



# Appeal Decision

No site visit

**by M. P. Howell BA (Hons) Dip TP MRTPI**

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

**Decision date: 2<sup>ND</sup> MAY 2024**

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**Appeal Ref: APP/U5930/X/23/3321956**

**3 Third Avenue, Waltham Forest, Walthamstow E17 9QJ**

- 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 Ms Sabina Mughal against the decision of the Council of the London Borough of Waltham Forest.
  - The application ref 223405, dated 29 November 2022, was refused by notice dated 30 January 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 is sought is the use of a second floor loft area as one self-contained studio flat.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs was made by Ms Sabina Mughal against the Council of the London Borough of Waltham Forest to refuse a Lawful Development Certificate (LDC). This application is the subject of a separate decision.

## Preliminary Matters

3. Due to the nature of this case, it was determined that it was not necessary for me to conduct a site visit. The main parties were made aware of this fact, and no further comments or objections were received.
4. The appeal concerns the lawfulness or otherwise of the use of the second-floor loft area as a self-contained studio flat. The application form submitted with the Lawful Development Certificate (LDC) outlines the use class as C3-Dwellinghouses and the description as an additional 1-bedroom studio flat. The Council's Decision Notice describes the development as the 'use of a second-floor loft area as one self-contained studio flat.' I consider the description on the Decision Notice accurate, and I have determined the appeal in line with this description.
5. During the appeal process it was noted that two sets of plans had been submitted. However, it was confirmed that drawing references T1-01, T1-02, T1-03 and T1-04 outlined on the Decision Notice were the correct plans. The plans include a site location plan, a block plan, existing front, rear and side elevation plans as well as floor plans of the existing first and second-floor loft. I have based my decision on these plans.

6. There are references to the development plan policies, the National Planning Policy Framework and the principle of the development, which are not relevant in an LDC such as this. My determination is made solely on matters of fact, planning law, and application of judicial authority.
7. The appellant has submitted a Statutory Declaration (SD). However, as the SD is not signed by the appellant nor cosigned by a solicitor, commissioner for oaths or notary public with their signature and details, it does not accord with the provisions of the Statutory Declarations Act 1835. However, it can still be considered as additional information, and for this decision, I will hereafter refer to it as the SD.
8. Section 171B (2) establishes that where there has been a breach of planning control involving the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after a period of four years beginning with the date of the breach. The loft area would be relevant as the term 'building' in this context includes any part of a building.
9. The relevant test is the balance of probability, not the more onerous test of beyond reasonable doubt. The onus rests with the appellant to provide sufficient information to demonstrate this to be the case. The Planning Practice Guidance (PPG) states that if the Council 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.<sup>1</sup>

### **Main Issue**

10. To be lawful the second floor loft area, set out in the description, would need to have been in use as a self-contained studio flat for a continuous period of 4 years prior to the date of the application for the LDC. However, any 4-year period before the material date is relevant provided the use was established and has not been abandoned or lost by a supervening event. The relevant date is the date of the application, which in this case is 29 November 2022. Accordingly, the use would have to have commenced no later than 29 November 2018.
11. The main issue is, therefore, whether the Council's refusal to issue an LDC for the second-floor loft area being used as a self-contained studio flat was well-founded.

### **Reasons**

#### *Evidence*

12. In addition to plans and photographs of the second-floor loft area, a Statement of Case (SoC) has been submitted with the appeal submissions. It sets out that the appellant is seeking to show that the second-floor loft area has been used as a self-contained studio flat since 2015. The SD included with the SoC outlines the appellant is the owner of the building, shown on the Location Plan in Exhibit 1 and plans in Exhibit 2 in Appendix A and B respectively. The appellant has also submitted Appendix C- 'Decision Notice'; Appendix D- 'photos of second floor flat' and Appendix E- 'Appeal Precedents.'

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<sup>1</sup> Paragraph: 006 Reference ID: 17c-006-20140306

13. There is a considerable amount of supporting evidence provided in Appendix F. Although there is a list of the supporting evidence included, I have compiled my own from the evidence before me and set it out below:-

Land Registry Details

- Land Registry Document- First Floor Flat January 2014.
- Land Registry Document- Ground floor Flat May 2018.

Invoices for work to second floor loft

- Howden's Loft Conversion Materials Invoice 2015.
- Iloft Conversions Ltd- Contract of Works- 2 March 2015.
- Building Control Letter and Certificate March 2015.
- Electrical Apparatus Certificate 29 March 2018.
- Electrical Installation Report 01 March 2021- Second Floor Flat.

