



Appeal Decision

Site visit made on 29 May 2026

by **T C King BA(Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 June 2026

Appeal Ref: APP/L3815/X/24/3342319

95 First Avenue, Batchmere, Chichester PO20 7LQ

- 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 N Paul against the decision of Chichester District Council. The application ref E/23/00089/ELD, dated 13 January 2023, was refused by notice dated 4 July 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 described as '*change of use of building to dwelling*'.
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Decision

1. The appeal is dismissed.

The Legal Background

2. In an appeal under s195 of the Act, against the refusal of a LDC, the burden of proof is upon the appellant who will need to demonstrate immunity from planning enforcement action on the basis that an outbuilding has been used continuously, without any significant breaks or interruption, as a dwelling.
3. The burden of proof is on the balance of probability. Accordingly, the key is that the evidence should be precise and unambiguous to this end.
4. The former four year rule for an unauthorised change of use to a single dwelling was discontinued by way of the provisions of the Levelling Up and Regeneration Act 2023. The Act's provisions came into force on 25 April 2024 and the four year bar only still applies if the unauthorised residential use began and was sustained continuously for four years prior to this cut-off date. From the evidence it would appear that this requirement is met, with the building fitted out as a self-contained residential unit and first used for such during the summer of 2018.
5. However, the crux of the matter in this particular case encompasses various factors including the planning unit, the frequency and duration of the use for habitable purposes, the actual manner of occupation and the relationship between this and the occupiers of the main dwelling.
6. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on evidential fact, planning legislation and, where relevant, case law.

7. From the appellant's representations it is clear that the appellant is attempting to demonstrate that the building is a dwelling independent of no 95 First Avenue, and has involved the creation of a new planning unit.

The Appeal site

8. No 95 First Avenue comprises a large, detached dwellinghouse which fronts a substantial piece of land, in common ownership, to the rear which is accessed via a driveway to the side of the house. The land is mainly laid to lawn, initially in connection with the main dwelling itself, although there are also three separate, and well-spaced, modern buildings, which stand back from the driveway.
9. It is understood that the building nearest the main dwelling contains additional living accommodation and is used in association. The next building serves as a tractor store and, further up the driveway, to its side, lies the two-storey building the subject of the appeal. This building has a small, open garden and a parking area.
10. This is the limit of built form at the site, which then fully opens out into an expanse of field.

Relevant planning history

11. In 2013 planning permission (ref 13/02281/FUL) was granted for a stable building, comprising loose boxes and tack room. The permission was subject to a condition which stipulated that the stable shall not be used other than in association with the use of the dwelling at 95 First Avenue, shall not be let out or used for commercial purposes, and shall not be used for habitable accommodation.
12. I have not seen anything to suggest that the said planning permission was not implemented, insofar as the building was built on a different footprint or is significantly larger than was approved. There must obviously be differences in the physical appearance of the building approved and what has resulted but I have not been provided with the approved drawings so I am unable to comment further.
13. Instead, the condition imposed, which I have referred to, has clearly been contravened and although the application was submitted under s191(1)(a) in an attempt to show that the claimed use of the building as a dwelling was lawful in planning terms I feel that the application should have also concentrated on s191(1)(c) which relates to uses taking place without compliance with planning conditions.

