Planning Inspectorate

Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2026

Appeal Ref: APP/Y5420/X/25/3365166
5 The Drive, Wood Green, London N11 2DY

- 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 Hakan Latif against the decision of the Council of the London Borough of Haringey.
- The application ref HGY/2024/2977, dated 27 October 2024, was refused by notice dated 17 January 2025.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is described in the following terms: *'The property was converted into three flats in 2019. The top flat was rented out in 2019, the middle and ground floor flats were used by my family. The middle floor was then rented out in 2021. In 2022 I applied for HMO which was granted and since then I have been renting out all three flats'.*

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Neither party considered that it was necessary for me to carry out an internal inspection of the property or enter the site for any other reason, a view I share. There was no reason either to view the property from public land, given the nature of the matters before me, which turn on the use of the property prior to the LDC application. I have therefore been able to determine the appeal without visiting the appeal site.

3. The description of the development in the heading above is taken from the application form. The Council used a shorter description in its decision notice and, on the appeal form, the appellant describes it as 'Conversion of a single residential dwelling into three self-contained residential flats'. This concisely describes the certificate the appellant seeks, as understood by both parties, and I have considered the appeal on that basis.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well founded. This turns on whether, on the balance of probability, the use applied for had taken place for a sufficient continuous period such that it was lawful on the day the application was made.

Reasons

General approach to LDCs

5. Advice relating to LDCs is provided by the Government's *Planning Practice Guidance* (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, 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 to justify the grant of a certificate on the balance of probability. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant.

The requirements to establish lawfulness in this case

6. Section 191(2) of the Act states that:

   For the purposes of this Act uses and operations are lawful at any time if—

   (a) 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

   (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

7. There was no enforcement notice in force when the LDC application was made, so my decision hinges solely on s191(2)(a). The appellant's claim is that the use of the property as flats is lawful due to the passage of time.

8. Section 171B of the Act sets out time limits for enforcement action. In this case, it is common ground that the relevant period is 4 years from the date of the breach (ie when the use commenced)[1]. Thus, to acquire immunity from enforcement action and therefore lawfulness, the use would have needed to have carried on for a continuous 4-year period prior to the LDC application. It is claimed that use as 3 flats commenced in June 2019, so the use would have needed to continue until at least June 2023. It is for the appellant to show this, on the balance of probability.

The appellant's evidence

9. The appellant has provided floorplans of the property showing two bedroomed flats on the ground and first floors and a studio flat on the second floor. There is no dispute regarding the accuracy of the plans, although they do not show when conversion works were carried out or how the building has actually been used.

10. The appellant advises that the conversion works to the ground and first floor were carried out in June 2019. In support of this a copy of a builder's invoice dated 22 June 2019 has been provided. The job description on the invoice is 'separating house into two flats'. I have no reason to doubt that evidence.

[1] 4 years being the period specified by s171B(2) of that Act, as it applied prior to 25 April 2024. The Act now applies a 10 year period, but that does not apply retrospectively and is not relevant here, given the period of use claimed by the appellant.

11. The appellant advises that the ground floor was occupied as a flat by his father (and his father's wife) from June 2019 until early 2020. I am told that the appellant's son occupied the first floor flat during the same period. This is supported by a statement from his son and correspondence addressed to his father at the appeal property.

12. The appellant states that private tenants moved into the first floor flat in May 2021 and have remained there since. In support of this a tenancy agreement dated 7 May 2021 is provided. The agreement runs from 5 June 2021 – broadly according with the appellant's timeline. However, it does not specify that it is for a flat comprising only one floor of the property, but instead gives the address of the premises as '5 The Drive, London N11 2DY'. Irrespective of how the property had been advertised, this implies that the agreement relates to the entire property, not just a flat within it. At the very least, it is ambiguous.

13. The appellant says that the second floor was converted into a flat in 2014. However, the Certificate of Completion submitted in support of that refers to a 'loft conversion with dormer' and makes no mention of the creation of a flat.

14. Nevertheless, a tenancy agreement dated 28 October 2019 relating to the 'Top Floor' supports the claim that the second floor was used as a flat from November 2019. The appellant advises that the tenants left in early 2021.

15. The appellant states that an HMO license was granted for the property in October 2022. After this, I am told, the ground floor flat and second floor studio flat were put on the rental market, while the first floor flat continued to be rented to the tenants who had occupied it since May 2021.

Assessment

16. It appears that conversion works were carried out to convert the ground and first floors to separate flats in 2019. The flats were then used by family members from June 2019 until early 2020, when occupation ceased during the Covid-19 pandemic. Although the evidence for this period is limited, it is consistent and there is no reason to doubt the appellant's claims.

17. There is no clear indication that the second floor was converted specifically for use as a separate flat. Nevertheless, from the appellant's evidence and the tenancy agreement of October 2019 it appears that tenants occupied it from November 2019 until early 2021. Thus, the position is reasonably clear for this earlier period.

18. The position after this, however, is not at all clear. The appellant indicates that the whole property was rented out as flats after it ceased to be used by family members, but there is a lack of documentary evidence to support the claim. The only tenancy agreement for this later period is the one from May 2021. However, as noted above, while it is said to be for the first floor flat, it appears to relate to the entire property. Thus, the evidence is contradictory and unclear in that respect.

19. From October 2022, the appellant refers to the ground and second floor being 'put on the rental market', but it is not clear what that actually amounted to in terms of lettings. I would expect the letting of flats to generate significant paperwork, but there is a noticeable lack of documentary evidence for this period. Moreover, an HMO license was apparently obtained prior to letting the ground and second floors. There is no explanation as to why an HMO license was necessary for the

letting of self-contained flats. This adds to my uncertainty as to how the property was actually used at this time.

20. It may be that there are explanations for the above uncertainties. I also accept that periods of non-occupancy, such as during the Covid-19 pandemic, do not necessarily indicate that the use has ceased. However, the appellant is responsible for providing sufficient evidence to support his case and, as things stand, the evidence is too imprecise and ambiguous to demonstrate use of the property as 3 flats for a 4 year period, on the balance of probability.

Conclusion

21. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development 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) and dismiss the appeal.

Peter Willows

INSPECTOR