



Appeal Decision

Site visit made on 25 April 2026

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

an Inspector appointed by the Secretary of State

Decision date: 26 May 2026

Appeal ref: APP/Q5300/X/25/3364651

18 Huxley Road London N18 1NN

- 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 Hamid Kamyab on behalf of Kiks Group Ltd against the Council of the London Borough of Enfield.
- Application ref ref 25/00520/CEU, dated 10 February 2025, was refused by notice dated 4 April 2025.
- The application was made under section 191(1)(a) of the Act.
- The existing use for which a LDC is sought is described in the application as follows: the property has been subdivided into 5 separate self-contained flats. The application seeks a lawful use certificate for the property as 5 self-contained flats.
- An application for costs is made by the appellant against the Council and is at the end of this Decision.

Decision

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

Reasons

2. The **main issue** is whether the Council's decision to refuse the LDC was well-founded. The appellant's claim is a simple one, namely, the existing use as 5 self-contained flats is lawful due to the passage of time, because it occurred on or before 10 February 2021. In this appeal, the onus of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence 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 refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability. As an aside, if the Council has evidence of its own, instead of sitting on it, it must produce the documents and explain how it contradicts the appellant's version of the events.
3. It is important to make a distinction between the terms *use as a single dwellinghouse* from what might normally be regarded as *being a single dwellinghouse*. Beginning with *Gravesham*, the Courts have consistently held that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day domestic existence¹. The key message from these judgments and the findings therein serve to illustrate that, with each case, it is a matter of fact and degree based on the circumstances [my emphasis].

¹ See the case of *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.

4. Against that background, I have reviewed all the evidence. For the existing use claim to succeed, the appellant's evidence must clearly demonstrate two key points: (1) when the property was physically converted into self-contained flats as claimed and, (2) each unit was occupied and used as a dwellinghouse for a continuous period of at least four years, without any significant interruptions in residential use. In that context, for the following reasons, the Council faces an uphill struggle.
5. Starting with the relevant unit of occupation, no. 18 forms 5 physically and functionally separate planning units in primary residential use. The Council refers to previous enforcement investigations into alleged change of use to home in multiple occupation and site visit notes or images taken in 2021. However, apart from vague statement that kitchens were not seen in each flat, exact details have not been supplied nor is there an explanation of dates and what was seen.
6. In any event, the appellant's unchallenged testimony is that the works of conversion began in March ending in July 2020, which is plausible given the layout and configuration of the building. That work resulted in each flat having viable facilities for day-to-day private domestic existence, I have no evidence to cast any doubt on the appellant's version of the events and accept, at face value, that by July 2020 the previous dwellinghouse had undergone significant building operations resulting in the creation of 5 flats.
7. Turning to use of each flat for the requisite period, the added issue for the Council is the voluminous documentation supporting the occupation and residential use. The appeal parties are aware of the evidence and there is no need for me to repeat that here. Although utility bills and details of taxation are limited, the Council has not provided specific local taxation records nor details contradicting the appellant's version. I consider that criticism of the documentary evidence is misplaced as the Council does not provide cogent analysis or discussion as to the perceived discrepancies in the submitted evidence. I find the appellant's evidence comprehensive and particularly instructive of occupation and continued use throughout the requisite period.
8. The bundle of evidence includes tenancy agreements from 2020 for each flat, court documents relating to proceedings in relation to one of the flats occupants, government agency correspondence to occupiers, and bank statements clearly showing rental income for each occupant throughout the relevant period. To an untrained eye, the significance of the supporting documents might not justify a positive outcome. However, the information supplied is consistent with properly executed statutory declarations to which I attach significant weight.
9. Tenancy agreements do not necessarily prove occupation nor use. Nonetheless, contracts are helpful in appreciating the timings and level of occupancy and the submitted documents appear to show the flats were used as someone's home from around 2020 onwards. Minor inaccuracies within the tenancies do not cast significant doubt over the veracity of the documents. In my opinion, errors can reasonably be described as bad drafting or carelessness. Nevertheless, bank statements have been provided, and these clearly show rental income against each flat throughout the relevant period.
10. To my mind, the quantum of evidence presented clearly demonstrates the property's conversion into 5 self-contained flats on or before the relevant date and its continued use as such throughout the relevant period. Any perceived gaps in occupancy can be put down to usual changeovers. I consider that the property's existing configuration should have triggered

off alarm bells and the Council could have taken enforcement action given the amount, nature and scale of the works of conversion and subsequent use.

