The Planning Inspectorate

# Appeal Decision

**by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 7 September 2017**

## Appeal Ref: APP/W5780/X/16/3162752
## 12 Christchurch Road, Ilford, Essex, IG1 4QY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Shaukat Ali against the decision of the Council of the London Borough of Redbridge.
- The application Ref 3087/15, dated 29 July 2015, was refused by notice dated 19 August 2016.
- 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 as two self-contained flats (Class C3).

### Decision

1. The appeal is dismissed.

### Procedural matters

2. The appeal form states the appellant's name as Ali Shokat. However, under section 195(1) of the 1990 Act, it is the applicant who may appeal and the LDC application was made in the name Mr Shaukat Ali. This is consistent with an electrical installation certificate and other documentation submitted by the appellant.

3. Given that the appeal turns on the evidence regarding the history of the use of the premises, I am satisfied that I can determine it without visiting the site.

### Main Issue

4. The main issue is whether the Council's refusal of an LDC was well-founded.

5. The application cited use as two self-contained flats. As stated by the appellant, Section 55(3)(a) of the 1990 Act as amended provides that "the use as two or more separate dwelling houses of any building previously used as a single dwelling house involves a material change of use of the property and each part of it which is so used." It is clear that either one of the self-contained flats could benefit from the 4 year rule and section 193(4) provides that an LDC may be issued in respect of the whole or part of the land specified in the application. Accordingly, the main issue requires consideration of whether the appellant has proved on the balance of probability that the use of any part of the appeal building changed to use as a self-contained flat on or before

29 July 2011[1] and that this use then continued without substantial interruption for four years after the date of change.

**Reasons**

6. The Council does not dispute that the use of the premises changed to two self-contained flats in 2008, as claimed by the appellant, but it does not accept that 4 years continuous use has been proven thereafter. The Council also says that the evidence submitted by the appellant "covers a period which pre-dates the requisite four year period of assessment." However, as reflected in paragraph 5 above, any continuous 4 year period prior to the date of the LDC application would be sufficient. If the use became immune from enforcement action prior to the date of the LDC application, it would remain lawful, so long as it was not abandoned or superseded by a new use. Accordingly, evidence of use prior to the 4 year period immediately preceding the application is relevant.

7. However, I have not been provided with any statements from the owner or various occupiers, sworn or otherwise, detailing the occupation of the premises throughout any relevant 4 your period. Nor have I been given copies of any tenancy agreements or proof of rental payments. To establish the continuity of the use, the appellant has only submitted documentary evidence in the form of EDF gas and electricity bills, statements and correspondence and one letter regarding a SKY subscription. These are indicative of actual occupation at various points between July 2007 and January 2015. Whilst occupation may also have continued through periods for which there is no documentary evidence, I cannot assume that it did; the onus is on the appellant to produce evidence, or at least to provide good reason for any such assumption.

8. In relation to the first floor flat, the documentation is indicative of occupation during the following periods:

   12 December 2007 – 20 January 2008

   20 March 2008 – 26 March 2008

   17 September 2008 – 12 December 2008

   16 March 2009 – 14 September 2009

   10 September 2010 – 13 December 2010

   8 September 2011 – 15 March 2012[2]

   22 May 2013 – 5 June 2014[3]

9. It is almost inevitable that there will be some gaps in occupation, as one tenant vacates and another moves in, and this may include periods where the landlord has to carry out repairs and redecoration. Some such breaks will not interrupt the continuity of occupation for the purposes of acquiring immunity from enforcement action; they can be regarded as de minimis. Whether any period during which a flat is not occupied breaks that continuity will be a question of fact and degree in each case and there are no 'hard and fast' rules. It is

[1] The Council's decision notice specified the relevant date as 29 October 2015, but section 191(4) makes clear that this should be the date of the application.
[2] I note that between 15 March 2012 and 22 May 2013, EDF wrote to the customer (Faisal Kayani) in October 2012 about new energy prices, but this does not clearly establish his occupation throughout any specific period.
[3] Having regard to both an EDF electricity statement and a SKY subscription letter.

essentially a question of considering whether the Council could have taken enforcement action against the use at any given time.

10. Even some of the shorter breaks in the occupation of the first floor flat are arguably longer than should reasonably be expected when there is a change of tenants. However, as a matter of fact and degree, I am satisfied that: the 12 month gap in occupation from September 2009 to September 2010; the 9 month break between December 2010 and September 2011; the 14 month gap between March 2012 and May 2013; and the 16 month break between March 2014 and the date of the LDC application are plainly significant. They are each clearly more than de minimis and the Council would not have been able to take enforcement action during these periods. On the balance of probability, the evidence before me does not establish any four year period of continuous occupation of the first floor flat.

11. Turning to the ground floor flat, the documentation is indicative of occupation during the following periods:

    31 July 2007 – 20 March 2008[4]

    12 September 2008 – 9 December 2008

    12 March 2009 – 5 April 2009

    11 September 2009 – 4 December 2009

    18 May 2011 – 22 November 2013

12. Some 9 months after November 2013, a letter from EDF to Nadia Arshad dated 15 August 2014 welcomed her as a new customer and indicated that she had just moved in. However, the next letter to her dated January 2015 noted that she had not topped up her prepayment meter for a while and the next letter dated 22 January 2015 is just addressed to the "owner/occupier." There is no clear or unambiguous evidence to establish periods of occupation after November 2013.

13. Again, even some of the shorter breaks in the occupation of the ground floor flat are arguably more than de minimis. In any event, as a matter of fact and degree, the gap of 17 months from December 2009 to May 2011 and the break of 20 Months between November 2013 and the date of the LDC application interrupt the continuity of actual occupation, such that there is no continuous 4 year period.

14. I conclude that whilst the ground and first floors of the appeal property each changed their use to use as a self-contained flat before 29 July 2011, the appellant has not proved on the balance of probability that the use of either floor then continued without substantial interruption for four years after the date of change. Accordingly, the Council's refusal of the LDC application was well-founded and the appeal must fail.

*J A Murray*

INSPECTOR

[4] As the appellant claims the use as 2 self-contained flats commenced in 2008, this documentation suggests the ground floor flat was completed and occupied first.