Tenancy Agreements, rental invoices and Statements

- Tenancy Agreement 2017- 21 January 2017 to July 2017.
- Tenancy Agreement 2022- 21 July 2022 to 20 July 2023.
- Rental Invoice CMC Estates 2017.
- Letting Notice CMC Estates 2017.
- Homelet Report CMC estates 2017.
- Tenancy Occupancy Confirmation- Statement from Mr Samuel Reis Cardoso and Mrs Elsa Maria Amorim Fernandes Reis Cardoso. Signed and dated 5 October 2022.
- Letter from CMC estates confirming letting of the property to Mr Samuel Reis Cardoso and Mrs Elsa Maria Amorim Fernandes Reis Cardoso on 21 January 2017.

Bank Statements and Utility Bills- Electricity

- Bank Statements 2017 to 2022 – Regular monthly payments to the account highlighted in orange.
- Electricity bills April 2018 to August 2022 (Second Floor Flat)

Self-Contained Dwelling and Continuous Use

14. The site location plan includes the property and surrounding garden land (subject of the appeal). The floor plans show internal stairs into the loft and an open-planned L-shaped room with a Juliet balcony. A kitchenette is shown in the L-shaped room with a separate shower room and toilet. There are photographs of the loft room showing a bed next to a kitchenette, including a cooker with a hob, a sink, storage units as well as a table and chair. There is a fridge in a corridor area and the shower room includes a toilet, shower and a washing machine.
15. Based on the plans and photographs provided, the loft area contains a living and sleeping space, a kitchenette, a toilet and a shower room. I am, therefore, satisfied that the plans and photographs show that the current studio flat in the loft area contains all the facilities required for day-to-day private domestic existence and, as such, has the distinctive characteristics of a dwellinghouse. However, the photographs and plans submitted with evidence are not annotated or dated, and no information with the appellant's SD indicates a date when the

facilities necessary for day-to-day private domestic existence were installed in the loft area.

16. The Building Control letter and Certificate of Completion submitted as evidence indicate that the works to convert the loft were completed by 31 March 2015. The 'Iloft Conversions Ltd- Contract of Works' document sets out a schedule of works. It includes a list of materials to supply and fit but specifically excludes a kitchen suite. Although the evidence submitted shows the loft was converted with a bathroom suite in March 2015, it does not provide a date when the kitchen suite was installed. As such, I cannot conclude that the second floor loft area had the facilities necessary for day-to-day private domestic existence in 2015.
17. There is evidence to show a single pair of tenants have been residing in the loft area since January 2017. Although the tenancy agreements submitted do not cover the requisite four years, the appellant has provided evidence in the form of bank statements showing regular payments to her from the named tenants between 2017 and 2022. There is also a statement from the tenants indicating that they have resided in the Studio Loft, 2nd Floor Flat since January 2017. There is also a statement from the estate agents indicating that they let the 'second floor flat' to the named tenants in January 2017 and they understand that they still reside at the property.
18. I appreciate that the above-mentioned evidence shows, on a balance of probability, that a pair of tenants have resided at No 3, in the loft area, since 2017. However, the evidence is only relevant to the continuous use, and does not provide the necessary detail that indicates when the kitchen was installed in the loft area or how the tenants occupied the space as a separate planning unit. Similarly, the accompanying statements from the tenants and estate agents are brief and vague. They are not statutory declarations and neither provide any detail on what accommodation was in the loft area when it was originally let, or how it was separately occupied. The SD submitted by the appellant also provides limited commentary on this matter.
19. I acknowledge that at the time the application was submitted the loft area includes the facilities required for private domestic existence. However, based on the evidence I am unable to establish a date when the loft area had all of the necessary facilities to be used independently. Accordingly, on the balance of probabilities, the evidence is imprecise and ambiguous, failing to demonstrate when the second floor loft area begun being used as a self-contained studio flat, and that it continued for at least 4 years thereafter without significant interruption.

### **Other Matters**

20. Based on the planning history and the application details submitted in Appendix E, it is evident that the ground and first floor of 3 Third Avenue are two separate flats, granted lawfulness in 2002<sup>2</sup>. The appellant makes the case that the decision on the flats in the same building sets a precedent. I acknowledge that two flats have been granted at the site via an LDC, however, I have not been provided with the full details and information submitted to the Council with those cases, so it is difficult to directly compare. In any event, each case must be individually judged on a fact and degree basis, and in the light of the circumstances of the case. That is the approach I have taken here.

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<sup>2</sup> Council reference 020545

## **Conclusion**

21. While I agree with the Council's decision to refuse to issue an LDC, having regard to the available evidence submitted during the appeal process, my decision is made on a different basis. As with all LDC applications, it is open for fresh applications to be made if, for example, greater detail or other evidence comes to light.
22. For the reasons given above I conclude on the evidence available that the refusal to grant a certificate of lawful use for the existing use of the second floor loft area as a self-contained studio flat 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.

*M. P. Howell*

INSPECTOR