



Appeal Decision

Site visit made on 13 June 2026

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

an Inspector appointed by the Secretary of State

Decision date: 21 July 2026

Appeal ref: APP/L5810/X/25/3358690

Red Ices, Mears Walk, Richmond Riverside TW10 6UJ

- 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 Barry Edwards on behalf of Running Red Ltd against the Council of the London Borough of Richmond-upon-Thames.
 - The application ref 24/1208/ES191, dated 10 May 2024, was refused by notice dated 17 July 2024.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is described as follows: Retention of Existing Ice Cream Stand use class E(c) iii on the foreshore at Richmond Riverside, adjacent to Mears Moorings.
 - An application for costs is made by the appellant against the Council and vice-versa. This is subject to a separate Decision.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. An application for a LDC is not like an application for planning permission. The LDC application adopts a scattergun approach and conflates planning matters with those relevant to an LDC assessment.
3. Firstly, it is necessary to understand the purpose of a section 191 LDC application. The Act explains that if any person wishes to ascertain, amongst other things, whether any existing use of land is lawful, they may make an application for the purpose to the local planning authority (LPA) specifying the land and describing the use, operations or other matter. As the Planning Practice Guidance (PPG) explains, an application needs to describe precisely what is being applied for and the land to which the application relates. Without sufficient or precise information, the LPA may be justified in refusing a certificate. The LPA, or Secretary of State on appeal, may choose to issue a LDC for a different description from that applied for on the facts of a case, as an alternative to refusing a certificate altogether. The decision-maker needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. The appeal parties, including interested parties, have made extensive arguments about planning merits. However, I am afraid that in this specific appeal, all this voluminous documentation and arguments are irrelevant.

Secondly, the word "lawful" has a specific meaning in law as explained in s191(2) of the Act. In summary, if development is declared to be lawful, then no enforcement action may be taken against that development provided there is no enforcement notice in force. It may be

lawful because planning permission is not required for an existing use or operation as it does not amount to development falling within the scope of s55(1) of the Act.

4. Finally, I sought clarification through The Planning Inspectorate of a few matters arising from my site visit. I am grateful for the comments made. I am satisfied the matters clarified have no bearing on the determination of this appeal. I proceed.

Reasons

5. The appeal site, identified on the LDC site/location plan submitted with the LDC application¹, is a small parcel located on the towpath adjacent to the River Thames Visitor Centre (RTVC) moorings, which is situated a short distance from Richmond Bridge. The main issue is whether the Council's refusal to grant the LDC was well-founded.
6. 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.
7. The application form describes the existing use as a retention of an existing ice cream stand, but on the other hand arguments are made about the use of the appeal site for ice cream sales. From the extensive written representations and my own observations, it appears the claim is that the existing use of the site for ice cream sales, which is probably facilitated by the stationing of a mobile cart as illustrated in the evidence, is immune from enforcement action because the existing use started in 2006, which is prior to the relevant date - 10 May 2014. Although both appeal parties describe the activity as falling in Class E(c)(iii) of the schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (UCO)², ice cream sales are characteristic of a retail activity.
8. That said, I have carefully reviewed all the written representations. Apart from vague and generalised assertions that the use started in 2006, there are inconsistent dates given as to when the retail activity commenced. There is no specific detail as to what happened when and by whom, and the photographic evidence does not clearly show a timeline. In addition, while use of the appeal site was probably seasonal or temporary and involved periods when the ice cream cart was kept in storage, evidence about when the site was used is lacking in detail. For example, there is nothing showing periods or duration on or before the relevant date. The lack of this kind of detailed evidence makes comparisons between nature and scale of seasonal activity difficult to make.
9. The use of the site for ice cream sales may have fluctuated due to inclement weather. Again, apart from vague assertions there is no specific detail about intensity or variation in terms of use. Furthermore, there is no plausible explanation as to why sale details have not been provided. This kind of information would have assisted in showing a timeline of retail activity during any 10-year period, but, in the absence of this kind of evidence, it is difficult to draw any firm conclusions on immunity.

¹ At application stage the LPA clarified with the appellant which site plan is accurate as there was a slight discrepancy. The location plan illustrates a red line of slightly different dimensions and location to the red line indicated on DWG No 2. Prior to validation the appellant confirmed that drawing PP-13054588v1 should be used for the purposes of identifying the LDC application site.

² Use, or part use, for the provision of the following kinds of services principally to visiting members of the public... (iii) any other services which it is appropriate to provide in a commercial, business or service locality.

10. There is also confusion about the extent and scope of the retail sales. For example, the appellant's witness statement states that Red Ices is outside the planning footprint of Mears Moorings and the RTVC and has operated from the foreshore from 2005 to date. It is said that Red Ices has traded selling ice cream in the summer season at the site first by Running Red Ltd from 2006 to 2008. That ice cream sales were run by Greedies from 2008 to 2012, and then by Kapucin from 2013 to 2019, followed by Nyam Dis from 2022 to 2023. However, the operators' statements cast some doubt over the appellants claims. Apart from lack of clarity over the extent of their occupation and use, they appear to refer to ancillary type of activities. For example, an ancillary restaurant or sale of food and drink, which would be significantly different to a primary retail use of ice cream on a seasonal basis.

Conclusions

11. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me, irrespective of the Council's muddled approach given the reference to what amounts to development and permitted development rights. Nonetheless, as the PPG says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented. The latter is relevant in this case because of the extent, nature and quality of the evidence presented.
12. Albeit for different and other reasons, I find that the Council's refusal of the LDC was well-founded, because the quantum of evidence presented does not clearly show the existing use is lawful, due to the passage of time.
13. Having regard to all other matters raised, including concerns about the handling of the application but these are not for my determination, I conclude that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the Act.

A U Ghafoor

INSPECTOR