



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Appeal Ref: APP/W5780/X/23/3332475

63 Argyle Road, Redbridge, Ilford IG1 3BJ

- 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 Mr Dalbir Basi against the decision of the Council of the London Borough of Redbridge.
 - The application ref 2723/23, dated 17 September 2023, was refused by notice dated 31 October 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 '*A Victorian double fronted house that is been dividing into five flats Flat A, Flat B, Flat C, Flat D, Flat E.*'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner heading above is taken from the appellant's original application form, noting it is different from that used by the Council in the decision notice and on the appellant's appeal form.
3. 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

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

Reasons

Background

5. 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.
6. 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.

7. The issue to be determined in this appeal is whether the use as five flats (dwellings) was lawful on the date the application was made, that is, 17 September 2023.
8. 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.
9. 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.
10. The Council commented that the appellant has put forward additional evidence in support of their case beyond that submitted as part of the application. However, in section 195 appeals, the parties and interested persons may submit additional evidence which was not before the authority at the time of its decision.
11. An Inspector should consider any relevant new evidence advanced at the appeal, including where this evidence was not advanced at application stage, since the purpose of the LDC provisions are to enable the making of an objective decision based on the best facts and evidence available when the decision is taken.
12. 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

13. The appellant's case is that the property has been occupied as four flats for around 30 years and as five for over six years.
14. The appellant submitted what appears to be the first page of a selective property license issued by the Council for 63A, C and D which state that it is issued to include all parts of the property for occupancy as a single-family dwelling. The license states that it shall remain in force from 23 July 2018 up to and including 22 July 2023. The license for 63B is a draft dated 7 June 2018 and the period which it concerns is incomplete. In the absence of explanation, the image of the outside of the property dated 13 April 2018 does not take me any further.
15. In respect of 63A the appellant's evidence includes an unsigned tenancy agreement from 8 January 1993 for a period of six months which refers to the room at 63A, and a signed tenancy agreement for two occupants for a period of 12 months commencing on 1 June 2018.
16. For 63B there is an unsigned tenancy agreement dated 7 November 2009 for a period of six months, and a signed agreement for a single occupant for a fixed term period of 12 months beginning on 4 May 2018.
17. The evidence for 63C includes a letter from the Council regarding housing benefit payments to an occupant of 63C for a period up to and including 30 September

- 2012, and a signed tenancy agreement for the occupant, named in the letter, for a period of 12 months commencing on 1 July 2021.
18. For 63D there is an unsigned tenancy agreement dated 9 October 2009 for a period of six months, and a signed tenancy agreement dated 1 December 2014 for a period of 12 months. The appellant provided copies of bank statements showing payments with the reference 'rent' dated 31 August 2019 and 14 and 15 August 2022. The payee's name corresponds with one of those on the tenancy agreement dated 1 December 2014.
 19. The evidence for 63E is more comprehensive and includes a letter from Complete Building Control Ltd dated 17 January 2018, stating that the final certificate has been submitted to the Local Authority for the loft conversion at 63. There is also a photograph dated 1 February 2018 of part of the inside of 63E which appears to correspond with submitted floor plans. An electrical installation certificate for 63 (loft) Argyle Road dated 5 January 2018 refers to a kitchen light switch, oven heating ring and water heaters.
 20. There is a letter from the Council dated 11 September 2019, to the appellant confirming the allocation of the postal address being 63E Argyle Road, Ilford, and a Council Tax bill for the period 1 January 2018 to 31 March 2021 for 63E addressed to the appellant.
 21. There are signed tenancy agreements for 28 January 2018 – 27 January 2019 which refer to the loft room at 63 Argyle Road, and for the period 12 February 2020 to 11 February 2019; the appellant has not sought to explain this discrepancy in the dates.
 22. However, there are bank statements showing payment from the tenant named in the aforementioned agreement, for £900 dated 12 September 2020, 2021, and 2022, which is the rent amount set out in the agreement. There is a further signed tenancy agreement for the period 14 March 2023 to 13 March 2024 with a corresponding bank statement which shows a payment of £1050 from the named tenants, which is the rent amount set out in the agreement.
 23. A bank statement was submitted detailing a payment of £900 dated 16 September 2019, but there is no explanation about what this relates to and whose account into which it was paid. Accordingly, it is a matter of little weight.
 24. The submissions indicate that the property was sub-divided into five flats more than four years before the date of the application. However, the critical question is whether the property was used continuously as five flats throughout the relevant period, not whether the property was continuously fitted out or intended for use as five flats.
 25. In respect of flat A and B, there is scant evidence of actual occupation. There is similarly limited evidence in respect of flat C, whilst it may be inferred from the housing benefit letter and tenancy agreement, that the same occupant has been in residence since at least 2012, there is little evidence to support this.
 26. Similarly in respect of flat D, since it appears the two rent payments (2019 and 2022) are from persons named on the tenancy agreement, it may be assumed that they had occupied the flat since 2014 however, there is no evidence of such

continued occupation, which is surprising given the possible length of their occupation.

27. The evidence in respect of flat E is more comprehensive, such that it seems likely the flat was created and occupied for a period of more than four years.
28. However, whilst it seems unlikely that the appellant would have converted the property to five flats and not used them as such, evidence of actual occupation is sparse, particularly in respect of flats A, B, C and D.
29. Unsigned tenancy agreements are a matter of little weight, and in any event neither tenancy agreements nor licenses alone, are conclusive evidence of occupation. However, more significantly, the submitted evidence does not cover a continuous four-year period for all five flats.
30. 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.
31. 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 probabilities that the use of the property as five flats is lawful.

Conclusion

32. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of; '*A Victorian double fronted house that is been dividing into five flats Flat A, Flat B, Flat C, Flat D, Flat E*' is 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