



Appeal Decision

A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr

Site visit made on 12 September 2026

an Inspector appointed by the Secretary of State

Decision date: 25 September 2026

Appeal Ref: APP/Z5630/X/24/3351923

11A Berrylands Road Kingston upon Thames KT5 8QX

- 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 Mr Arash Shababi against the decision of the Council of the Royal Borough of Kingston upon Thames.
 - The application Ref 23/02267/CPU, dated 17 August 2023, was refused by notice dated 4 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 in the application as follows: *No change to Site for 11a Berrylands Road HMO flats. Has been operating as HMO for past 20 years with relevant license.*
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Planning Practice Guidance (PPG) explains that separate application forms apply to LDC applications under sections 191 and 192. In either case, the application must be supported by sufficient factual information and evidence to enable the local planning authority (LPA) to determine it. Although the appellant used the form for a proposed use or development, the submitted material makes clear that the application seeks a certificate under s191(1). The case advanced is that the existing use of no. 11A as a house in multiple occupation (HMO) is lawful.
3. As the LDC Procedural Guide, dated 20 May 2026, at paragraph 8.2.10, explains a site visit won't be needed for every LDC appeal. In this case, both the appellant and LPA confirmed that the site is visible from public viewpoints¹. I did an unaccompanied visit as I was in the area, but despite suggesting conditions to be imposed on any grant of an LDC by the LPA, an LDC is not a planning permission. Its purpose is to enable owners to ascertain whether specific uses, operations or other activities are, or would be, lawful.
4. Lawfulness is equated with immunity from enforcement action (s191(2) of the Act). The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. Although the appeal parties refer to the

¹ Application form and appeal form and LPA questionnaire form.

LDC as a planning application, it is not and planning merits are not relevant at any stage. I proceed on this basis.

Reasons

5. No. 11A is situated above a commercial unit on a corner site. The submitted plans show six bedsits with shared kitchen and bathroom facilities, and the appellant's bundle includes photographs of the internal layout. For applications concerning an existing use, the burden of proving decisive facts rests with the appellant. Where neither the LPA nor any third party provides evidence that contradicts the applicant's account or makes it less probable, there is no good reason to refuse the application, provided that the applicant's *evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability* [my emphasis].
6. I have not been informed of any enforcement notice currently in force. For the purposes of s191(2)(a), the appellant's case is that the existing HMO use began before the relevant date of 17 August 2013. In support of that claim, the appellant relies on the Council's grant of an HMO licence in 2009 and maintains that the internal layout shown on the submitted plans has remained unchanged since the first HMO permit was granted. However, there is insufficient evidence to substantiate those assertions. The photographs show the current internal layout but do not establish when the bedsits and shared accommodation were created. Nor has information been provided about the nature, type or extent of the conversion works. In the absence of such supporting documentary evidence, I cannot draw a firm conclusion that the HMO use began on or before the relevant date.
7. The appellant contends that the internal layout is self-evident and relies heavily on floor plans, photographs and HMO licences. However, beyond broad and generalised assertions, there is insufficient evidence to substantiate the case advanced. In particular, there is no evidence of the HMO's use or occupation on or before the relevant date, no detailed account of who occupied the bedsits, and no plausible explanation of how the communal facilities were used. Nor is there documentary evidence demonstrating actual use as an HMO or the nature and continuity of that use throughout the relevant 10-year period. For example, utility bills could have helped establish patterns of consumption and the scale of residential use over that period, but none have been submitted.
8. The Council has produced local taxation records showing that no. 11A is rated as three separate units, two of which are identified as Flats 6 and 7. The appellant says that the HMO is entirely separate from those flats and that the flats were created after the launderette closed. However, the layout and use of the premises remain unclear. This contradictory evidence undermines the appellant's claim that no. 11A has continued in use as an HMO, without internal alteration, for a continuous period of 10 years.
9. Pulling all the above threads together, I find that the totality of the appellant's evidence presented thus far does not conclusively show that the claimed existing use of no. 11A as an HMO is immune from enforcement action due to the passage of time. There is insufficient evidence presented that clearly and unambiguously shows the claimed HMO use began on or before the relevant date, that it has been

occupied and used as such throughout a 10-year period without significant interruption.

10. 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. 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: that is certainly the circumstance here.
11. For the reasons given above, I conclude that the Council's refusal to grant the LDC, described by the appellant in the LDC application, is well founded albeit for different reasons. The appeal should fail, and I will exercise accordingly the powers transferred to me in section 195(3) of the Act as amended.

A U Ghafoor

INSPECTOR