Planning Inspectorate

Appeal Decision

Site visit made on 16 July 2025

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st July 2025

Appeal Ref: APP/U5360/X/23/3329237
46 – 48 Broadway Market, London E8 4QJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Hussein Talat against the decision of the Council of the London Borough of Hackney.
- The application ref 2022/2735, dated 9 November 2022, was refused by notice dated 10 March 2023.
- The application was made under section 191(1)(a) of the Act.
- The use for which a certificate of lawful use or development is sought is described as 'the lower ground and ground floor of the building has been in use as 2 x self-contained flats since 1994'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice refers to a different description of development compared to that used in the application form. It is clear from the submissions that the appellant seeks an LDC in respect of Flats 1 and 4 at the site, which are located on ground and lower-ground floor levels. The Council's decision notice only refers to lower-ground floor level. I have therefore used part of the description provided in the application form for the banner heading above in the interests of clarity.

3. A representative for the Council failed to attend the site visit at the pre-arranged time. I carried out the site visit in the presence of the appellant at the pre-arranged time without discussing any matters relevant to the appeal.

Main Issue

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

5. On the date of the application for an LDC section 171B(2) of the Act stated:

   'Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach'.

6. Section 191(2) of the Act states that for the purposes of the Act uses are taken to be lawful at any time if no enforcement action may be taken in respect of them, and they do not constitute a contravention of the requirements of any enforcement

notice then in force. There is no evidence that any enforcement notices were in force at the site on the date of the application.

7. The Council has provided no evidence to contradict the appellant's claims. I therefore need to consider whether the appellant's evidence is sufficiently precise and unambiguous to show, on the balance of probabilities, that the material change of use of the parts of the building comprising Flats 1 and 4 to self-contained dwellings took place on or before 9 November 2018 and that they have remained in use as such without substantial interruption for at least four years.

Reasons

8. Numerous documents have been provided by the appellant in support of their case. This evidence has been presented in a disordered manner and there is limited explanation of what the evidence is claimed to show specifically, or how it may be interlinked. Moreover, lists of further extensive evidence dating back to 1996 referred to at pages 12 to 15 of the appellant's statement of case are absent, despite this being queried with the appellant.

9. There are consistent gas safety reports dating from 14 November 2018 in respect of Flat 1 and 16 November 2017 in respect of Flat 4. There are also electrical safety reports dated 2 August 2020 in respect of each flat which refer to their electrical installations as being in general good condition and approximately 18 years old.

10. The gas safety reports state that each flat had a four-ring hob and gas boiler, and refers to kitchens, but the electrical reports make no mention of what electrical installations may have been inspected. Other than a gas boiler and four-ring hob within kitchen and living room areas, there is limited evidence as to what facilities may have been present within either of the flats at any times.

11. A signed copy of a twelve-month assured shorthold tenancy agreement for Lesley Bray has been provided alongside other documents which show they paid a deposit and commenced tenancy of Flat 1 from 26 February 2020. It is unclear whether they moved out of the property at any time, or whether they remain living there.

12. Copies of various bills addressed to Lesley Bray at Flat 1 have been provided, but a council tax bill dated 28 February 2020 addressed to Mossfield Properties Ltd concerning Flat 1 states that a 100% council tax discount was applied 'as empty unoccupied and unfurnished' between 25 February and 3 March 2020. Another council tax bill dated 23 December 2021 addressed to Lesley Bray at Flat 1 refers to the period 1 April 2021 to 31 March 2022. The evidence therefore suggests that Lesley Bray lived in Flat 1 between 3 March 2020 and at least April/December 2021. Limited details and explanations have been provided to show they lived there longer, or who may have lived there since.

13. A signed copy of a twelve-month assured shorthold tenancy agreement for Nicholas Clayton Thomas and Sarah Jane McLarty has been provided alongside other documents which show they commenced a tenancy of Flat 4 on 6 January 2018. However, parts of another tenancy agreement dated 12 September 2018 for an unspecified period have been provided, which refer to Harry Bunt and Georgia Hammerson being tenants. Gas bills addressed to Daniel McCartney for periods between 1 August 2020 and 23 February 2022 have also been provided, but there are no details of the specific periods any of these people may have lived at Flat 4.

14. Copies of council tax bills relating to the period 11 September 2018 to 31 March 2019 addressed to Mossfield Properties Ltd refer to an empty unoccupied and unfurnished 100% council tax discount being applied to Flat 4 for the period 11 July to 10 August 2020.

15. A very brief undated and unsigned letter from EDF Energy states that the company has supplied Flat 1 since 22 July 1994 and Flat 4 since 11 August 1994. Further, a document purporting to be a statutory declaration states that Flat 1 and Flat 4 'have both been used as a self-contained unit (C3 Use Class) for the past 4 years till today without any disruption of use'. This document is signed by Ibrahim Elgen of Citymove Property Group Ltd on 21 June 2022 in the presence of a solicitor. However, the document makes no mention of the Statutory Declarations Act 1835 and provides no accompanying details or clarification of how Mr Elgen may know that statement to be true. I assign little weight to the letter from EDF Energy and the document claiming to be a statutory declaration on account of their significant lack of detail.

16. Case law explains that the distinctive characteristic of a dwelling is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. The gas safety certificates show that Flat 1 had a gas boiler and four-ring hob in November 2018 and that flat 4 had these in November 2017. I saw the boilers and hobs in place during my site visit, as well as the corresponding gas and electricity meters. All of these appeared to be of significant age. On their own, such facilities would not have been sufficient to ensure Flat 1 and Flat 4 comprised dwellings at those times, and the electrical safety certificates do not specify what electrical installations were estimated to be 18 years of age in August 2020.

17. The tenancy agreements convince me that Flat 1 comprised a dwelling on 26 February 2020, and Flat 4 comprised a dwelling on 6 January 2018. This is because the tenants referred to above would not have entered into those agreements otherwise. None of the other evidence shows, on the balance of probabilities, that Flats 1 or 4 comprised dwellings prior to these dates or consistently since.

18. There is a lack of clear evidence as to who actually lived in Flat 1 and Flat 4 during which specific periods, or whether Flats 1 and 4 continued to be in use as dwellings since February 2020 and January 2018 respectively. The council tax discounts applied show that they were empty unoccupied and unfurnished for brief periods, and the lack of comprehensive council tax bills means it is unclear whether there may have been other, longer periods where they were empty unoccupied and unfurnished. It does not necessarily follow that the flats ceased to be in use as dwellings during periods when tenants and furniture were absent, but the evidence is unclear as to what facilities have been present, and for what periods.

19. In summary, the evidence provided is patchy, lacks detail, and is not clearly explained. Although I saw the flats appeared to be of significant age during my site visit, the evidence is not sufficiently precise and unambiguous to show that Flat 1 and Flat 4 have been in use as self-contained dwellings for at least four years without substantial interruption, on the balance of probabilities. This does not mean that their use as such is unlawful, but the appellant has failed to provide the necessary evidence for an LDC to be issued. To clarify, had the pre-2018 evidence referred to at pages 12 to 15 of the appellant's statement of case been provided,

depending on the quality and veracity of that evidence, the outcome of this appeal could well have been different.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the use of the lower ground and ground floor of the building as 2 x self-contained flats is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR