



Appeal Decisions

Site visit made on 25 January 2024

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 February 2024

Appeal A Ref: APP/B5480/X/22/3312637

199 - 201 Rush Green Road, Romford RM7 0JR

- 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 R Virk against the decision of The London Borough of Havering Council.
 - The application ref E0024.22, dated 3 August 2022, was refused by notice dated 9 November 2022.
 - 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.
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Appeal B Ref: APP/B5480/X/23/3317082

199b - 201b Rush Green Road, Romford RM7 0JR

- 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 R Virk against the decision of The London Borough of Havering Council.
 - The application ref E0042.22, dated 24 November 2022, was refused by notice dated 2 February 2023.
 - 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.
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APPEAL A

1. The appellant confirmed in the application and appeal documents that a certificate is being sought for the two rear flats on the first floor of the property. Flat 199b and Flat 201b are labelled in red on the submitted first floor plan. The internal layout of the units on plan is generally consistent with the layout seen on the appeal site visit.
2. The **main issue** is whether the decision of the local planning authority is well-founded. The onus is on the appellant to show on the balance of probability the material change of use of this rear area of the property into two self-contained flats (as shown on plan) took place before 3 August 2018 and the use as two self-contained flats continued without significant interruption for a period of four years thereafter.
3. The appellant's evidence consists primarily of a retail package certificate and renewal certificate (insurance certificates), copies of tenancy agreements and energy bills and statements.

4. The insurance certificates cover the period 29 September 2015 to 28 September 2017 and describe the property 199-201 as offices with four self-contained flats above. The certificates do not show the area occupied by each flat and do not provide information on the continuity of use of the two rear flats in question. The certificates have very little weight.

Number 199b

5. The set of tenancy agreements for the property with the address 199b Rush Green Road is between the same named landlord and tenant. The first agreement is dated 17 August 2014 and there are subsequent yearly agreements dated 17 August 2017 through to the agreement dated 17 August 2021. The agreements are not supported by a plan of the dwelling and on their own they provide no evidence of actual use. No explanation is provided to explain the gap between 2015 and 2017.
6. The utility information consists of energy statements addressed to the landlord at 199B Rush Green Road in 2014 and 2015, indicating energy usage and payments received. There are energy statements from a different supplier addressed to the landlord at 199B Rush Green Road stating energy use over the year from 2 July 2017 and subsequent years to 30 June 2022. This information may not apply to the flat identified as Flat 199b on the submitted plan and provides little information on use.

Rear flat Number 201

7. In the set of yearly tenancy agreements for the property with the address 201 rear flat Rush Green Road the first agreement is dated 28 February 2012. There are subsequent yearly agreements dated 28 February 2018 through to 28 February 2021. The same landlord and tenant are named on all agreements. The documents are not supported by a plan of the dwelling and on their own they provide no evidence of actual use. No explanation is provided to explain the gap between 2013 and 2018.
8. The energy statements and energy bills from two different suppliers are addressed to the landlord at Rear Flat 201 Rush Green Road. The earliest statement is dated 31 January 2018 and the latest statement is dated 15 April 2022. There is no commentary from the appellant to explain these statements and how they support the case.

Other documents

9. The TV licence communication dated February 2022 addressed to rear flat 201a does not assist the appellant's case in showing use. Similarly, the letter dated 23 May 2016 from the Council regarding collection and disposal of household waste indicates an address 201b Rush Green Road existed at the time but otherwise is of little help.
10. Additional information in the form of correspondence dated June/July 2023 on a property licence in respect of 201a Rush Green Road and 201b Rush Green Road was not placed in any relevant context by the appellant.
11. The set of photographs (undated) of the front, rear and side elevations of the property do not assist in confirming the use of the area in question. The set of

photographs of the interior of the units¹ are taken at a point in time and do not assist in showing continuity of use as living accommodation.

Conclusions

12. Planning Practice Guidance advises that an application for an LDC needs to describe precisely what is being applied for and the land to which it relates. The applicant/appellant is responsible for providing sufficient information to support an application. In this case the 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. However, the appellant's evidence alone is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
13. Taking all submitted evidence into account, the appellant has failed to show on the balance of probability the material change of use of this rear area of the property into two self-contained flats (as shown on plan) took place before 3 August 2018 and thereafter the use continued without significant interruption for a period of four years.
14. The decision of the local planning authority is well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

APPEAL B

15. The appeal relates to the same two self-contained flats 199b and 201b Rush Green Road as in Appeal A. The appellant's statement explained that the LDC application followed refusal of the earlier application and that more information was submitted.
16. The **main issue** is whether the decision of the local planning authority is well-founded. The onus is on the appellant to show on the balance of probability the material change of use of this rear area of the property into two self-contained flats (as shown on plan) took place before 24 November 2018 and the use continued without significant interruption for a period of four years thereafter. The relevant date is derived from the date of the application for a LDC².
17. The appellant, referring to an appeal for a property elsewhere in London³, indicates the application was made under section 192(1)(a) of the Town and Country Planning Act 1990. However, all the documentation for the current appeal is for an existing use under section 191(1)(a) and not for a proposed use under section 192(1)(a).
18. The supporting documents listed on the appeal form consist of a set of plans and three Whats App images. The plans include an existing ground floor layout of two shops and offices and the entrances to Flats 199 and 199b and Flats 201 and 201b. The existing first floor layout plan has a note indicating Flats 199 and 201 are lawful and that the application is seeking confirmation Flats 199b and 201b are lawful. There are also plans of the elevations of the property and plan of a proposed conversion of the offices to a dwelling, which are of no assistance for the appeal.

¹ The photographs are undated. The heading 'Photos for 109b' probably should have stated Photos for 199b.

² The date is taken from the application form, not the date the Council validated the application.

³ Appeal ref: APP/G5750/X/13/2202687 - 53 West Ham Lane, London, E15 4PH

19. The Whats App images are of a London Borough of Havering envelope with the address 201B Rush Green Road, and two London Borough of Havering Envelopes addressed to The Owner/occupier 201a and 201b Rush Green Road regarding a new planning application in the area. There also is an extract from a London Borough of Havering list titled Selective Licensing Scheme 2 - Designated Properties where the addresses 199A, 199B, 201A and 201B Rush Green Road are highlighted.
20. These documents only go so far as suggesting four units existed at the property at Rush Green Road. They do not have specific information on dates, use or occupation to explain when the flats may have been formed and to demonstrate a continuity of residential use for a continuous four year period.
21. The Council's officer delegated report indicates that in determining the LDC application the Council took account of the tenancy agreements, energy statements and other documents that I have considered in Appeal A. Even when assessed in conjunction with the new documents my conclusion is the package of evidence falls short of what would be necessary to show lawfulness of use. For example, there are no statements from the landlord or occupiers, or evidence of rental payments. The evidence is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Conclusion

22. The decision of the local planning authority is well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

DECISIONS

Appeal A: APP/B5480/X/22/3312637

23. The appeal is dismissed.

Appeal B: APP/B5480/X/23/3317082

24. The appeal is dismissed.

Diane Lewis

INSPECTOR