Appeal Decision

No site visit made

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2025

Appeal Ref: APP/W5780/X/24/3346102
98 Lansdowne Road, Seven Kings, Redbridge, Ilford IG3 8NG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Basharat Khan against the decision of the Council of the London Borough of Redbridge.
- The application ref 0417/24, dated 12 February 2024, was refused by notice dated 26 April 2024.
- The application was made under section 191(1)(a) of the 1990 Act (as amended).
- The use for which a certificate of lawful use or development is sought is the property has been converted from a dwellinghouse (Use Class C3) into two self-contained flats.

Formal Decision

1. The appeal is dismissed.

Preliminary Matters

2. An application under s191(1)(a) of the 1990 Act can only confirm whether an existing use of land is lawful. In this instance, the existing use is said to be the use of a dwellinghouse as two self-contained residential units, and I have determined the appeal on this basis.

3. In an LDC application, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities[1]. The Planning Practice Guidance (PPG) states the appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous[2].

4. In an LDC case such as this, the determination is based on the evidence submitted. It was not therefore deemed necessary to carry out a site visit in the circumstances, and no parties would be prejudiced as a result.

5. The provisions of the Levelling Up and Regeneration Act, which came into effect on 25 April 2024, mean all unauthorised uses are now subject to the ten year bar. However, as the application, in this instance, was made on 12 February 2024, the four year bar still applies for unauthorised residential uses. To demonstrate immunity from planning control, the applicant must therefore show that the use has continued on an uninterrupted basis for at least four years from the date of when the LDC application was made. Accordingly, the material date here is 12 February 2020.

[1] Thrasyvoulou v SSE & Hackney LBC (No 1) [1984] JPL 732
[2] Lawful Development Certificates Paragraph: 006 Reference ID: 17c-006-20140306

Main Issue

6. The main issue is whether the Council's refusal to grant an LDC for the claimed use was well-founded.

Reasons

7. The appellant contends that the property has been used as two self-contained flats (ground floor flat and first floor flat) since approximately 2006/2007 which would far exceed the required four-year period. In support of their claim the appellants have submitted various documents and information as part of the LDC application and this appeal. 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 to two self-contained flats took place on or before 12 February 2020 and that they have remained in that use without substantial interruption for at least four years.

8. From the information before me the property appears to have been split into separate units thus the material change of use to two self-contained flats has taken place for a considerable period. This is based on the submitted plans and evidence consisting of the Council Tax banding from the Valuation Office Agency (VOA) dated September 2007; Energy Performance Certificates (EPC); and the Selective Property Licence (SPL) for the ground floor flat dated November 2019. However, where the evidence is less convincing is on whether the two flats have continued to be occupied as separate units, on an uninterrupted basis since 12 February 2020.

9. With regard to the ground floor flat, alongside the VOA, EPC and SPL information the appellant has also submitted four signed Assured Shorthold Tenancy (AST) Agreements from Mr Shezad Salim for an uninterrupted period of four years between October 2019 and September 2023. This covers the relevant immunity date. In an attempt to corroborate these dates, the appellant has also submitted Council Tax bills addressed to Mr Salim between April 2020 and March 2024. Whilst these records show a four year period; they do not, however, cover the 12 February 2020 date.

10. I acknowledge that it is unlikely the tenant, referred to above, would have paid the Council Tax or entered into the AST agreements unless he resided at the property, however the Council Tax records nevertheless do not cover the relevant time frame and thus are inconclusive. Furthermore, there is a distinct lack of evidence in the form of utility or service bills which would have significantly assisted the appellant in their onus of proof. Consequently, the submitted information to date does not convince me that the ground floor flat has been occupied for the required time frame.

11. The information provided with the first floor flat is also inconclusive. Whilst there is evidence pertaining to the change of use through the VOA and EPC certificates, the appellant fails to provide information in respect to any SPL or ASTs attached to this unit to demonstrate that the first floor flat has been occupied and/or tenanted for the requisite time period. Like the ground floor flat, other than a single annual TV licence[3], no bills or correspondence regarding the use of the first floor flat have been presented to me.

[3] TV Licence 3754104748 for Ground Floor valid until Oct 2017 & TV Licence 3744773242 for First Floor valid until Oct 2024

12. It is likely that the lack of evidence has led the appellant to submit Statutory Declarations (SD) from the occupiers of the property as part of this appeal. A SD is a formal statement made under the provisions of the Statutory Declarations Act 1835 to affirm that something is true to the best knowledge of the person making the declaration.

13. The first SD is signed by Mrs Farida Sadaf on 9 May 2024 in the presence of a solicitor, and states that Mrs Sadaf is the occupier of the first floor flat and has been since approximately 2018. Mrs Sadaf also confirms that the occupier of the ground floor flat is Mr Shezad Salim. This SD further confirms that Mrs Sadaf is not a tenant and does not pay rent stating she is a cousin of the landlord, which may explain the lack of any ASTs attached to the first floor flat.

14. Mrs Sadaf further claims to have been paying separate Council Tax for the property since 2018 and that the Council records would show this. As part of the submitted evidence the appellants have included Council Tax bills for the first floor flat, however these invoices are not addressed to Mrs Sadaf, but rather her cousin, the landlord and appellant (Mr Basharat Khan). Even if I was to accept that the Council Tax had been paid by a relative on behalf of Mrs Sadaf the submitted bills are inclusive of April 2021 until March 2024, which does not cover the material date of 12 February 2020.

15. The second SD is signed by Mr Shezad Salim and again witnessed by a solicitor. Mr Salim confirms he has resided at the ground floor flat for 18 years, since approximately 2005/2006. Mr Salim confirms that the occupier of the upstairs flat is Mrs Sadaf, whom he has known for 6 years. He also states he is a tenant and has entered into various ASTs and paid Council Tax at the property for 18 years, despite, as stated above, the submitted Council Tax records not corresponding with this. I appreciate that a lack of Council Tax records is by no means conclusive of how the flats have been used in practice, and there may be several reasons why the lack of these records does not accurately reflect the actual use in planning terms.

16. Nevertheless, there is scant detail before me in respect of any utility bills, services or other correspondence at either flat to provide precise and unambiguous evidence that the use has occurred on an uninterrupted basis. This type of information would have provided significant assistance in verifying that the site has been used as two separate residences. This information should be readily available given the purported separate residential use, particularly in the light of Mr Salims' claimed 18 year term of residence. Consequently, I am unclear why these records would be unavailable at the time of either the LDC application or the submission of this appeal.

17. Overall, the submitted evidence is inconsistent, lacks detail, and is not sufficiently precise and unambiguous for me to conclude, on the balance of probability, that the use as two self-contained flats has been uninterrupted for four years from the date the LDC was made. Although the conversion to flats appears to be of significant age, based on the evidence presented their use as separate units is inconclusive. This does not mean that their use is unlawful per se, but the appellant has failed to provide the necessary evidence for an LDC to be issued at this stage.

Conclusion

18. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the material change of use of the dwellinghouse to two self-contained flats is well-founded, and consequently the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

Robert Naylor

INSPECTOR