continuity of use of the flats over the requisite immunity period.
12. Similarly, it is undisputed that the Council tax records, whilst referencing flats, pre-date the findings of a previous Council enforcement investigation which at that time found the appeal site to operate as a House in Multiple Occupation (HMO), rather than flats. Furthermore, they do not show any Council tax to have actually been paid, and consequently do not support the claim that the flats have been in continuous use.
13. The bank statement information relates to a small sample of dates between February 2019 and February 2023, providing an intermittent record of rental income. These records apparently indicate lump sum payments from the management company to the appellant, however fail, on the balance of probability, to evidence the sustained letting of the property as six self-contained flats to named individual tenants.
14. I have had regard to the remaining evidence submitted by the appellant, as referenced in the Council officer's report. From the information available to me, this does not corroborate the appellant's case regarding continuous use as flats for the requisite period. Furthermore, plan drawings referenced E01, dated 2022, and an email from the Council's HMO licensing team, dated June 2023, appear to identify the presence of a shared / communal kitchen within the building, despite the appellant disputing the room in question was used as such over the requisite 4-year period. This information, notwithstanding the kitchen's relatively small size, suggests the existence of an HMO arrangement, rather than six self-contained flats, thus contradicting the appellant's claim regarding how long the flat arrangement has endured.
15. I am mindful that planning practice guidance states *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the*

applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

16. The Council has not produced its own evidence that directly contradicts that of the appellant. However, despite the submission to the Council of sworn evidence from the appellant, the level of detail provided therein is vague, with reliance on simple assertions. Furthermore, collectively the information before me is not sufficiently precise and unambiguous to substantiate a consistent timeline and to enable me to conclude, on the balance of probability, that the claimed use of the property as six flats continued without any significant breaks in activity over the requisite period.
17. I consider, as a matter of fact and degree, the appellant's evidence regarding continuity of use is not sufficiently precise and unambiguous to justify the grant of a certificate, on the balance of probability.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use of the property as six self-contained flats is 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).

R. Merrett

INSPECTOR