



Appeal Decision

No site visit

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 AUGUST 2025

Appeal Ref: APP/Z5060/X/24/3336426

6 Fordyke Road, Barking and Dagenham, Dagenham RM8 1PJ

- 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 R Hussain against the decision of the Council of the London Borough of Barking and Dagenham.
 - The application ref 23/01145/CLUE, dated 19 July 2023, was refused by notice dated 18 September 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 is sought is for existing two flat units.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It was determined that it was not necessary for me to conduct a site visit. The main parties were made aware of this fact, and no objections were raised to the appeal being determined on this basis.
3. In cases such as this, the onus rests with the appellant to make their case. The evidence does not need to be corroborated by independent evidence to be accepted, provided the evidence alone is sufficiently precise and unambiguous on the balance of probability. Matters such as planning policies and the impact of development on the character and appearance of the area, as well as impacts on neighbours' living conditions, are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
4. The LDC application included a Site Location Plan, Existing Layout Plan, Energy Performance Certificates, Home Insurance Renewal document, Electrical Installation Certificates, correspondence from energy suppliers, Gas Safety Certificates, Building Regulations Certificate of Compliance, emails from Royal Mail, water bills and correspondence, Council Tax bills, Television Licensing correspondence, letting agents correspondence and Tenancy Agreements. The appeal submissions also included an Appeal Statement.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant the LDC for the use of the building as two flat units was well-founded.

Reasons

6. An application under section 191(1)(a) of the Town and Country Planning Act 1990 (1990 Act) seeks to establish whether the two existing flat units would have been lawful at the time of the application. The relevant date would therefore be 19 July 2023, when the application was submitted.
7. Planning Practice Guidance (PPG) confirms the 'statutory framework covering 'lawfulness' for lawful development certificates is set out in section 191(2) of the 1990 Act¹. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: a) No enforcement action may 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 enforcement notice then in force.
8. An Enforcement Notice (Notice) is referred to in the submissions by the Council and is material to the determination of this appeal. The Notice was issued on 15 June 2023 and alleges the unauthorised subdivision of the property to separate self-contained units of accommodation. I have no evidence to indicate the Notice was appealed and, therefore, it came into effect on 15 July 2023, which is three days before the submission of the LDC application. The Notice requires the cessation of the use of the land and property as separate self-contained units of accommodation.
9. The appellant has submitted evidence with the LDC to demonstrate that the use of two self-contained flats had been continuous for four years before the date of the application, and therefore, is immune from enforcement action.
10. However, as indicated, section 191(2) sets out the circumstances in which uses are lawful at any time for the purposes of the 1990 Act. The 'and' between section 191(2)(a) and (b) of the 1990 Act is crucial in this instance. The 'and' means that even if the evidence submitted with the LDC is sufficient to demonstrate compliance with section 191(2) (a), that is not enough for an LDC to be granted. The appellant would also need to provide evidence to show that either the Notice is not active or the use subject of the LDC would not contravene its requirements, to satisfy section 191(2)(b) of the 1990 Act.
11. In an LDC application such as this, the onus is firmly on the appellant to make out their case. The appellant has not indicated any reason why the Notice is not active, and why the use of the property as two flats does not contravene the requirements of the Notice. Based on the evidence I have before me, and in my judgement, the use of the property as two flats does contravene the requirements of an active Notice on the land, which was in force on the date the LDC application was submitted.
12. Accordingly, the use of the land and property as two flat units is contrary to section 191(2)(b) of the 1990 Act, and the appellant has failed to demonstrate that the two flats were lawful at the time of the LDC application.

¹ Paragraph: 003 Reference ID: 17c-003-20140306

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use for the existing two flat units 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).

M. P. Howell

INSPECTOR