Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2026

Appeal Ref: APP/Q1445/X/24/3355579
Basement Flat, 10 Prince Albert Street, Brighton BN1 1HE

- 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 Chestnut Developments Co Ltd against the decision of Brighton & Hove City Council.
- The application ref BH2024/01105, dated 2 May 2024, was refused by a notice dated 25 June 2024.
- The application was made under section 191(1)(a) of the 1990 Act.
- The use for which a certificate of lawful use or development is sought for is existing use of the basement level as a self-contained flat.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the use for which an LDC is sought is generally taken from the application form. However, the Council amended the description of the existing use during the determination of the LDC application and that description has been adopted by the appellant when completing their appeal form. That amended description is accurate in respect of the use that has been applied for and therefore I have used that description in the banner heading above.

3. 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.

Main Issue

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

Reasons

5. 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 existing use of the basement level as a self-contained flat was lawful at the time the application was made.

6. 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 date of the LDC application is the 2 May 2024 therefore the appellant needs to show, on the balance of probability, that the material change of use of the basement as a self-contained flat began on or before 2 May 2020 and has continued for at least 4 years thereafter without significant interruption.

7. The appeal was accompanied by documents including several Assured Shorthold Tenancy Agreements (ASTs), a deposit protection certificate, correspondence from a solicitor, bank statements and Council Tax correspondence. The LDC application form indicates that the existing use began on 3 November 2014. Nevertheless, the letter from the solicitor states that *'Michael Blencowe and his wife, Sarah, resided in the residential flat at 10 Prince Albert Street between December 2012 and May 2015 as their primary residential address.'* Therefore, there is ambiguity as to when the existing use began. Moreover, as it appears that a second floor flat in the property has been rated for Council Tax since 1 May 2015 the solicitor's letter is also ambiguous as to which residential flat they are citing in their letter. There is no additional evidence such as household bills to indicate residential use of the basement prior to 2018.

8. An AST dated 25 November 2018, on the front page, between Baron Management Ltd and a tenant has been redacted so no tenant name/s are visible. Moreover, on the third page on that document it states the agreement is dated 30 November 2022. Yet, the AST appears to cover 9 months from 25 November 2018. There are also three ASTs relating to one tenant covering the period from 23 August 2018 until January 2022. There is also a bank statement to indicate that rent payments from that tenant were paid during that time ending in January 2022. However, the Council's evidence states that *"photos from the planning officer site visit in August 2021 show that the basement was not occupied at that time"*. Nonetheless, those photographs are not before me.

9. There are also ASTs relating to the basement flat dating 30 November 2022, 5 September 2023 and 1 November 2024. The deposit protection certificate is in the same name as one of the ASTs and the bank statements appear to show rental payments for November 2022 through to September 2024. Yet, there is a significant period of time between January 2022 and 30 November 2022 that is not covered by any ASTs. Moreover, the Council Tax valuation indicates the basement flat was assessed for Council Tax purposes as a dwelling from 5 September 2023.

10. The appellant has stated that between March 2022 and November 2022 building repairs due to damp and roof damage causing issues in the basement flat were carried out. Two invoices dated 18 October 2022 and 26 November 2022 from a roofing contractor and a building contractor have been submitted. It is ambiguous as to how the roof damage affected the basement flat and when the works were started and completed. The damp issues appear to have affected an internal wall which the invoice states was reconstructed. Again, there is no indication when those works began and finished. It is also not apparent whether the flat was renovated/ refurbished at the same time or whether it was habitable during that period.

11. Caselaw has held that if at any time during the relevant period of unlawful use the Council would not have been able to take enforcement proceedings in respect of

the breach, for example, because no breach was taking place then any such period cannot count towards the rolling period of years which gives rise to the immunity. The evidence before me is not sufficiently precise to show that the Council could have taken enforcement action against the use of the basement as a self-contained flat at any time between January 2022 and November 2022. The basement flat does not appear to have been occupied during that time, and that period of time is significant.

12. Additionally, the submitted evidence is insufficiently precise and unambiguous as to when the residential use of the basement began and there is little specific evidence such as household bills or ASTs prior to 2018. Taking into account all of the above, there is insufficient precise and unambiguous evidence before me to show when the material change of use began and that it continued for at least 4 years thereafter without significant interruption. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for existing use of the basement level as a self-contained flat 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.

D Boffin

INSPECTOR