Planning Inspectorate

# Appeal Decision

Site visit made on 23 September 2026

**by Grahame J. Kean B.A. (Hons) Solicitor, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 07 October 2026**

**Appeal Ref: APP/R4408/X/25/3376793**
**17 (Adjoining 19) Saville Lane, Thurlstone, Barnsley, South Yorkshire S36 9RE**

- 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 Mark Wetton, trustee of the estate of Mr Steven Wetton against the decision of Barnsley Metropolitan Borough Council.
- The application ref 2025/0404, dated 4 April 2025, was refused by notice dated 19 June 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 use of the first floor of the building as a self-contained residential unit.

## Decision

1. The appeal is dismissed.

## Background, legal framework and main Issue

2. The appellant stated on the application form that the use of the first floor of the building as a self-contained residential unit was begun on 28 March 2007. Further, that the first floor had been used as a self-contained residential unit for more than 4 years and on a continuous basis. Supporting letters and statements were submitted. The Council's reason for refusal was that insufficient evidence was provided to demonstrate the use as sought, on the balance of probability.

3. The building in question was a garage previously associated with 98 Manchester Road and was located in the rear garden area. I saw that it is detached, stone-built with a pitched roof. It has windows and a door on the front elevation and a large roller garage door on the east elevation. It now stands within its own curtilage.

4. A use is lawful, as provided for in s191(2) of the 1990 Act, if no enforcement action may then be taken in respect of it (whether because it did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and the use is not in contravention of the requirements of any enforcement notice then in force.

5. The onus of proof is on the appellant on the balance of probability, adducing evidence which, whilst not necessarily needing to be corroborated, should be sufficiently precise and unambiguous to enable a certificate to be granted in the terms sought. The main issue is whether the decision of the Council is well-founded, ultimately irrespective of the reasons it gave for the decision.

6. It is common ground that the building in question was completed before 25 April 2024. Applicants generally have to show that a building was in continuous residential use for 10 years or more but transitional legislation provides that if

works were substantially complete by 25 April 2024, the relevant immunity period for a change of use of a building to use as a dwelling is 4 years or more prior to the date of the application. Thus the relevant date to consider would be 4 April 2021.

## Reasons

7. The use is in contravention of the requirements of an enforcement notice in force.

8. The Council has made the briefest of references to a previous appeal decision in its officer report, and only latterly in its statement has it provided the date of the appeal decision but with no PINS reference. Surprisingly, the appellant has not referred to it, other than ticking the box on the appeal form asking whether there was an effective enforcement notice on the site, but giving no other detail.

9. The appeal decision Ref APP/R4408/C/24/3338746 relates to a previous enforcement notice issued by the Council on 16 January 2024 and served on the same person as the current appellant, Mr Mark Wetton on behalf of the Trustees of Mr Steven Wetton. An appeal was made by him, but the notice was upheld by decision of Inspector Hartley dated 19 June 2024.

10. The appellant has used a different agent from the agent used in connection with the enforcement notice.

11. The breach of planning control as alleged in the notice as corrected was the material change of use of the land to use as two residential dwellings arising from the use of a detached garage (shown edged/coloured blue on the attached plan) as a separate a residential dwellinghouse (C3: dwellinghouse use class).

12. The requirements of the notice were to cease the unauthorised change of use of the detached garage as a dwelling and restore the garage to its previous condition prior to the change of use, including restoration of the previous internal configuration, removal of all waste materials from the land due to carrying out the works and all domestic paraphernalia associated with the use of the garage as a dwellinghouse. The period for compliance with the requirements was six months.

13. The subject matter of the breach of planning control established through the appeal decision is the same as the appealed application before me. I have no information that the notice was subsequently withdrawn or the decision challenged in the High Court. Clearly therefore it is in force and has not been complied with.

14. The appeal was made including on ground (d), asserting facts similar to those in the present appeal. Inspector Hartley concluded that the claims made by the appellant were not substantiated with any objective or precise evidence of a continuous four-year use of the appeal building as a separate dwellinghouse. There were, for example, no statutory declarations, dated photographs, witness statements, dated utility bills, signed tenancy agreements, or Council tax records (which remains the case). On the balance of probability, he did not find that "*the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability…I therefore conclude that the ground (d) appeal fails*." He therefore upheld the notice and it came into force.

15. I have considered all the information given in the present appeal, but it does affect the position that by virtue of s191(2) the LDC sought relates to a use that is in contravention of the requirements of an enforcement notice in force.

16. For these reasons the appeal is dismissed.

## Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for use of the first floor of the building as a self-contained residential 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).

*Grahame J. Kean*

INSPECTOR