



Appeal Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2026

Appeal Ref: APP/V1260/X/24/3356534

Flat 2B, Whitley Court, West Cliff Gardens, Bournemouth BH2 5HL

- 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 Wendy Lovett against the decision of Bournemouth Christchurch and Poole Council.
 - The application ref 7-2024-23085-I, dated 24 April 2024, was refused by notice dated 13 June 2024.
 - 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: Use of Flat 2B as a single dwelling house.
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Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matter

2. The appellant accepts that it is not essential for me to enter the site to check measurements or other relevant facts. On that basis, and given the relevant matters in dispute, injustice does not arise from an assessment on the written evidence only.

Main Issue

3. The main issue is whether the Council's refusal to grant a certificate of lawfulness was well founded.

Reasons

4. The site relates to a lower ground-floor flat located towards the rear of a former hotel building. In matters such as this the onus is firmly on the appellant to demonstrate their case on the balance of probabilities that the use of the flat is lawful owing to the passage of time. My assessment is therefore fact specific, based upon the evidence before me.
5. The parties agree that the relevant period for immunity from enforcement action in this case arises from 4-years continuous independent use of the flat. A relevant period however need not necessarily be constrained to just the 4 years immediately preceding the date of the application.
6. The appellant has provided evidence in the form of 4 signed tenancy agreements dated January 2009, December 2018, June 2022 and May 2023 respectively. A statutory declaration made on 30 May 2024 has also been provided. I am however unclear whether the Council considered this, as it was submitted just prior to the

determination of the appeal application. In any event, it is before me and so forms part of my assessment.

7. The 2009 tenancy agreement is for a period of 6 months and so provides very little evidence of continuous independent use.
8. The 2018 tenancy agreement is also for a period of 6 months. However, the statutory declaration provides evidence that the tenants remained in occupation of the flat until 20 June 2022 without signing another agreement.
9. The 2022 tenancy agreement was then signed by the tenant on 21 June 2022 with a further new tenant signing an agreement on 23 May 2023. The appellant asserts these tenants vacated the flat on 22 May 2023 and 25 March 2024 respectively, with a new tenant awaiting to move in as at the date of the appeal application.
10. The appellant has therefore demonstrated on the balance of probabilities a relevant period of 4 years continuous independent use of the flat. As a matter of fact and degree, there is then very little evidence of a sufficient gap in the use, such as between tenants, that would re-start the period for immunity. There is also very little evidence that there was a relevant enforcement notice in force.
11. A representation received in response to the appeal application raised a potential commercial use, but it is said by the appellant that this relates to a different flat. In light of the evidence before me of the use of the flat the subject of the appeal application, I accept there has been no commercial use during the relevant period. There is accordingly very little evidence of an intervening use of the flat that would re-start the period for immunity.
12. The Council assert that reference to the flat has only appeared for Council Tax purposes since June 2022. Such records are however not determinative in themselves as they do not provide evidence of what use actually subsisted, unlike, for example, the statutory declaration.
13. As a matter of fact and degree the appellant has therefore demonstrated their case on the balance of probabilities and so the ability of the Council to take successful enforcement action has therefore expired.

Conclusion

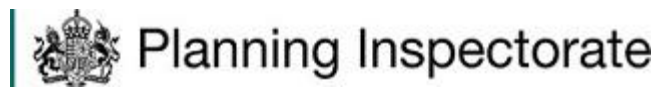
14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawfulness was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

15. The appeal is allowed and attached to this decision is a certificate of lawfulness describing the existing use which is considered to be lawful.

Paul T Hocking

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 24 April 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has demonstrated their case on the balance of probabilities.

Signed

Paul T Hocking

Inspector

Date: 3rd September 2026

Reference: APP/V1260/X/24/3356534

First Schedule

Use of Flat 2B as a single dwelling house.

Second Schedule

Flat 2B, Whitley Court, West Cliff Gardens, Bournemouth BH2 5HL

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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: 3rd September 2026

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Land at: Flat 2B, Whitley Court, West Cliff Gardens, Bournemouth BH2 5HL

Reference: APP/V1260/X/24/3356534

Scale: DO NOT SCALE

