



Appeal Decision

By A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal Ref: APP/Y5420/X/23/3332232

5 Coolhurst Road, Hornsey London N8 8EP

- 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 Francesca Montanaro against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2023/2402, dated 6 September 2023, was refused by notice dated 23 October 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 proposed amalgamation of four self-contained flats to revert to a single-family dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Interested parties' comments suggest the appeal is against the refusal of an application for planning permission pursuant to section 78 of the 1990 Act. That is incorrect because this appeal is against a refusal to grant a certificate under s192(1)(a) and is pursuant to s195. Therefore, planning merits of the proposed development are irrelevant at any stage in this process. The appeal turns on the facts of this case and relevant planning law and whether the specific matter is lawful¹ at the date of the LDC application. I do not consider a site visit is necessary to determine the appeal and proceed on this basis. For clarity's sake, I have taken the description of the proposed development from the Council's decision notice.

Inspector's reasons

3. The LDC application refusal reason states that the amalgamation of four units to a single dwelling would result in a material change as per section 55(3)(a) of the 1990 Act, but this provision explains the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building and of each part of it which is so used. The Council's delegated report is brief and refers to permitted development rights, but there is no explanation why a material change in the use of no. 5 would occur: no statement of case has either been submitted. Nonetheless, in this kind of appeal, the onus of proof is firmly upon the appellant to show, on the balance of probabilities, the proposed development would be lawful.
4. The appellant maintains the use of no. 5 would remain residential falling within use class C3 of the schedule to the Town and Country Planning (Use Classes) Order 1987 as amended. However, s55(3) has the effect of disapplying s55(2)(f) to the change of use of a dwellinghouse to flats, even

¹ Section 191(2) of the 1990 Act defines lawfulness as follows: (a) 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 (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

though the 'before' and 'after' uses both fall within use class C3. In a similar vein, de-conversion from four flats to one may constitute a material change in the use of no. 5. Nonetheless, the appellant's argument is that the impact of the proposal would not be materially different from the present effect of four flats in the same building. In fact, the use of the property as a single dwelling potentially results in lower level of impacts in terms of traffic and living conditions as the property would most likely be occupied by fewer adults: to me that approach is too simplistic.

5. In *Lambeth v SSLUHC* [2024] EWHC 1391 (Admin), the High Court dismissed a challenge to an Inspector's decision to grant a certificate of lawfulness and planning permission for the amalgamation of two flats into a single dwelling. The Inspector had correctly interpreted policy H3 of the Lambeth Local Plan and H8 of the London Plan and concluded that the amalgamation in that specific case did not breach those policies, and that the loss of a single unit, in the context of the current housing delivery in Lambeth, would not be a planning consequence of significance. The court endorsed the principles set out in *Royal Borough of Kensington and Chelsea v SSCLG* [2016] EWHC 1785 (Admin) (RKBC), and relevant is *Richmond upon Thames LBC v SSETR* [2001] JPL 84 in determining whether the amalgamation constituted a material change of use.
6. Each case needs to be determined on its individual merits but, given the principles established by the courts, I consider that the extent to which no. 5's existing use fulfils a proper planning purpose is a relevant matter when assessing if the proposed de-conversion would amount to development falling within s55(1) of the 1990 Act. The need for a specific land use in this locality and borough, such as flats, is a planning purpose which relates to the character of the use of land. Whether the loss of four flats would have a significant planning consequence, even where there would be limited amenity or environmental impact, is also relevant.
7. Unfortunately for the appellant, there is a lack of specific detailed information and explanation for me to assess this LDC application and conclude that the proposed change would have been lawful. For instance, there is limited, if any, detailed explanation as to why the proposed development would or would not constitute a material change in the use of the building. This is because neither the Council, nor appellant, provide cogent reasons or relevant local planning policies for my consideration. The documentary evidence is very limited and inconclusive. This kind of information should, and could, have been submitted by the main appeal parties.
8. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and evidence before me. There is insufficient evidence to substantiate the appellant's claims. Frankly, I cannot go searching for information nor can I make the case without supporting evidence: I certainly cannot trawl the internet for the latter. As the Planning Practice Guidance says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

Conclusion

9. For the reasons given above I conclude that insufficient evidence has been submitted for me to determine whether the Council's refusal to grant an LDC in respect of the proposed use 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.

A U Ghafoor
INSPECTOR