



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2025

Appeal Ref: APP/K5600/X/23/3328693

3 Edith Terrace, London, SW10 0TQ

- 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 Mrs Rukhsana Choudhry against the decision of Royal Borough of Kensington and Chelsea.
 - The application ref CL/23/03110, dated 15 May 2023, was refused by notice dated 3 July 2023.
 - The application was made under section 192(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 the use of the property as a single dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Having considered the evidence submitted, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the parties were sought on this matter and no objections were raised.

Main Issue

3. Section 192(2) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) states that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
4. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal, that is, it is not for me to determine whether or not the proposed use of the property is acceptable. My decision rests on the facts of the case, relevant planning law and judicial authority. The burden of proof in an LDC case rests with the appellant and the appropriate test of the evidence is the balance of probabilities. The appellant's evidence does not need to be independently corroborated in order to be relied upon, but it needs to be sufficiently precise and unambiguous¹.
5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. To satisfy the requirements of s192(1)(a) the appellant needs to demonstrate, on the balance of probability, that using the appeal property as a single dwelling house would not require planning permission.

¹ Gabbitts v SSE & Newham LBC [1985] JPL 630 and the Planning Practice Guidance Ref ID:17c-006-02410306.

Reasons

6. The appeal property is a four storey mid-terrace building which according to the evidence was a single dwellinghouse but which the appellant acknowledges is currently in use as three separate residential flats. However, the appellant submits that the existing use as three residential flats is not lawful and that the lawful use of the building is as a single dwellinghouse.
7. Section 55(1) of the 1990 Act provides the meaning of development, which includes “the making of any material change of use of any buildings or other land.” Section 55 (3) states “For the avoidance of doubt it is hereby declared that for the purposes of this section- (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used.” Thus, the provision of self-contained flats within what was a single dwellinghouse represents a material change of use of the whole building and each individual flat within. There are no planning records to demonstrate planning permission has been granted for such subdivision of the original dwellinghouse.
8. The appellant focuses on whether the current use as three self-contained dwellings has become lawful, such that it has displaced the previous lawful use as a single dwelling. However, whilst s57(4) of the 1990 Act provides a right of reversion to a previous lawful use, that only applies if an enforcement notice has been issued in respect of the new use. No enforcement notice has been issued in this case. So, even if the current use as separate flats has not become lawful, the reversion to a single dwellinghouse would not be lawful if that would constitute a material change of use, such that it would be development as defined in s55(1).
9. The 1990 Act is silent as to whether the change of use of a building from flats to a dwellinghouse is or is not a material change of use. In such cases, however, a building used as flats plural is not used as a single dwellinghouse². There is no dispute that the appeal property comprises three separate units of residential accommodation comprising a basement flat, a ground floor flat and a maisonette at first and second floor.
10. It has been established in the courts³ that the extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. The need for a land use such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land. Thus, the resultant effect on housing supply is a factor to be taken into account when determining whether or not a material change of use has occurred when considering the amalgamation of flats to form a single dwellinghouse.
11. To this end, with reference to Policy CH1b of the Royal Borough of Kensington and Chelsea Local Plan 2019, the Council argue that the amalgamation of three residential units to form a single dwelling house would result in a net loss of two existing units of accommodation which would change the character of the use of the land and have significant planning consequences in the overall provision of housing stock in the Borough. The appellant has not addressed this argument or

² Richmond upon Thames LBC v SSETR [2000] 2 PLR 115 & R (on the application of Kensington and Chelsea RLBC v SSCLG, Reis and Tong [2016] EWHC 1785 Admin.

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otherwise indicated why the change back to a use as a single dwellinghouse would not be material given that there is no right of reversion when an enforcement notice has not been issued. As a matter of fact and degree, having particular regard to the relevant development plan policy, I am satisfied that the amalgamation of three residential units into one probably would change the character of the use and be material.

12. In the circumstances, the appellant has not demonstrated, on the balance of probability, that using the appeal property as a single dwellinghouse would not require planning permission.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of 3 Edith Terrace, London SW10 0TQ as a single dwelling house 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.

Elizabeth Jones

INSPECTOR