



Appeal Decision

Site visit made on 18 October 2025¹

by **A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 24 October 2025

Appeal Ref: APP/G5750/X/23/3332298

165 Sherrard Road, Forest Gate London E7 8DY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal in part to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr A Uddin² against the decision of Council of the London Borough of Newham.
- The application Ref 23/00935/CL, dated 26 April 2023, was refused in part by notice dated 28 July 2023.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
- The use for which a certificate of lawful use or development is sought for is studio flat on ground floor front and 2 bed flat at first floor.

Decision

1. The appeal is dismissed.

Reasons

2. The onus of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence 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 refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability. Essentially, the claim is that the existing use is lawful due to the passage of time. The assertion is a simple one, namely, the subdivision of no. 165 into a studio flat on ground floor and two-bed flat at first floor occurred on or before 26 April 2019, which is the relevant date.
3. I pause here. The Council's decision to refuse to grant the LDC states that, in terms of the ground floor studio flat, it has not been demonstrated that the material change of use is immune from enforcement action. In terms of the first floor flat, it states the following: "...As a result of the deliberate concealment of the development, the applicant is disentitled to the provision of section 171B(2)...The development therefore cannot be considered lawful under S191(2)(a) of the Act and enforcement action may be taken in respect of the development". For the following reasons, I consider that the approach taken by both parties in this appeal is fundamentally flawed.
4. No. 165 formed a single unit of occupation, so the first question is this: does the evidence precisely and unambiguously show that the building operations involved in the conversion of

¹ Although things on the ground appear to have moved on since the appeal and no. 165 seems to be occupied as a single dwellinghouse, I will proceed in determining the appeal based on the evidence before me. Planning merits play no part in the assessment of this appeal.

² Taken details from the application form.

no. 165 into a studio flat on the ground floor and two-bedroom first floor flat substantially completed on or before the relevant date? In that context, the appellant needs to show, on the balance of probabilities, each flat could provide separate facilities for cooking, sleeping and washing on or before the relevant date.

5. The physical conversion of this modest property probably involved significant building operations yet there is nothing before me to show when the conversion took place. The information provided with the LDC application³, including invoices for the purchase of building material, does not unambiguously demonstrate where the material had in fact been used nor when the conversion was substantially complete. I consider that the quantum of the evidence presented does not show the nature and timings of the physical conversion. Taken as a whole, the evidence presented is inconclusive because it does not show, with sufficient degree of precision, that the studio and first floor flats were capable of providing the necessary wherewithal for day-to-day existence on or before the relevant date.
6. That finding is sufficient to dismiss the appeal because the evidence does not clearly show how each flat met the *Gravesham*⁴ dwelling test on or before the relevant date. Nonetheless, for completeness, I have also discovered significant weaknesses in the information about occupation and use of each flat.
7. Firstly, tenancy agreements alone are not determinative of use nor are utility bills or safety certificates, because this type of information does not show specific use of the studio and first floor flat for a continuous 4-year period. Absence specific detail as to who occupied and used each flat as their home, it is difficult to draw comparisons between the documentary information and the scale of residential use. Based on the available evidence, firm conclusions about occupation and use of each flat cannot be drawn because the quantum of evidence does not show that each flat has been occupied and used as a dwellinghouse on or before the relevant date and that use has continued without significant interruption.
8. Another problematic factor as to why an existing use LDC cannot be granted in this appeal is the effect of s191(2) sub (a) and (b). This explains that a use is lawful if no enforcement action may then be taken in respect of the use for example, because the time for enforcement action has expired, and the use does not constitute a contravention of any of the requirements of any notice then in force. Attention was drawn to an extant notice dated 14 April 2023. The breach relates to three self-contained flats and requires cessation of the use. The claimed existing use clearly falls within the scope of the notice. On this basis alone, the existing use cannot be declared lawful as it would contradict the clear terms of s191(2) of the 1990 Act.
9. Pulling all the threads together, even if an alternative view prevails and the appellant's evidence demonstrates that each flat could meet the definition of a dwellinghouse for planning purposes, I find that the evidence presented does not sufficiently show continuous use without significant interruption. Moreover, the extant enforcement notice prevents the granting of the LDC.

Conclusion

10. For the reasons given above, and having considered all other matters raised, I have exercised accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

A U Ghafoor

INSPECTOR

³ See the Council's delegated report.

⁴ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307.