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# Appeal Decision

by **D Moore BSc (HONS), MCD, PGDip, MRTPI, IHBC**

an Inspector appointed by the Secretary of State

Decision date: 20th August 2024.

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**Appeal Ref: APP/Z3635/X/23/3329073**

**Garage Flat, 4 Thetford Road, Ashford, Middlesex TW15 3BW**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the 1990 Act) 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 Syed Naqvi against the decision of Spelthorne Borough Council.
  - The application Ref 23/00198/CLD, dated 15 February 2023, was refused by notice dated 13 April 2023.
  - The application was made under section 191(1)(a) of the 1990 Act as amended.
  - The use for which a certificate of lawful use or development is sought is "existing garage having been converted to a self-contained unit/flat since 2010 without interruption".
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
3. The appellant maintains that the Council failed to take reasonable steps to acquaint itself with the material and failed to make relevant crucial enquiries to positively advance the appellant's case. Reference is made to caselaw concerning procedural fairness, among other related matters<sup>1</sup>. However, in this type of appeal, the onus of proof is firmly upon the appellant. The Courts<sup>2</sup> have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.
4. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case. For the avoidance of doubt, the planning merits of the development are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act.

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<sup>1</sup> *SSes v Tameside MBC* [1977] AC 1014; *R (Campaign Against Arms Trade) v SSIT* [2019] EWCA Civ 1020; *R(ASK) v SSHD* [2019] EWCA Civ 1239; *R(Ikram) v SSHCLG* [2019] EWHC 1869 (Admin); *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin).

<sup>2</sup> *Gabbitts v SSE & Newham LBC* [1985] JPL 630.

5. I have taken the description of the use for which the LDC was sought from the Council's decision notice.

### **Main Issue**

6. The application sought confirmation that the use of the former garage as a self-contained unit/flat was lawful on the date of the application.
7. I must decide whether the appellant has shown, on the balance of probabilities, that the material change of use took place four or more years prior to the date of the application and continued after the date of change without significant interruption such that it would be too late for the Council to take enforcement action. As a point of clarification, it is not necessary for the relevant period to be immediately before the submission of the application.
8. The main issue is whether the Council's refusal to grant an LDC was well-founded.

### **Reasons**

#### *Evidence*

9. The appeal relates to a detached garage that is situated within the garden of the house at No 4 Thetford Road. The appellant states that the former garage was converted and first used as habitable residential accommodation in May 2010. It is explained that the accommodation was occupied initially by the owner of No 4. It is stated that the unit was then let to a tenant as a self-contained flat in 2015 and that use continued until May 2022 when the flat was vacated at the request of the Council.
10. The appellant has provided Assured Shorthold Tenancy Agreements (AST) as follows: M Banner for 'room 1', from 13 July 2015 for one year but terminated on 12 August 2015; R Hoyle for 'room 1', from 1 September 2017 for six months but terminated on 31 December 2018; R Alijev for 'studio room 4', from 31 May 2019 for one year but terminated around September/October 2019; M Valparambil in 'studio flat 4', from 9 October 2019 for six months; R Kunaka in 'studio flat 4', from 10 January 2020 for six months.
11. A copy of tenant account payments from the estate agent has been provided, which shows payments as follows: Mr Banner between 29 June 2015 and 28 August 2015; Mr Hoyle between 24 July 2017 and 28 February 2019; Mr Alijev between 24 May 2019 and 16 October 2019 and a Mr Webber who made payments between 24 August 2015 and 22 September 2015. The statement indicated these latter payments were associated with a lease for 'room 1', which ran from 12 September 2015 to 11 July 2017 although no relevant AST has been provided.
12. There are also screenshots from an estate agent's webpage showing the photographs included with the particulars for the flat. These include a bathroom with shower and toilet, and a sleeping/living area with a microwave and a fridge.

#### *Analysis*

13. The totality of the appellant's evidence does not show that the flat was occupied without significant interruption for any four-year period prior to the date of the application.

14. Although there are named tenants who have made rental payments since 2015, there are significant periods when the flat was not occupied. This includes a two year gap between August 2015 and September 2017 where there is no evidence that the flat was let. There is another void period between 31 December 2018 and 31 May 2019 and then no evidence of any occupation after July 2020.
15. In addition, some of the ASTs refer to the "Studio Flat 4" or "Studio Room 4" and others refer to "Room 1". Room 1 may be a room within the main house as opposed to being the converted garage. This discrepancy is not explained, and casts doubt on the evidence.
16. It is important to show continuous occupation because, during the periods when the converted garage was not used and occupied as a self-contained unit of accommodation, the Council would not have been able to take enforcement action. There is no reason given for the extensive void periods, such as refurbishment, and there is no evidence that the landlords were seeking a tenant during those periods nor that the flat was available to let.
17. Furthermore, there is no supporting evidence such as utility bills or Council Tax payments in the names of the various tenants. This information would show that the tenancy was instigated and maintained throughout the relevant period.
18. The appellant argues that the Council's decision was 'Wednesbury' unreasonable<sup>3</sup> or irrational as the evidence in support of the application was sufficient to demonstrate lawfulness. However, I find to the contrary and the Council's decision cannot be considered unreasonable or irrational.
19. It is also suggested that the Council indicated an application would receive a positive outcome. The Council is not bound by any pre-application discussions and, in any event, the outcome of any LDC application is dependent on the evidence.
20. The appellant claims that the Council did not provide detailed reasons for its decision in the relevant decision notice. Caselaw is referenced to support the principle for requiring public bodies to adequately explain the reasons why they acted as they did<sup>4</sup>. However, the notice stated that "the Council does not consider that the Applicant has established to the civil standard of proof (on a balance of probabilities) that the garage has been in continuous residential use for the past 4 years and therefore the applicant has also failed to make the case for its use as a new single, independent dwelling". This is sufficient to explain the Council's decision. It is also likely that the officer's delegated report would have been available should the appellant have required more detailed information.
21. Overall, I consider that the appellant's evidence is imprecise and ambiguous. It has not been shown that, on the balance of probabilities, the material change of use took place four or more years prior to the date of the application and continued after the date of change without significant interruption such that it would be too late for the Council to take enforcement action.

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<sup>3</sup> *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223.

<sup>4</sup> *Oakley v South Cambridgeshire DC* [2017] EWCA 71; *Clarke Homes Ltd v SSE* [2017] PTSR 1081; *Kannan v Newham LBC* [2019] EWCA Civ 57; *R(Ashworth Hospital Authority) v Mental Health Review Tribunal for West Midlands and NW Region* [2001] EWHC Admin 901.

## **Conclusion**

22. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of "existing garage having been converted to a self-contained unit/flat since 2010 without interruption" was 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.

*Debbie Moore*

Inspector