



Appeal Decision

Site visit made on 1 October 2026

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2026

Appeal Ref: APP/P1560/X/24/3345420

Kovalam, 3 Rosemary Road, Clacton-On-Sea, Essex, CO15 1NY

- 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 Mario Aristidou against the decision of Tendring District Council.
- The application ref 23/01526/LUEX, dated 18 October 2023, was refused by notice dated 25 April 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 “change of use from retail to one flat and one studio flat with retention of retail unit”.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The use for which a certificate is sought does not accurately reflect what is shown on the submitted floor plans. The plans showing the different stages of development indicate that when the change of use of the ground floor, from retail use to mixed use, first took place, four retail units were retained, two of which had no windows. The four retail units were subsequently altered to recreate two larger retail units served by a shared external front entrance door.
3. The appeal relates solely to the ground floor use of the premises. However, for the purposes of Schedule 2, Part 3, Class G of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), it is necessary to consider the use of the building as a whole (which is already in mixed use), and not the use of individual floors or units comprised within it. It follows that any flats on the upper floors must be added to the total number of flats in the building for the purpose of Schedule 2, Part 3, Class G of the GPDO, the maximum of which is two, and would therefore be exceeded.

Main Issue

4. The main issue is whether the Council’s refusal to issue a LDC was well founded. That will turn on whether the appellant has proved on the balance of probability that the use of the building was lawful on the date on which the application was made.

Reasons

5. Schedule 2, Part 3, Class G of the GPDO, permits development consisting of a change of use of a building from a use within Class E (and prior to that Class A1) of The Town and Country Planning (Use Classes) Order 1987 (as amended), to a

mixed use for any purpose within that Class and as up to two flats. Development permitted by Class G is subject to the conditions set out in G.1 (a) to (d).

6. Although the plans indicate that the floor levels of the two ground floor flats have been raised above that of the ground floor retail units, to accommodate insulation and new floor coverings, this does not result in the retail use being on a floor below or beneath the flats. It simply results in parts of the ground floor having different finished floor levels, with the retail floor being lower, as opposed to below that of the flats. Consequently, the development fails to comply with condition G.1 (a), which requires that the commercial part of the building is situated on a floor below the lowest part of the building used as a flat.
7. The building comprises a retail use with a display window at ground floor level. Consequently, even though the frontage retail units and display windows have been retained, the development fails to comply with condition G.1 (b), which requires that in any development consisting of a change of use of a building with a display window at ground floor level, the ground floor must not be used in whole or in part as a flat.
8. Therefore, notwithstanding my concerns about the description for which a certificate is sought, the existing mixed-use of the building as a whole and the number of flats within it, the change of use of the ground floor to a mixed-use comprising retail accommodation and two flats, does not accord with conditions G.1 (a) or G.1 (b), and the development is not permitted by Schedule 2, Part 3, Class G of the GPDO.

Conclusion

9. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for, change of use from retail to one flat and one studio flat with retention of retail unit, 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).

R Bartlett

INSPECTOR