



Appeal Decision

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2025

Appeal Ref: APP/Q5300/X/24/3346065

32 South Street, Enfield EN3 4JZ

- 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 London Stay Apartments against the decision of the Council of the London Borough of Enfield.
 - The application ref 23/03845/CEU, dated 24 November 2023, was refused by notice dated 22 February 2024.
 - 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 C3 self-contained residential dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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.
3. 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.
4. An Inspector should consider any relevant new evidence advanced at the appeal, 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.

Main Issue

5. The main issue is whether the Council's refusal to issue an LDC was well-founded.

Reasons

Background and Statutory Framework

6. 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.
7. Where there has been a breach of planning control consisting of a material change of use of a building to a dwellinghouse, where the use took place before 25 April 2024, by virtue of section 171B(2) of the 1990 Act, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
 8. For the appeal to succeed, the appellant would need to demonstrate that the accommodation has been used as a dwellinghouse on a substantially uninterrupted basis for not less than four years prior to the date of the application.
 9. The planning merits of the development are not relevant to this appeal, my decision rests on the facts of the case. As such, that the property is not a listed building nor in a conservation area, the PTAL rating and Flood Risk, are matters which have no bearing on this appeal. Similarly, the appellant's misgivings about how the Council dealt with the application have no bearing on my decision.
 10. 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

11. Although the address is given as 32 South Street, it is evident from the submissions that the appeal relates to part of the ground floor only.
12. The appellant's evidence consists of statutory declarations from the occupant of the accommodation and her mother and father, a Council Tax record and photographs including those showing utility meter readings.
13. In her statutory declaration dated 31 October 2023, the owners' daughter stated that for a minimum of the past four years she has exclusively used the property (32 South Street) for residential purposes. Further, that during this time she and her children solely utilised the personal kitchen, toilet and bathroom facilities which were designated for her personal use. She was responsible for paying the cost of utilities at 32 South Street which had a separate meter.
14. This account is corroborated by the statutory declarations of her mother and father who in addition stated that they have consistently maintained the property as a residential dwelling, ensuring that it possesses the necessary amenities and remains suitable for residential purposes.
15. The Council stated that they visited on 20 February 2024 and noted that the unit was being renovated and there was no evidence of a self-contained unit. They stated that there were a new toilet and shower, but no cooking facilities and no one living in the accommodation.
16. In response the appellant stated that what the Council observed was the wider renovation of 32A for HMO use, 32A being the remainder of the property – not including the appeal site. I acknowledge the comment, but in the absence of further explanation this does not address the Council's observations.
17. The appellant also stated that they disagree with the Council's review of the visit, stating that the unit already contained a bathroom, toilet, and kitchenette facilities which are shown on submitted photographs.

18. However, those photographs are undated and whilst they show a small number of kitchen units with work surface, microwave and freestanding cooker, there is no evidence of occupation from the photographs. Moreover, the photographs do not correspond with the existing ground floor plan included with the statutory declarations, specifically the kitchen units/cooker are not in the same position.
19. The Council also stated that the site was visited by their Enquiry Officer Assessment and Collection Services on 25 April 2018 and his visit report indicates that following a discussion with the occupants it was established that part of the ground floor had been used as a bedsit since 3 February 2018. At this time, the Council stated it was not a self-contained flat or used for the residential purposes indicated on the submitted drawings, there was no kitchen or bathroom, only a toilet and the bathroom and the kitchen of the occupant's parent's flat above were being used.
20. It seems likely that kitchen facilities were provided at some point during the time between the Enquiry Officer Assessment and Collection Services visit and the date of the application. However, there is scant evidence of when the facilities required for day-to-day private domestic existence were provided.
21. Moreover, given the Council's observations at their visit on 20 February 2024 and the inconsistencies between the floor plan and photographs, there is ambiguity about precisely what the accommodation consisted of, and raises doubt about the appellant's claim that the accommodation constituted and was used as a dwellinghouse throughout the relevant period.
22. The Council tax information is not determinative since it is only evidence that business rates were no longer being paid on the property, it is not determinative of the nature of the residential use. Nor, in any event is the existence of separate Council Tax rating, or separate utilities determinative as to whether a separate unit of residential accommodation has been created.
23. 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.
24. On the basis of the evidence before me, 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 probability, that the use of part of the ground floor as a self-contained residential dwelling is lawful.

Conclusion

25. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for C3 self-contained residential dwelling 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