Planning Inspectorate

Appeal Decision

Site visit made on 15 September 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 November 2026

Appeal Ref: APP/Q1445/X/25/3361865
Annexe, 1A Warmdene Way, Brighton BN1 8NW

- 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 Robert Walters against the decision of Brighton and Hove City Council.
- The application ref BH2024/02476, dated 8 October 2024, was refused by notice dated 17 December 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 sought is use of detached building as a separate dwellinghouse (C3 use class)

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Application for costs

2. An application for costs has been made by Mr Robert Walters against Brighton and Hove City Council, which is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded.

Reasons

4. There is no dispute that the building was originally constructed and used as a garage prior to planning permission being sought for its conversion to a residential annexe in 2016[1]. That planning application was refused, and a subsequent planning application to convert the building into a home gym was approved, subject to conditions, in 2017[2]. My attention has been drawn to condition 3 of that planning permission, which states: '*the garage with home gymnasium shall only be used for purposes incidental to the main dwelling*.'

5. The building is currently in use as a dwelling. It comprises a living/kitchen area with fridge/freezer, sink, 4-ring hob, double oven and kitchen worktop and units. A shower compartment is accessed from this space, while separate rooms comprise a bedroom and a toilet, with washing machine and tumble dryer.

6. The material change of use of the building from a garage ancillary/incidental to the dwellinghouse at 1A Warmdene Way to a separate dwellinghouse (the MCU)

[1] The Council's ref: BH2016/05128
[2] The Council's ref: BH2016/06396

comprised development requiring planning permission. No planning permission exists for that development.

7. Section 191(2) of the Act sets out that uses are lawful at any time if no enforcement action may then be taken in respect of them and they do not constitute a contravention of an enforcement notice then in force.

8. As the MCU took place before 25 April 2024, with regard to the relevant transitional provisions[3], section 171B(2) of the Act provides 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. Section 171B(3) states that in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.

9. It is in dispute whether the planning permission granted in 2017 was implemented. It is the Council's case that the planning permission was implemented and that the MCU comprises a breach of condition 3 which can be enforced against within 10 years of the date of the breach, in accordance with section 171B(3) of the Act. However, the matter of whether the planning permission was implemented is not determinative in this appeal.

10. In *Arun District Council v First Secretary of State* [2006] EWCA Civ 1172, the Court of Appeal clarified the correct approach to be taken where there has been an unauthorised material change in the use of a building to use as a single dwellinghouse, which is also in breach of a condition. It was held that section 171B(2) applies to a breach of condition where there has been a change of use to a single dwellinghouse, and that planning conditions cannot be enforced more than 4 years after such a breach.

11. Therefore, even if the planning permission was implemented and condition 3 is in effect, if the MCU took place on or before 8 October 2020[4], and the building remained in use as a dwelling for a continuous period of at least 4 years without significant interruption up until the date of the application for an LDC, the appeal should succeed.

12. The statutory declarations (SDs) of the appellant and Jane Harman (the appellant's wife) explain that their daughter, Stephanie Walters, occupied the building between 1 July 2018 and 4 January 2020, and that it was during this period that they started referring to it as the 'Annexe'. By this point, the garage door had been replaced with brickwork, a pedestrian door and a window, with those works being completed by 5 March 2017. These SDs also state that Adriana Jurez Martinez occupied the building as her sole and only residence between 29 January 2020 and 30 June 2023, followed by the tenant who remained living in the building on the date of the application for an LDC, Hannah Tweed, from 8 July 2023.

13. The parts of the SDs which refer to the tenancies of Ms Jurez Martinez and Ms Tweed are largely consistent with copies of Landlord Rental Statements dated 30 January 2020 through to 8 August 2024 and an unsigned letter dated 8 October 2024 from Cubitt & West Lettings. The only inconsistencies are references to Dr Ariadna Juarez Martinez rather than Adriana Jurez Martinez.

[3] Regulation 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024
[4] Four years before the date of the application for an LDC

14. Signed tenancy agreements between the appellant and Ms Tweed relate to the building and cover the relevant period since 8 July 2023, while signed tenancy agreements between the appellant and Dr Ariadna Juarez Martinez relating to the building cover the period 29 January 2020 until 28 January 2022.

