



Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th October 2020

Appeal Ref: APP/Z5060/X/19/3243122

104 Glenny Road, Barking, Essex IG11 8QQ

- 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 Mrs Kariben veja Odedra against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 19/01417/CLU_E, dated 22 August 2019, was refused by notice dated 18 November 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 2 self-contained flats created on 2 July 2015.
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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 have been lawful on the date that the application was validly made.

Preliminary matters

2. With the consent of the parties, a site visit was not undertaken.
3. The Council's reason for refusing to grant an LDC referred to whether "the outbuilding" had been in use as a self-contained flat for at least 4 years. However, as described in the appellant's evidence and on drawing 455/01, which does not show an outbuilding, the LDC is sought in respect of 2 self-contained flats within the main building.
4. The application states that the flats were created on 2 July 2015. However, the appropriate test is whether the use as 2 self-contained flats began on or before 22 August 2015, 4 years before the date of the application, and has continued since without significant interruption.
5. The Council issued an enforcement notice on 27 November 2019, alleging the unauthorised sub-division of the property into 2 independent units of accommodation. No appeal was lodged against the notice, which came into effect on 27 December 2019 and is thus in force. Because the notice was issued after the LDC application was validly made, it does not prevent consideration of whether the use as 2 self-contained flats was lawful on 22 August 2019, the date of the LDC application. However, and following the decision in *Staffordshire CC v Challinor*¹, my decision on this appeal cannot alter the effect of the enforcement notice, which remains a separate matter.

¹ *Staffordshire CC v Challinor & Robinson* [2007] EWCA Civ 864; [2008] JPL 392

6. Reference is made to the grant of an LDC for 2 self-contained flats in Dagenham² but no details have been provided. However, the facts relating to each application will be different and each must be considered on its merits.

Main Issue

7. The main issue is whether the Council's refusal to issue an LDC was well-founded. This turns on whether the appellant can show, on the balance of probability, that on the application date the property was in use as 2 self-contained flats, and if so whether it had been used as such continuously for a period of 4 years without significant interruption.

Reasons

8. When an LDC is sought, the burden of proof lies with the applicant. In addition, the Planning Practice Guidance states "In the case of applications for existing use, 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."
9. The date on which the use as 2 self-contained flats began is not agreed. The appellant states that it occurred on 2 July 2015 but no supporting evidence, such as the nature and date of any works that facilitated it, has been provided. However, a former tenant of the first floor flat made a statutory declaration that she lived there on 2 July 2015, when the property had already been converted to 2 flats, each with its own entrance door, kitchen, toilet and bedroom. The copies of her tenancy agreements provided by the appellant, all describing the property in question as "furnished upper flat", cover a period beginning on 15 June 2015. The Council has not provided any evidence to make this statutory declaration less than credible.
10. The appellant indicates that this tenant left, on an unspecified date, before her second tenancy agreement was due to end on 14 June 2018. This suggests the flat would have been vacant for a while, until the current tenants' agreement, again describing the property in question as "furnished upper flat", began on 20 June 2018. However, that is to be expected with turnover of tenants and there is no evidence to suggest it amounted to a significant interruption or that the first floor flat's use as a self-contained unit of accommodation ceased before the new tenancy began.
11. The tenants of the ground floor flat also made a statutory declaration that they lived there on 2 July 2015, when the property had been converted to 2 flats, each with its own entrance door, kitchen, toilet and bedroom. However, the start date in the copy of their first tenancy agreement was 11 August 2015, nearly 6 weeks later. While no explanation has been offered for this, both dates are 4 years before the date of the application, that is 22 August 2019, and while the signatures on the copies provided are undated, these agreements cover a continuous period of more than 4 years, including the date of the application. The Council has not provided any evidence to make this second statutory declaration less than credible.

² 18/00251/CLU_E, 275-277 Oxlow Lane, Dagenham, Essex

12. All the copies of tenancy agreements for the first floor flat contain a special condition stating that the tenant has "the sole use of the downstairs including rear garden". This is inconsistent with the copies of the tenancy agreements for the ground floor flat, all of which describe that property as "furnished ground floor flat and sole use of rear garden" and include the same special condition. While no explanation has been provided, this would appear to be an error because drawing 4355/01, submitted with the application, shows that the first floor flat does not have direct access to the rear garden.
13. The Council indicates there is only one Council Tax entry for the property, which is inconsistent with use as 2 self-contained flats, although a copy of this record has not been provided. Of itself, this evidence does not demonstrate that the use as 2 flats had not begun 4 years before the date of the application or that it has not continued since.
14. The statutory declaration made by the former tenant of the first floor flat is precise and unambiguous and is credible evidence. Even taking account of the Council Tax record and the difference between dates in the ground floor flat tenants' statutory declaration and their tenancy agreement, viewed as a whole, the appellant's evidence is precise and unambiguous. Accordingly, it sufficiently demonstrates that, on the balance of probability, the use of the property as 2 self-contained flats began more than 4 years before the date of the application and continued without significant interruption thereafter until and including the date of the application.

Conclusion

15. 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 in respect of 2 self-contained flats was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Mark Harbottle

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 22 August 2019 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:

The use of the property as 2 self-contained flats began more than four years before the date of the application and continued thereafter; and

The use does not contravene the requirements of any enforcement notice that was in force on the date the application was made.

Signed

Mark Harbottle

Inspector

Date:

Reference: APP/Z5060/X/19/3243122

First Schedule

The use of the property as 2 self-contained flats

Second Schedule

Land at 104 Glenny Road, Barking, Essex IG11 8QQ

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.



Plan

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

by Mark Harbottle BSc MRTPI

Land at: 104 Glenny Road, Barking, Essex IG11 8QQ

Reference: APP/Z5060/X/19/3243122

Not to scale

