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# Appeal Decision

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2020

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**Appeal Ref: APP/A2280/X/19/3229750**

**38 Watling Street, Gillingham ME7 2YH**

- 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 Divya Nagarajan against the decision of The Medway Council.
  - The application Ref MC/18/218, dated 16 July 2018, was refused by notice dated 30 April 2019.
  - 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 for a dwelling used as four self-contained flats.
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## Decision

1. The appeal is dismissed.

## Procedural Matter

2. The appellant's name on the appeal form is Mr Deva Prasath of The Property Direct. The appellant's agent has clarified that this is the same person as the applicant, Divya Nagarajan, whose name has been given on the application form. I have used the name as it appears on the application form in the banner heading above.

## Reasons

3. The application seeks to establish whether the use of the building as four self-contained flats was lawful on the date of the application. The onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development was lawful at the date of the application.
4. Section 191(2) of the 1990 Act provides that uses are lawful at any time if no enforcement action may be taken in respect of them because the time for enforcement action, 4 years in this case, has expired. Accordingly, the appellant needs to demonstrate, on the balance of probabilities, that the change of use to four self-contained flats occurred at least 4 years prior to the date the application was made (16 July 2018), that is on or before 16 July 2014, and was sustained for a full 4 year period.

5. In support of the application the appellant states that the property is registered as four flats by the council tax department and has been registered as four flats since 1 April 1993. Royal Mail also has the property registered as four different addresses. No records have been provided to substantiate these claims, but in any case, such evidence would not suffice to demonstrate that the use had been sustained continuously for any four year period within which enforcement action could have been taken at any time, a prerequisite for establishing lawfulness under Section 191(2).
6. The Council has also drawn my attention to the floor plans (ref 4/0718/1) submitted with the application which indicate that the kitchen and toilet assigned to Flat 3 are accessed from a communal area, so that it is not clear on the evidence provided that Flat 3 is self-contained and provides all of the necessary facilities for day to day living.
7. The very limited evidence that has been submitted in support of the appellant's case does not clearly demonstrate that the building has been used as four self-contained flats for the required continuous 4 year period. It therefore falls well short of discharging the burden of proof.
8. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the dwelling used as four self-contained flats was 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 and dismiss the appeal.

*N Thomas*

INSPECTOR