Main Issue

14. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

15. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

16. In support of the application three statutory declarations have been produced; one from the appellant and also one from each of his two daughters.
17. The appellant says, that following the stable building being approved in 2013 it was built out and the works were substantially completed by November 2016. However, the new building has never been used for its original purpose. It is explained that up until January 2018 it was used, instead, as a domestic store, following which it was decided to fit out the building as a self-contained residential unit. Various evidence has been provided to corroborate the claim that the conversion took place at this time. He indicates that this was for the purposes of family and friends who regularly came to stay.
18. By family, he refers mainly to his daughters and their families who have occupied the building at various times, taking advantage of the fully self-contained residential unit. He says that they have stayed at weekends and during school holidays. Their statutory declarations generally confirm their father's claims, and they say that they stayed at the building on alternate weekends, and then for longer periods during the school holidays.
19. The judgement in *Gravesham BC v SSE & O'Brien* [1982] sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence. The Council accepts that this is the case here and, from my site inspection, I agree.
20. The appellant considers that the building lies outside no 95's residential curtilage, and given the distance between, and the fact that there is no intimate relationship between the main dwelling and the area of land on which the outbuilding is situated, I take a similar view.
21. The building at issue and the main dwelling are thereby clearly separate entities. It is generally accepted that, whilst 'separate' implies being apart or distinct, 'independent' focusses on self-reliance and autonomy. In other words, 'independent' relates to autonomy, self-sufficiency and freedom from external control, which is not the case with the occupation of this building.
22. Essentially, 'separate' describes a physical or structural state, while independent is concerned with a functional or operational state. Here, the utility bills are addressed to the appellant at no 95 and despite the physical distance, this illustrates the intrinsic relationship between the two buildings.
23. The actual planning unit must then be considered. The leading case in which the planning unit was defined was *Burdle v SSE* [1972]. With regard to this I find that the open and expansive nature of the site as a whole, with no physical demarcation between the various buildings on the land, there is a single main purpose to which any secondary activities are ancillary or incidental.
24. It must thereby follow that the land as a whole here represents the planning unit. Accordingly, I must disagree with the appellant that a new planning unit has been created by the development.
25. Notwithstanding the above, the appellant makes a number of assertions in his Statement of Case. He says that the occupiers of the dwelling are not dependent on the main house and, what I find crucial to this case, the building, since its conversion, was continuously in use as a dwellinghouse, 'but it was just not

occupied for that purpose on a continuous basis. This was put in a slightly different way in his statutory declaration whereby he states *'It has been continuously available for independent use since early July 2018, with no breaks for refurbishment or similar matters'*.

26. If the building had been continuously available for independent use then this would have surely clashed with the appellant's family using its facilities.
27. As I have mentioned the occupation, on the basis of the evidence put forward and in the wider context of things, can best be described as having been intermittent and short-term. The occurrences might have had degrees of regularity but it was certainly not continuous; being more used as a holiday home. The accommodation might be fully self-contained but, given the family connections, there would most likely have been a significant degree of interaction between the occupiers. Certainly, the manner of occupation would have been, and likely remains, an informal relationship.

Conclusions

28. As the building has never been used as stables, as was originally proposed, planning permission E/13/0228/FUL was never implemented in full, as only the operational development took place with the construction of a building. As mentioned, neither party has addressed the matter as to what degree – even if significant – the design and appearance of the building differed from that approved. However, due to the passage of time, this is not an issue and the building itself is immune from planning control.
29. In terms of its use I have concluded that this has impacted on the continued relevance of condition 2. Its requirements specifically prohibits *'the stables'* being used for habitable accommodation. The building has not been used in association with a riding school or for commercial purposes but, importantly, I have found that since its erection in 2016, when it was used for domestic storage purposes, it has always been used in association with the main dwelling. This will be similar to one of the other two outbuildings beyond the dwelling's rear building line.
30. Accordingly, as I am satisfied that this requirement has been observed throughout, and the other requirements now hold no relevance, the building and its use are lawful, but the latter can only be in conjunction with the main dwelling. The building's continued use as an extension of no 95's living accommodation thereby holds no implications in terms of planning control. In the circumstances there is no need for a LDC as the planning position has not been altered. Whilst the building contains all the facilities to allow for its use as self-contained accommodation it remains incidental to the use of the main dwelling, and falls within the same planning unit.
31. In this appeal I must, therefore draw a clear distinction between an independent dwelling and one separate to, but ancillary, to the main dwelling. An independent use would, instead, require the benefit of planning permission.
32. For the reasons above I conclude, from the evidence available, that, on the balance of probability, the use of the building as a dwelling, independent of no 95 First Avenue, was not lawful on 12 January 2023, within the meaning of section 191(2) of the Town and Country Planning Act 1990.

33. The appeal is, therefore, dismissed and I shall exercise my powers under section 195(3) of the 1990 Act.

T C King

INSPECTOR