



Appeal Decision

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 17 July 2026

Appeal Ref: APP/L5240/X/24/3343575

16 Elgin Road, CROYDON, CR0 6XA

- 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 Qasim Gulamhusein against the decision of the Council of the London Borough of Croydon.
 - The application ref 24/00622/LP, dated 21 February 2024, was refused by notice dated 18 April 2024.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is described in the application statement as 'It is proposed to install cupboards that kitchen units in all bedroom [sic]. These fixtures will not contain any cooking/food heating facilities such as hobs or microwaves. All the bedrooms will have kitchen units but will be used for the purposes of bedroom furniture'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the LPA. This is the subject of a separate decision.

Preliminary Matter

3. In view of the nature of the case and evidence submitted, it was assessed that the appeal could be determined 'on the papers' without a site visit. No objection was raised by either party to this approach.

Main Issue

4. The main issue is whether the LPA's decision to refuse a LDC¹ was well-founded, turning on whether the proposal would have been lawful as at the date of the application.
5. Planning merits are not relevant and the onus is firmly on the appellant to make their case on the balance of probability. If the LPA has no evidence of its own to contradict or make the applicant's version of events less than probable, there is no good reason to refuse a LDC provided the appellant's evidence is sufficiently precise and unambiguous

Reasons

6. The planning history of the property includes an enforcement notice alleging change of use of the ground floor flat into 3 SCFs² and of the first and second

¹ Lawful development certificate

² Self-contained flats

floor maisonette into 5 SCFs³. An appeal was made out of time and the notice took effect on 27 April 2023 subject to requirements including a stipulation that ‘all kitchens including sinks, kitchen cupboards and cookers’ be removed from the ground floor flat and first and second floor maisonette (apart from one kitchen to be retained in each).

7. Subsection 191(2) of the Act⁴ states that, uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. Since this definition is given ‘for the purposes of this Act’, plainly it is applicable in the assessment of lawfulness in a s192 LDC application; the appellant has not adduced any case law or other evidence which leads to a different conclusion.

Whether or not a contravention of an in force enforcement notice

8. Both parties have made detailed representations on whether the requirements of the 2023 notice have been complied with. However, per ss181(1) of the Act: *‘Compliance with an enforcement notice, whether in respect of—(a) the completion, removal or alteration of any buildings or works; (b) the discontinuance of any use of land; or (c) any other requirements contained in the notice, shall not discharge the notice’.*
9. Subsection 181(3) then sets out that *‘Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered...’.*
10. As such, if the items proposed to be installed are caught by the notice requirement to remove ‘kitchens including sinks, kitchen cupboards and cookers’, their installation would contravene the requirements of the 2023 notice even if ‘kitchens including sinks, kitchen cupboards and cookers’ were previously removed per the notice requirements. Whether or not the notice requirements are excessive is irrelevant in the context of s285 of the Act which states that the validity of a notice shall not, except by way of an appeal, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.
11. It is a matter of fact and degree then whether the proposed fixtures fall within the ambit of the kitchen fixtures set out in the notice requirement. I note the stated intention for cupboards, worktops and sinks to be used as bedroom storage, bedside tables and a dressing table and with worktop space as bedside tables and with the sink unit as dressing tables/vanity units. I acknowledge that there can be similarities between bedroom furniture and kitchen units. However, it would appear that the proposed fixtures have been designed as kitchen units and readily lend themselves to kitchen use, with only the addition of a plug-in cooking appliance and fridge required for a functional kitchen.

³ The LDC application which is the subject of this appeal relates only to the maisonette

⁴ Town and Country Planning Act 1990

12. While the fixtures are not proposed to be in the same positions as those apparently previously removed pursuant to the notice requirements, the notice stipulates removal from the 'first and second floor maisonette'. Logically then, relocating kitchen fixtures within the maisonette would not achieve compliance with the notice. Equally, if the intention of the notice requirements was to leave kitchen units in place but render these non-functional for kitchen use, for example by removal of cooking facilities, the requirement would have stated as such, rather than specifying removal of all kitchen cupboards from the maisonette.
13. Drawing these matters together, I find on the available evidence that the appeal proposal would constitute a contravention of the requirements of an enforcement notice in force as at the date of the LDC application.
14. For completeness, and while not determinative in view of the above finding, since s55(2)(a) of the Act excludes from the definition of development any works for the maintenance, improvement, or other alteration of any building which affect only the interior of the building, the appeal proposal would not represent operational development requiring planning permission. As to whether the proposal could trigger a material change of use requiring planning permission, I note the LPA's comment that an assessment in relation to planning use 'would not usually be made based on the theoretical use of one item/group/room within a planning unit' and agree that the limited evidence presented would not enable a proper determination.
15. The appellant has not then made their case on the balance of probability that the proposal would have been lawful as at the date of the LDC application.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the proposal described in my banner heading 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).

V Bond

INSPECTOR