



Appeal Decision

Site visit not required

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2026

Appeal Ref: APP/F0114/X/25/3373977

45 St. James's Park, Lansdown, Bath, BA1 2SX

- 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 Gordon & Ann Glass against the decision of Bath and North East Somerset Council.
 - The application ref 25/00100/CLPU, dated 9 January 2025, was refused by notice dated 9 April 2025.
 - The application was made under section 192(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 the reversion of the property from a studio flat and maisonette back into a single dwellinghouse.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, I make clear that the planning merits of the proposed reversion of the property from a studio flat and maisonette back into a single dwellinghouse are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded with particular regard to whether the proposal amounts to a material change of use under section 55 of the Act and whether planning permission is required for it.

Reasons

4. The evidence is that the property is currently used in accordance with an approved planning permission in 2016¹ for use of the lower ground floor as a studio flat and the ground and first floors as a two-bedroom maisonette. The proposal is to amalgamate the existing two residential units into one single family dwellinghouse. Proposed internal works comprise the removal of kitchen facilities on the lower ground floor level and the reinstatement of a flight of stairs which were removed as part of the implementation of the 2016 planning permission.
5. Section 55(1) of the Act defines development to include the making of a material change in the use of land. The Act provides that use of a single dwellinghouse as

¹ Planning permission 16/05449/FUL

two or more dwellinghouses constitutes development, but it does not follow that the reverse is true. The appellant asserts that as the uses both before and after the change are within class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO), no material change of use can be considered to have taken place. But a building in use as more than one dwellinghouse is not use as a dwellinghouse and therefore in this case the 'before' use does not fall within class C3 of the UCO. Therefore, it is not the case that the proposal is exempt from the definition of development under section 55(2)(f) of the Act.

6. It is established law that whether the amalgamation of planning units has resulted in a change in character so as to constitute a material change of use is a matter of fact and degree. It is therefore necessary for me to consider whether the proposal to amalgamate two residential units into one dwellinghouse amounts to a material change of use and hence an act of development requiring planning permission.
7. In this case, and as detailed above, there are no external alterations proposed: only internal works are proposed in respect of the amalgamation. There is no suggestion from either of the main parties that the amalgamation of the two residential units into one dwelling would have any material environmental or amenity consequences.
8. The most recent judgement from the High Court² (the Kensington judgement) has found that the loss of a unit or units of accommodation in the relevant local area may have a planning consequence in terms of the significant reduction in the number of dwellings available as housing stock. It made clear that the material effect of such conversions may conflict with development plan policy, but this should not be the sole basis upon which a decision is based. In practice, the determination of whether a material change of use would be involved may or may not be supported by a planning policy.
9. The Kensington judgement made several points which are set out below:
 - “(1) A planning purpose is one which relates to the character of the use of land;*
 - (2) Whether there would be a material change in the use of land or buildings falling within the definition of “development” in section 55 of the TCPA 1990 depends upon whether there would be a change in the character of the use of the land;*
 - (3) The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. Thus, the need for a land use, such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;*
 - (4) Whether the loss of an existing use would have a significant planning consequence(s), even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;*
 - (5) The issues of (2) and (4) above are issues of fact and degree for the decision maker and are only subject to challenge on public law grounds;*

² R (oao) The Royal Borough of Kensington and Chelsea v (1) Secretary of State for Communities and Local Government (2) David Reis (3) Gianna Tong [2016] EWHC 1785 (Admin)

(6) Whether or not a planning policy addresses a planning consequence of the loss of an existing use is relevant to, but not determinative of, an issue under (4) above.”

10. I have considered the above legal judgement and it is clear that the Council’s analysis of the effect of the amalgamation upon housing supply should be considered relevant to whether the proposal falls within the scope of planning control. Whether this is the case is a matter for me to decide on a fact and degree basis.
11. The undisputed evidence of the Council is that it can demonstrate only a deliverable 2.5-year supply of housing sites against a rolling 5.0-year supply requirement. This indicates a very poor housing land supply position and one where the Council will need to significantly boost supply to meet national planning policy requirements. In this context, I conclude that a net loss of one residential unit would lead to a material planning consequence in so far as exacerbating the housing undersupply position in the administrative area, and where the evidence indicates that there is acute housing need. Put another way, the loss of one residential unit should be considered against the five-year housing land supply requirement which is not being met by a significant extent.
12. The appellant states that the Council’s ‘Local Plan Options Document’ states that *‘3-bedroom properties represent the largest proportion of housing need in the City’*. While the proposal would result in the provision of a three-bedroom dwellinghouse, I have not been provided with any emerging or adopted development plan policies which seek to control the provision or loss of 3-bedroom properties. This is not therefore a matter which negates or alters the fact that the proposal would result in a net loss of a residential unit in the context of a very poor housing supply position.
13. Whether or not the proposal accords with policy H5 of the Bath and North East Somerset Local Plan 2011-2029 is not in itself determinative in this case. Nonetheless, it is of note that the policy does seek to restrict the loss of existing residential units in the context of the reasoned justification to the policy which states that *‘the existing housing stock should be protected from change of use, where possible, given the high demand for housing. However, there will be circumstances where change of use to non-residential use or to visitor accommodation uses (such as a hotel, guesthouse or the provision of bed and breakfast) could be acceptable where there are conservation or other benefits that outweigh the loss of a single dwelling’* (my emphasis).
14. The basis on which Policy H5 of the LP has been prepared therefore adds to my overall conclusion that the proposed net loss of a residential unit would result in a material change of use of the land. The two residential units are currently fulfilling a housing purpose where the evidence indicates that a five-year supply of deliverable housing sites cannot be demonstrated, and where a development plan policy seeks to restrict the loss of residential units given that there is *‘high demand for housing’*. In my judgement, the net loss of a residential unit would, as a matter of fact and degree, result in a material planning consequence.
15. For the above reasons, I therefore find that the proposal would amount to a material change of use and hence an act of development as defined in section 55(1) of the Act. The proposal would not fall to be permitted development in the Town and Country Planning (General Permitted Development) (England) Order

2015 (as amended). Consequently, planning permission is required for the proposal.

Other Matters

16. I recognise the supportive comments from third parties about the proposal. However, such supportive comments do not alter or outweigh my conclusion on the main issue which is reached on a fact and degree basis and considering relevant judicial authority.
17. The appellant asserts in his statement of case (which he acknowledges has been influenced using artificial intelligence) that the studio flat was only ever intended to provide temporary accommodation. There is no precise evidence before me to support such an assertion and, in any event, the appellant states that the 2016 planning permission was implemented. Moreover, the basis of the LDC application relates to the *'reversion of the property from a studio flat and maisonette back into a single dwellinghouse'*.
18. The appellant has referred to other LDC appeal decisions and Court judgements. These do not alter or outweigh my conclusion above which is based on the specific evidence that is before me and on a fact and degree basis.

Conclusion

19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the reversion of the property from a studio flat and maisonette back into a single dwellinghouse 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).

D Hartley

INSPECTOR