



Appeal Decision

Site visit made on 8 October 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 December 2025

Appeal Ref: APP/Y5420/X/23/3327412

93 Broad Lane, London N15 4DW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Naz Abbabil against the decision of the Council of the London Borough of Haringey.
 - The application ref HGY/2023/1501, dated 7 June 2023, was refused by notice dated 2 August 2023.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a certificate of lawful use or development is sought is a mixed-use comprising a hot food takeaway and residential use.
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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.

Preliminary Matters

2. The Council did not turn up to the arranged site visit, which means I carried out the visit on an access required basis. I am satisfied this arrangement did not cause prejudice to the Council, as no evidence was discussed during the visit.
3. In the original application for an LDC, the appellant described the existing use of the appeal property in the following terms:

"The ground floor consists of a takeaway café at the front and residential at the back. The disposition of the two usages is shown on Plan No 2 attached".
4. The LDC was therefore sought for a mixed-use, comprising a hot food takeaway and residential use. This would constitute a *sui-generis* use. However, the Council assessed the application on the basis of the use sought being a self-contained dwelling. This led to the Council mistakenly assessing the application on the basis of a four-year immunity period, as per s171B(2) of the 1990 Act.
5. The Council's assessment of the application was therefore flawed. As per s171B(3) of the 1990 Act, no enforcement action can be taken in respect of a change of use after ten years beginning with the date of the breach. The application should have been assessed on this basis. Accordingly, to succeed on appeal, the appellant would need to demonstrate that the mixed-use comprising a hot food takeaway and residential use had been ongoing continuously and uninterrupted for a period of at least ten years prior to the date of application, being 7 June 2013.
6. Given the evidence submitted in support of the appeal was prepared on the basis of an incorrect immunity period, the parties were given an opportunity to submit

further evidence in support of their respective cases, this time by reference to the correct ten-year immunity period. This ensured neither party has suffered undue prejudice during the appeal process as a consequence of the error.

7. I have also amended the description of existing use so that it refers explicitly to the mixed-use, comprising hot food takeaway and residential use. This ensures sufficient clarity in terms of the use sought, which the appellant has confirmed is accurate.
8. Planning merits are not relevant to the outcome of the appeal, and the burden is on the appellant to demonstrate their case, on the balance of probability. For LDC applications concerning existing use, as is the case here, Planning Practice Guidance says that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. I have determined the appeal on this basis.

Reasons

9. The ground floor of the property comprises two distinct sections: the front of the property is a hot food takeaway and includes a commercial kitchen, counter and small customer area; to the rear, there is a separate area which is said to be used for residential purposes, which includes a bedroom/living space, a small kitchenette and a bathroom. The appellant has submitted a number of statutory declarations and supporting statements which suggest this arrangement has been ongoing since 2004 (or before).
10. Raza Mir's original statutory declaration says he was (jointly) assigned a lease of the premises in 2004. He says it was apparent that the store at the back of the shop was being used for residential purposes at that time. He goes on to say that this area has been occupied for residential purposes by workers of the shop ever since.
11. A later statement from Mr Mir provides further detail of occupation. He clarifies that Ms Justianaiano and Mr Hayat became sub-tenants of the property in March 2013. Whilst he says both have occupied the residential accommodation at the back, Ms Justianaiano left in December 2023. However, he confirms that Mr Hayat has been in occupation continuously since 2013, and remains so now. A letter was sent from the Council to these sub-tenants in 2016, and whilst its subject matter relates to business rates, it does still attest to their occupation of the premises at this time. This adds some credence to Mr Mir's evidence.
12. Alim Godal, who has also been a joint lessee of the premises since 2008, confirms that the front of the premises is used as a hot food takeaway and the rear section is used as living accommodation. He says both uses have been continuous, without any gaps, since at least 2008 (when he became a lessee).
13. Sami Ozkan, who lives in a flat above the property, says part of the ground floor is used as a shop and part as a residential property. He says he has been aware of people living in the back of the shop and using it as living accommodation since he moved into the property in 2013. He is not aware of the rear part of the ground floor ever having been used for commercial purposes since he has lived there.

14. Sukry Solmaz, who operates a dry-cleaning business at neighbouring premises, confirms to the best of their knowledge, that the appeal property has been used as a takeaway, with workers living at the back for more than 13 years.
15. Overall, the appellant's evidence is consistent and credible, and is indicative of the property having been used as described, continuously and uninterrupted since 7 June 2013 (or before). The Council has presented very little evidence of its own to contradict the appellant's evidence, nor make it less than probable. Overall, the evidence therefore demonstrates, on the balance of probability, that the use of the property for a mixed use comprising a hot food takeaway and residential use, was immune from enforcement on the date of application.

Other Matters

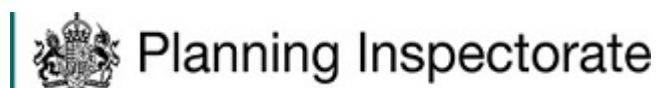
16. The evidence of both main parties suggests an enforcement investigation took place in respect of the appeal property in or around 2009. According to the Council's delegated report, the title of this investigation was "*Garage/Car park at rear being used for residential*". Ultimately, the enforcement investigation was closed with no further action. Whilst this could indicate the Council did not consider any breach was ongoing at that time, the existence of the investigation could also support the appellant's contention that the property was being occupied for residential purposes around that time. Either way, as the investigation pre-dates the relevant immunity period, it has little bearing on my overall conclusion.

Conclusion

17. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development for a mixed-use comprising a hot food takeaway and residential use is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Mr James Blackwell

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 8 June 2023 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:

On the balance of probability, the evidence demonstrates that the use had been ongoing continuously and uninterrupted for a period of ten years or more, prior to the date of application.

Signed

Mr James Blackwell

Inspector

Date: 11 December 2025

Reference: APP/Y5420/X/23/3327412

First Schedule

Mixed use comprising a hot food takeaway and residential use

Second Schedule

Land at ground floor, 93 Broad Lane, London N15 4DW

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 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 or 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 11 December 2025

by Mr James Blackwell

Land at: Ground floor, 93 Broad Lane, London N15 4DW

Reference: APP/Y5420/X/23/3327412

Scale: Not to Scale

