



Appeal Decision

Site visit made on 21 April 2026

by Richard S Jones BA (Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2026

Appeal Ref: APP/N5660/X/25/3366455

28 Ferndene Road, Lambeth, London, SE24 0AB

- 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 David Whyte against the decision of the Council of the London Borough of Lambeth.
 - The application ref 25/00357/LDCE, dated 7 February 2025, was refused by notice dated 3 April 2025.
 - The application was made under section 191(1)(a) and (b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is existing use of a building previously used as a single dwellinghouse to use as two separate single dwellinghouses with no occupancy conditions.
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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 and operations which are found to be lawful.

Application for costs

2. An application for costs was made by Mr David Whyte against the Council of the London Borough of Lambeth. That application is the subject of a separate decision.

Preliminary Matters

3. The above description of the LDC sought is taken from the appeal form, as the application form refers to a written submission which doesn't specifically set out a description.
4. An application under s191(1)(a) and (b) of the Town and Country Planning Act 1990 as amended (the 1990 Act) seeks to establish whether, at the time of the application, any existing use of buildings or other land, and any operations which have been carried out, are lawful.
5. The burden of proof lies with the appellant to make his case on the balance of probabilities. If there is no evidence to contradict or make the appellant's version of events less than probable and his evidence alone is sufficiently precise and unambiguous, that is enough. Evidence should not be rejected simply because it is uncorroborated.
6. The appellant requests that I consider additional evidence with the appeal and it is appropriate that I do so as the LDC provisions enable the making of a decision on

the best facts and evidence then available. In any case, the Council has had opportunity to consider the additional evidence and has made comment on it.

7. S191(2)(a) of the 1990 Act explains that uses are lawful if no enforcement action may be taken in respect of them because they did not involve development or require planning permission or because the time for enforcement action has expired.
8. The time limits for taking enforcement action are set out under s171B of the 1990 Act, which was amended via s115 of the Levelling-Up and Regeneration Act 2023 with effect from 25 April 2024. The amendments were subject to transitional arrangements set out in the Planning Act 2008 (Commencement no.8) and the Levelling-up and Regeneration Act 2023 (Commencement no.4 and Transitional Provisions) Regulations 2024.
9. S171B(1) of the 1990 Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of ten years beginning with the date on which the operations were substantially completed. However, where the operations were substantially completed before 25 April 2024, as is applicable here, the relevant period is four years.
10. S171B(2) provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. Again, however, where the date of the breach was before 25 April 2024, the relevant period is four years.

Main Issue

11. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. From the evidence before me, that turns on whether:
 - the building operations were substantially completed four years before the date of the application; and
 - whether the material change of use of the building previously used as a single dwellinghouse to use as two dwellinghouses began more than four years before the date of the application and continued without material interruption for a period of four years thereafter.
12. The material date for both the use and operations is therefore 7 February 2021.

Reasons

13. The appeal relates to a two-storey, semi detached property, with two storey side extension, previously accommodating a garage at ground floor level and a study at first floor level. The appellant states that the property was used as a single family dwellinghouse from when he purchased it in 1998 until October 2018, when it began use as two dwellings, the second of which was created by works to the garage and the room above.
14. In a supporting affidavit provided by the appellant, he explains that he originally sought to convert the garage to habitable space for an elderly relative to stay for extended periods. Planning permission was sought and subsequently granted for

the same in July 2017, together with alterations to the fenestration to the ground floor side elevation¹.

15. The appellant says that work was subsequently completed and signed off by the Council's Building Control Manager on 21 August 2018 and a letter of completion is exhibited to that effect. That describes the work as 'convert garage to habitable space and existing room above it with staircase'. The appellant states separately (in his planning statement) that other internal works were undertaken to create independent accommodation within the building.
16. In that regard, the as-built plans do not match the approved plans. Externally, the door and window openings on the front and side elevation differ, whilst internally the as-built plans show a studio flat arrangement with ground floor bedroom and shower room and first floor kitchen, whereas the approved plans show a study room on the ground floor and a gym on the first floor with a shower room.
17. The Council is satisfied that there is no contradictory evidence to suggest the construction works to the building were not undertaken and completed in 2018. Consequently, irrespective of the planning permission, the building operations were substantially completed more than four years before the date of the application and are thus immune from enforcement action through the passage of time, on the balance of probabilities.
18. Turning to use, where a dwellinghouse is subdivided, the building as a whole remains in residential use. There is only a material change of use if the subdivision results in the creation of physically and functionally separate planning units.
19. When considering whether there has been a change of use of a building to create a new dwelling, it is necessary to look at when the premises were capable of providing viable facilities for living and when the use as a separate dwelling commenced. Normally neither factor is decisive, but actual use can be critical in subdivision cases.
20. Internal alterations do not amount to development requiring planning permission by virtue of s55(2)(a) of the 1990 Act but are relevant here insofar as they may facilitate the material change of use. In that regard, the Council is satisfied that the works to the house comprising the conversion of the garage to a habitable room with a staircase to an existing first floor room above were completed four years prior to the date of the application.
21. With the conversion finished, the appellant explains in his affidavit that he made inquiries about letting the accommodation, which had become redundant as the elderly relative was receiving care in a nursing home. He says that a tenant was easily found, taking up occupation in October 2018, through to December 2021.
22. An initial 12 month tenancy agreement for that tenant is referred to and exhibited as part of the affidavit. A signed letter from the letting agent is also referred to and exhibited, confirming the duration of occupation and explaining that at the end of the 12 month term the tenancy continued on a monthly contractual periodic tenancy, until ended. A signed letter from the tenant also corroborates the dates given.

