



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2024

Appeal Ref: APP/U5930/X/24/3336332

4 Fletcher Lane, Leyton E10 6JE

- 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 D Simon against the decision of the Council of the London Borough of Waltham Forest.
 - The application ref 232652, dated 18 October 2023, was refused by notice dated 22 December 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 described as 'Certificate of Lawfulness for use of dwellinghouse as 2x self-contained flats (1x one bedroom and 1 x four bedroom).'
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. In reviewing the file, it appeared that the appeal could be determined without a site visit – without causing prejudice to any party. This is because the relevant date for determining whether the existing development is lawful, is the date of the application, and the parties have submitted sufficient evidence to understand the nature of the site given the dispute.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Background

4. Section 191(2) of the 1990 Act states that uses are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and, they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. By virtue of section 171B(2) of the 1990 Act, where there has been a breach of planning control consisting of a material change of use of a building to a dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

6. The issue to be determined in this appeal is whether the use as two flats (dwellings) was lawful on the date the application was made, that is, 18 October 2023.
7. Whilst it is necessary for the use to be existing on the date the application is made, it is an established principle that a use which was merely dormant or inactive could still be 'existing', so long as it had not been extinguished by evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use.
8. However, an unauthorised *use* [my emphasis] must continue throughout, in this case, the four-year period before it can achieve lawfulness, although some minor interruption will not normally be 'fatal' provided it is not significant.
9. Where an LDC is sought, the onus of proof is on the appellant and the standard is the balance of probabilities.

The appellant's evidence

10. The appellant's evidence consists of existing and proposed floor plans, photographs, a statutory declaration from their daughter, a letter from EDF Energy and bills from British Gas and care assessments from the Council.
11. The existing floor plan (EX01) shows the layout to be as a five-bedroom single dwellinghouse and is dated December 2021. The proposed plan (PR01) dated December 2021 shows the layout to be as a one-bedroom flat at ground floor and a four-bedroom flat above. The submission of an existing and proposed plan is ambiguous but not fatal to the appellant's case.
12. The photographs provided of the internal arrangements seem to correspond with the proposed layout plan, and that plan is attached to the statutory declaration of Judith Simon which was properly made and as such carries significant weight.
13. In that statutory declaration it is stated that the property was converted into two flats, as they relate to plan PR01 in early 1996, and since that time have been used in the same configuration.
14. There is also a letter from EDF Energy to the appellant, confirming that there are two separate supplies for 4 Fletcher Lane, stating that *one being 4a the flat downstairs, and the other is labelled as the first floor. There are two MPANs and 2 meters supplying the separate premises. The flat upstairs will have had separate bills since 01 Apr 1996.*
15. There are bills from British Gas addressed to the appellant at the first floor flat, 4 Fletcher Lane and concern the period from 9 October 2019 to 24 April 2021.
16. The care assessments provide an indication that the appellant was living in part of the property – being a flat on 20 June 2019 and 22 November 2021. I note the discrepancies in the description of the occupier however, it seems more likely than not, given that the assessments concern a person with the same name and date of birth, that they are for the same person – being the appellant.
17. Beyond separate meters being fitted, and the statutory declaration of Judith Simon, there is no evidence regarding when the physical works to sub-divide the property occurred, and the submitted bills do not cover the relevant four-

year period, as the appellant stated that the property at present is unoccupied so no further bills could be obtained. Nevertheless, the submissions indicate that the property was sub-divided, that both units of accommodation offer all the facilities expected to be found in a dwelling, and that the appellant lives in the ground floor unit.

18. However, the critical question is whether the property was used continuously as two flats throughout the relevant period, not whether the property was continuously fitted out or intended for use as two flats. In this case there is scant evidence that the four-bedroom flat has ever been occupied. For example, there is no evidence or explanation about who occupied the four-bedroom flat, noting that the British Gas bills are addressed to the appellant.
19. Council Tax may not have been paid and this would not itself justify refusing an LDC as its absence is not determinative. However, given the limited detail about the actual occupation of the four-bedroom flat, evidence of separate bills and tenancy agreements for example, may have helped the appellant's case.
20. Planning Practice Guidance states that 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* [my emphasis] to justify the grant of a certificate on the balance of probability.
21. Based on the evidence before me, I find, as a matter of fact and degree, that the appellant has failed to provide sufficiently precise and unambiguous evidence to demonstrate, on the balance of probability that the use of the property as two self-contained flats is lawful.

Conclusion

22. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of the development described as 'Certificate of Lawfulness for use of dwellinghouse as 2x self-contained flats (1x one bedroom and 1 x four bedroom' 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).

Felicity Thompson

INSPECTOR