



Appeal Decision

Site visit made on 12 September 2026

A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 8th October 2026

Appeal Ref: APP/Z5630/X/25/3368907

28 – 30 Church Road Kingston upon Thames KT4 7RA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr A Issa on behalf of Avida go Ltd against the decision of the Council of the Royal Borough of Kingston upon Thames.
 - The application Ref 25/00025/CEU is made on 6 January 2025.
 - 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 3x self-contained flats at the application site, which have been used continuously for more than 4 years.
 - An application for costs is made by the appellant against the Council. This is the subject of a separate Decision.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Firstly, the Act explains that if any person wishes to ascertain, amongst other things, whether any existing use or operation is lawful, they may make an application for the purpose to the local planning authority (LPA) describing the use or operation. 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 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.
3. Secondly, the word “lawful” has a specific meaning¹. In summary, it is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required. Finally, as the PPG states, a decision maker needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits, including policy, are not relevant at any stage in this application or appeal process.
4. The details in my banner above are taken from the LDC application form. In terms of the description of the existing use for which an LDC is sought, it is for the applicant state what they consider to be factually lawful. Although the existing use is described in LDC application

¹ Section 191(2) of the Act.

form as set out in the fifth bullet-point of the banner above, it appears the appeal parties agreed a different description² as follows: *Conversion of an existing flat into 3 nos self-contained flats. Roof extension and installation of 2 nos front and 4 nos rear rooflights which have been used continuously for more than 4 years.* I proceed on this basis.

Reasons

5. The site is located on a corner in proximity to the junction of Stroudes Close and Church Road. The site is occupied by a two-storey building, which is partly used as a café with children's play at ground floor level and residential above. Both are physically and functionally separate. In this appeal, the onus of proof is upon the appellant. 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 dismiss the appeal, provided the appellant's evidence alone is, on the balance of probability, sufficiently precise and unambiguous.
6. The Council explain it would have refused to grant the existing use LDC on the following basis: *The application...does not include precise and unambiguous evidence to support any contention that following the creation of additional windows on the west and east elevation, that condition No. 2 of permission 18/15011/FUL has been breached for a continuous ten-year period such that, on the balance of probability, no enforcement action could be taken by the local planning authority under section 171(B)(3) of the Act.* However, the appellant relies on subsection (2) of that section.
7. Lawfulness is equated with immunity from enforcement action (s191(2) of the Act). The LDC application relates to a period before the time limits were harmonised³. Section 171B(2) states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
8. The planning permission identified by the Council relates to the installation of six rooflights to facilitate a loft conversion and is subject to condition 1) commencement, 2) approved plans and 3) materials specified on the plans. There may have been a breach of the approved plans in that roof windows inserted in the east and west elevation might be in the wrong place. However, there is no condition regulating the residential use and the subdivision of the loft into two or more self-contained flats falls beyond the scope of the 2018 Permission. Whilst the description of the development permitted refers to six rooflights to facilitate loft conversion, and the plans illustrated residential flat type arrangement above ground floor level, in effect it grants planning permission for operational development.
9. I have not been told of any enforcement notice that is in force. Regarding s191(2)(a), the gist of the case is that the existing use as three self-contained flats is immune from enforcement action. The appellant's case is a simple one, namely, that the existing residential accommodation was physically subdivided into three parts forming three self-contained flats. I have reviewed all the evidence and for the appeal to succeed, the appellant's evidence must clearly demonstrate two key points: (1) when part of the property was physically converted into three self-contained flats as claimed and, (2) each unit had been occupied and used as a dwellinghouse for a continuous period of at least four years, without any significant

² By exchange of e-mail (January 2025).

³ Amendments enacted through 25 April 2024 Levelling-up and Regeneration Act 2023 (c. 55), ss. 115(2), 255(3)(b) (with s. 247); S.I. 2024/452, reg. 3(b) (reg. 5).

interruptions in residential use. In that context, for the following reasons, the appellant faces an uphill struggle.

10. There is no detailed or firm evidence to show when the layout had been altered to create the existing configuration as three self-contained flats. Each flat has separate utility supplies like electric metres and hot water, but there is no clear or precise explanation of the nature of the work involved in the creation of the flats, nor any information as to who carried out the work when and the sequence of the operations. The information presented does not clearly show when each flat contained viable facilities for day-to-day private existence. On the available evidence, I cannot be certain that each flat met the *Gravesham test*⁴ on or before 6 January 2021, which is the relevant date.
11. In a similar vein, apart from generalised and broad assertions, there is no detailed or firm evidence showing who occupied and used each flat given the internal layout. There is no plausible explanation as to how occupiers used the facilities and there is no supporting documentary information which could have been submitted to demonstrate actual use of each self-contained flat for any continuous period. For instance, there is lack of clear local taxation or utility bill records, which could have demonstrated usage and assisted in understanding the scale of the residential use throughout the relevant period.
12. 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 the building's first floor as three self-contained flats is immune from enforcement action due to the passage of time. There is insufficient evidence presented that clearly and unambiguously shows the claimed existing use began on or before the relevant date, that each flat, or any flat, has been occupied and used as such throughout a 4-year period without significant interruption.
13. 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.
14. For the reasons given above, and having considered all other matters, I conclude that the deemed refusal would have been well-founded albeit for the reasons I have given above. 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

⁴ See the case of *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.