15. A partial copy of a tenancy agreement signed by Dr Juarez Martinez on 14 December 2021, comprising only the odd numbered pages of that document, has also been provided. This does not include the dates or complete terms of that tenancy. That document is accompanied by a letter dated 2 December 2021 addressed to Dr Juarez Martinez at the Annexe from Cubitt & West Lettings, which refers to a tenancy agreement to be signed and returned by her. The appellant's submissions state Ms Jurez Martinez occupied the building on a rolling tenancy between January 2023 and July 2023. On the evidence, it is therefore likely that the incomplete tenancy agreement relates to the period 29 January 2022 to 28 January 2023.

16. I have also been provided with a copy of a letter dated 21 February 2024 addressed to Ms Tweed at the Annexe from her bank and a copy of a TV licence in her name at the Annexe shown to expire on 31 December 2024. Ms Tweed has also provided an SD confirming much of the above, and that she cooks her meals in the Annexe, sleeps in the Annexe, and uses the washing facilities and washing machine in the Annexe without needing to use any other facilities elsewhere. Ms Tweed's SD states she has lived in the building as her only and permanent residence since 30 June 2023.

17. The Council has not disputed any of the above evidence presented by the appellant.

18. The SDs of the appellant and his wife refer to Adriana Jurez Martinez rather than Ariadna Juarez Martinez and they do not explain when internal works to the building were carried out, such as the installation of the kitchen and internal wall creating the bedroom. I also note the inconsistency in Ms Tweed's SD referring to her living in the building since 30 June 2023 rather than 8 July 2023.

19. Notwithstanding the fact that Ms Tweed's SD refers to her living in the building since 30 June 2023, the evidence shows it is more likely than not that there was a gap of 8 days between Ms Jurez Martinez / Dr Juarez Martinez vacating the building and Ms Tweed's tenancy commencing. The appellant's SD states that he undertook maintenance repair work and thorough cleaning within the building during that period, when it was not used for any other purpose. The evidence therefore shows, as a matter of fact and degree, that it is more likely than not that the building remained in use as a dwellinghouse, with all associated facilities, and was open to formal enforcement action during this brief period when it was unoccupied.

20. Overall, despite the lack of evidence clarifying when internal works were carried out and the minor inconsistencies in the evidence, I am satisfied that the available evidence shows, on the balance of probabilities, that the MCU took place on 29 January 2020 and that the use of the building as an independent dwelling had continued without significant interruption until at least the date of the application for an LDC. With regard to the relevant case law and legislation outlined above, that use of the building was therefore lawful on the date of the application and an LDC should have been issued.

Conclusion

21. For the reasons given above, on the evidence now available, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the detached building as a separate dwellinghouse (C3 use class) was not well-founded. The appeal should succeed, and I will exercise the powers transferred to me under section 195(2) of the Act.

L Douglas

INSPECTOR

Planning Inspectorate

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 8 October 2024 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched 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:

On the evidence, as a matter of fact and degree, the material change of use of the building to an independent dwelling took place on or before 29 January 2020 and that use of the building continued without significant interruption up until at least the date of the application for a Lawful Development Certificate on 8 October 2024. Notwithstanding condition 3 attached to planning permission reference BH2016/06396, with regard to sections 171B and 191 of the Town and Country Planning Act 1990 (as amended), and considering the findings in *Arun District Council v First Secretary of State* [2006] EWCA Civ 1172, the use of the building as a dwelling was lawful on 8 October 2024 as the material change of use took place at least 4 years prior and the use as a dwelling had continued without significant interruption throughout that 4-year period.

Signed

L Douglas

Inspector

Date: 5 November 2026
Reference: APP/Q1445/X/25/3361865

First Schedule

Use of detached building as a separate dwellinghouse (C3 use class)

Second Schedule

Land at Annexe, 1A Warmdene Way, Brighton BN1 8NW

IMPORTANT NOTES – SEE OVER

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 5 November 2026

by L Douglas

Land at: Annexe, 1A Warmdene Way, Brighton BN1 8NW

Reference: APP/Q1445/X/25/3361865

Scale: Not to Scale

