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# Appeal Decisions

Site visit made on 2 October 2018

**by Anthony J Wharton BArch RIBA RIAS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 23 October 2018**

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## **Appeal A - Ref: APP/V5570/X/17/3181740**

### **Flat 2, 20 Danbury Street, London N1 8JU**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Eurolets against the decision of the Council of the London Borough of Islington (the LPA).
  - The application, Ref P2017 dated 8 June 2017 was refused by notice dated 3 August 2017.
  - 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: the use of the unit as a self-contained dwellinghouse under Class C3.
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## **Appeal B - Ref: APP/V5570/X/17/3181737**

### **Flat 3, 20 Danbury Street, London N1 8JU**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Eurolets against the decision of the Council of the London Borough of Islington (the LPA).
  - The application, Ref P2017/2256/COL, dated 23 May 2017, was refused by notice dated 3 August 2017.
  - 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: the use of the unit as a self-contained dwellinghouse under Class C3.
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## **Summary of Decisions**

1. Appeal A is allowed and Appeal B is dismissed. See formal decisions below.

## **Matters of clarification**

2. The LDC application form for Appeal A referred to *'the existing use of the one bedroomed property on the ground is residential and has been for more than 4 years with clear evidence to show'*. The LDC application form for Appeal B referred to *'the usage of the one bedroom flat on the first floor has been in consistent use for a period of four years with clear evidence being residential'*. The wording in the last bullet point above is the wording adopted by the Council and used in the respective refusals.

3. I have used the same wording as the Council in both cases since it is clear that what is being sought for both flats is a LDC confirming that the units have been in continuous residential (Class C3) use for a period of 4 years from the respective dates of the applications. In Appeal A, therefore the relevant 4 year date is 8 June 2013 and in Appeal B the relevant date is 23 May 2013.

### **Background information in relation to both flats**

4. Both flats are within the residential property on the east side of Danbury Street at No 20. The building is not listed but is located within the Duncan Terrace/Colebrook Row Conservation Area. Flat 2 (Appeal A) is located on the ground floor and the submitted plan shows a one bedroom flat with a total area of 35.21m<sup>2</sup>, comprising a reception room/kitchen a rear bathroom and a bedroom. Flat 3 (Appeal B) is on the first floor and comprises a reception/kitchen (kitchenette), a bedroom and a bathroom. The overall area of this one bedroom flat is 40.23m<sup>2</sup>. Flat 2 was not part of the Council's enforcement action relating to Nos 22, 24, 26, 28 and 40 Danbury Street which in any case was not taken forward.

5. I have noted that the appellant company is aggrieved at the manner in which one of the Council officers dealt with the LDC applications at this property. However, I am only empowered to deal with these LDC appeals which I have done and have considered them on their merits in relation to all of the evidence submitted. Any matter relating to any grievance relating to procedure or behaviour is a matter for the parties.

### **Matters of clarification re LDC appeals relating to both appeals A and B**

6. An appeal relating to a LDC refusal is confined to the narrow remit of reviewing the LPA's reason for refusal. The planning merits of these cases do not fall to be considered. These LDC applications were applied for in order to establish whether the existing residential uses of Flats, Nos 2 and 3 on the ground and first floors, at No 20 Danbury Street were lawful for planning purposes under section 191(1)(a) of the Town and Country Planning Act 1990 on the dates of the LDC applications.

7. The LPA refused both applications on the basis that there was insufficient, precise and unambiguous evidence submitted to demonstrate, on the balance of probabilities that the two flats had been in lawful use as Class C3 residential units for a continuous four year period prior to the respective LDC applications. The application relating to Appeal A was made on 8 June 2017. The application relating to Appeal B was made on 23 May 2017.

8. Thus, the onus is upon the appellant company to show that Flat 2 has been in continuous Class C3 residential use since 8 June 2013 and that Flat 3 has been in continuous Class C3 residential use since 23 May 2013. National Planning Practice Guidance (PPG) indicates that an applicant for an LDC is responsible for providing sufficient information to support an application and that, without sufficient or precise information, a LPA may be justified in refusing a certificate.