11. Contrary to the Council's submissions, the appellant's supporting documentary evidence corroborates when each unit had been first used for residential purposes. It is particularly instructive of the conversion work and subsequent occupation of each unit by tenants and the agent's description of their use is consistent with the facts, the sequence of the events, and the nature and scale of the residential activity. Alongside sworn testimony, I consider the appellant has discharged the burden. There is nothing from the Council that makes any of the appellant's evidence doubtful. Indeed, there is no evidence to undermine the veracity or credibility of this kind of documentary information tendered as evidence.
12. My own observations are that the condition of the units suggests residential use spread over significant length of time. There are signs of substantial wear and tear resembling residential occupation for some time.
13. In the absence of any firm evidence to the contrary, I take at face value the evidence presented by the appellant because the written representations combined with the documentary information is consistent and unambiguous. It clearly shows to me that no. 18 provided 5 self-contained flats each containing facilities for day-to-day domestic existence on or before the relevant date and each one was so used thereafter for a continuous period of 4 years without significant interruption.

Conclusions

14. My decision is likely to be disappointing for the Council, but perhaps the lesson learned is to ensure evidence it holds in its possession is exhibited with clear and cogent explanation as to why it contradicts the appellant's version of the events. Anyway, I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me.
15. For the reasons given above I conclude, on the evidence now available and applying the correct approach and balance of probability test, the Council's refusal to grant a LDC in respect of the outbuilding was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under s195(2) of the Act.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 10 February 2025 the matter described in the First Schedule hereto, constituting the existing use of the building as 5 separate self-contained flats, in respect of the land specified in the Second Schedule hereto and edged 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:

Each flat and subdivision of the building into 5 flats is immune from enforcement action due to the passage of time. For this reason, no enforcement action may then be taken in respect of the 5

self-contained flats which do not constitute a contravention of any of the requirements of any enforcement notice in force.

Signed

A U Ghafoor

INSPECTOR

Date: 26 May 2026

Reference: APP/Q5300/X/25/336451

First Schedule

Existing use of the property subdivided into 5 separate self-contained flats.

Second Schedule

Land edged as shown on the plan attached to this certificate and identified as no. 18 Huxley Road London N18 1NN.

IMPORTANT NOTES

This certificate is issued solely for the purpose of Section 191 of the Act. It certifies that the existing 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 Act, on that date. This certificate applies only to the extent of the existing use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation or 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 LPA.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 26 May 2026

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

Land at: 18 Huxley Road London N18 1NN

Reference: APP/Q5300/X/25/3364561

Scale: Do not scale.



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 Hamid Kamyab on behalf of Kiks Group Ltd for a full award of costs against the Council of the London Borough of Enfield.
 - The appeal was in connection with an appeal against the refusal of a certificate for existing use LDC.
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Decision

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 and inaccurately appraised the LDC application and documents, misunderstood key dates or omitted to check and review relevant evidence. In rebuttal, the respondent refers to the burden of proof, which rests with the applicant. However, the LDC was refused based on the respondent's own evidence yet did not provide a clear or cogent explanation as to what evidence it held.
4. That said, when determining LDC applications, the planning history of a site can be relevant consideration. The respondent referred to previous enforcement history in 2021 and the issuing of a Planning Contravention Notice in response to an allegation that the property had been unlawfully converted into a home in multiple occupation. A subsequent investigation in 2024 alleging the same breach resulted in the LDC application. As the latter happened within the relevant immunity period, it seems to me the respondent placed too much reliance on the history rather than focussing on relevant and material issues and evidence presented.
5. 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 allowed and my approach is based on relevant principles and case law applied to the facts. In this case, I have found that the approach taken by the respondent was fundamentally flawed and I will not repeat the reasons here, but, on this occasion, in my assessment it did not cross the unreasonableness threshold. The matters raised required an exercise of planning judgment having regard to relevant judicial authorities and evidence presented.
6. Acting contrary to, or not following, well-established case law or legal tests 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.
7. 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. I note that the applicant chose to appoint professional representation, but I do not consider the appeal could have been avoided had the respondent properly exercised its judgment.

8. 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