¹ Ref: 17/02424/FUL

23. The appellant then sets out in his affidavit the subsequent tenancies for the periods from January 2022 to December 2022, December 2022 to November 2023 and November 2023 to November 2024. The last tenant, by the date of making the affidavit (6 February 2025), took up occupancy in November 2024.
24. In his affidavit, the appellant again refers to and exhibits signed tenancy agreements for each of those tenants, whilst the aforementioned exhibited letter from the letting agent also confirms the respective occupation periods for the named tenants. Letters are also provided from two of the tenants confirming their occupancy.
25. I understand the Council's concern that the studio unit retained a connection to the main dwelling through an internal door off the staircase. The appellant explains that the door was locked and blocked on the main dwelling side and that tenants had no key. I note the appellant has referred me to an appeal decision² where the matter of 'blocking' was achieved by positioning a bookcase in the way of a connecting door, but individual cases are inevitably fact specific.
26. In this case there is no suggestion that tenants had access to the main house. Rather, the accommodation had its own 'front door' and is able to function in a self-contained manner. In the circumstances, it is unlikely that there was a continued functional connection between the studio and the main house.
27. Whilst I note the Council's concerns over the lack of utility bills, the additional letters received from three of the occupants confirm that the rentals were 'all-inclusive'. Two of the rental agreements also stipulate that the rent included all utilities apart from Council Tax. That is consistent with the appellant's explanation of his instruction to the letting agent that utilities would be included in the rent. Whilst No 28 may be banded as a single dwelling for Council Tax purposes, that isn't necessarily determinative either way.
28. The Council's case seeks to highlight that the above referenced planning permission is subject to a condition which stipulates that the development permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as No 28 Ferndene Road, and not be operated as a separate dwelling unit.
29. However, the Council provides no explanation of the potential consequences of that condition insofar as it relates to this case. A breach of condition is subject to a ten year immunity period under s171B(3) of the 1990 Act, that is unless the condition prevents use as a single dwellinghouse and the breach falls to be considered under s171B(2). In any event, in the context of a fairly small scheme, the differences between what was approved and what has been built are such that it is unlikely that the planning permission was implemented. Accordingly, the development is not subject to the highlighted condition, on the balance of probabilities.
30. Therefore, in the absence of any contradictory evidence from the Council, it is likely that by October 2018, the unit was capable of providing viable facilities for living, and that the use as a separate dwelling commenced. That marks the breach of planning control through a material change of use and the creation of a separate planning unit. It is also likely that the use as a separate dwelling then continued for

² Appeal Ref: APP/J1860/X/18/3219273

a period of four years thereafter, without material interruption, on the balance of probabilities. Accordingly, the use for two dwellinghouses has become lawful through the passage of time.

31. Under s191(4) of the 1990 Act, any LDC granted must describe the existing use or development found to be lawful. That may not be exactly what was written on the application form, and so s191(5) enables a local planning authority to modify the description. An Inspector may exercise that power on appeal and is indeed obliged to issue a LDC for any existing use or development that is shown to be lawful on the facts and evidence.
32. The description in the banner heading deals only with use, but it is clear from the appeal submissions that the LDC is also sought to encompass the external alterations. I shall therefore modify the description to material change of use of a building previously used as a single dwellinghouse to use as two separate dwellinghouses, along with facilitating external alterations.

Conclusion

33. For the reasons given above, I conclude that the Council's refusal to grant an LDC 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 (as amended).

Richard S Jones

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 7 February 2025 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

It is more likely than not that an initial breach of planning control comprising a material change of use from single dwellinghouse to two dwellinghouses along with the facilitating external works, occurred by October 2018, such that the time limit for taking enforcement action for both the use and operations was four years, as then set out in sections 171B(1) and 171B(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

On the balance of probabilities, the facilitating external alterations were substantially completed more than four years before the date of the application so the time for taking enforcement action has expired by virtue of s171B(1) of the 1990 Act.

On the balance of probabilities, the use of the property as two dwellinghouses continued from the date of the initial breach without material interruption for a period of more than four years prior to the date of the application, so the time for taking enforcement action has expired by virtue of s171B(2) of the 1990 Act.

Signed

Richard S Jones

INSPECTOR

Date: **[26 June 2026]**

Reference: APP/N5660/X/25/3366455

First Schedule

Material change of use of a building previously used as a single dwellinghouse to use as two separate dwellinghouses, along with facilitating external alterations.

Second Schedule

Land at 28 Ferndene Road, Lambeth, London, SE24 0AB

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 and operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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: [\[26 June 2026\]](#)

by Richard S Jones

Land at: Land at 28 Ferndene Road, Lambeth, London, SE24 0AB

Reference: APP/N5660/X/25/3366455

Scale: Not to Scale