9. Having taken into account relevant case-law, I consider it appropriate to consider any additional information submitted since the date of the initial application. Section 195 of the Act refers only to a refusal being '*well-founded*' or '*not well-founded*'. This relates to the decision itself and not to the reasons for it. In the case of '*Cottrell v SSE and Tonbridge and Malling BC [1982] JPL 443*', it was held that the Secretary of State (SOS) cannot be compelled to issue a certificate where the opinion is that one should not be granted. Conversely it was also held that for a LPA to argue that the only evidence to be considered was that placed before them as part of the application, denies the purpose of the LDC procedure.

10. The LDC procedure is aimed at the decision-maker arriving at an objective decision (on the balance of probabilities) based upon the best facts and evidence available. It is also the case that if subsequent information is available it is always open to an applicant to re-apply. In this case I consider it appropriate to take all of the submissions into account. I am satisfied that in taking this course of action no injustice has been caused to either the Council or the appellant company.

## Assessments

### *Appeal A - Ref: APP/V5570/X/17/3181740: Flat 2, 20 Danbury Street*

11. Flat 2 on the ground floor of the property comprises a reception/kitchenette area to the front and a bedroom with bathroom to the rear. The overall area of the flat is 35.21m

12. In the Planning Statement (PS) submitted in support of the application a total of 8 Assured Shorthold Tenancy Agreements (ASTAs) are submitted. The first is in the name of David Aiossa and is dated 24 October 2012 and indicated to be for '20 Danbury Street Ground' with a reference of No of 2002. It shows an expiry date of 24 April 2013, although there is a roll-over clause in the 'Notice to terminate' section. There is one copy of a bank statement showing a payment to Eurolets from the tenant which is dated 25 June 2013. A Council Tax document shows the banding and that it was applicable with effect from 16/6/2014. The submitted statement shows that this tenant vacated the flat on 29 September 2013.

13. The second ASTA is in the name of Danny Albiston and is dated 25 October 2013, thus there is approximately 1 month between tenancies. Although it does not refer to flat 2 it is referenced 2002. It has a 'roll-over' clause. An initial date of expiry (25 April 2014) has been scored out and a new one, handwritten, is inserted as 25 January 2014. The PS shows this tenant vacating on 24 July 2014. There are 3 bank statements to show payments to Eurolets from this tenant. These are dated 25/2/14, 27/5/14 and 25/6/14.

14. The third ASTA is in the name of Christopher Charles Ferguson and Natasha Lazic. It is dated 2 August 2014; it refers to Flat 2 and is referenced 2002. The date of expiry is given as 2 February 2015 but again there is a 'roll-over' clause. The PS indicates that these tenants vacated on 26 January 2015. There are 4 bank statements showing payments to Eurolets dated 26/8/14; 24/11/14; 24/12/14 and 29/1/15 which is just after the flat was vacated by the tenant.

15. The fourth ASTA is in the name of Folasade Rotibi and is dated 10 February 2015. It refers to Flat 2 'Ground' with a reference of 2000 and an expiry date of 9 August 2013. Again there is a 'roll-over' clause. The PS indicates that this tenant vacated on 30 July 2015. There are 3 bank statements indicating payments to Eurolets by this tenant. These are dated 24/2/15; 21/5/15 and 24/7/15.

16. The PS shows the next tenants as being Colin Brewster and Kiraanpreet Dhaliwell from 10 February 2015 to 21 July 2016. There is a deposit status document indicating payments to the tenants on 17/8/16 which is around 2 months after they are stated to have left the flat.

17. The next ASTA is in the names of James Veck Giloda and Maria Alejandra Herrera Tirad and is dated 17 August 2016. There is no flat number. The address is shown as '20 Danbury Street Ground' and a typed initial reference has been altered by hand to 2002. The date of expiry is shown as 16/2/17. There is a deposit status document dated 20/01/17 indicating a payment to one of the tenants. The PS indicates that these tenants vacated on 20 January 2017.

18. The following ASTA is in the name of Razvan Tocaci. It refers to Flat 2 at No 20 and is referenced 2002 with an expiry date of 12 February and a 'roll-over' clause. There is a bank statement showing payments Eurolets by 'TOCACI/RA from 28/12/17 to 5/5/17. The PS indicates that the tenant vacated on 6 May 2017. The final ASTA in the name of Ozan Mustafa and is dated 8 May 2017. It does not give a flat number and is just shown as 20 Danbury Street with a reference of 2002. The PS indicates that the tenant was still in occupation on 23 May 2017.

19. The Council refers to inconsistencies between the PS and the ASTAs. In particular it notes that although David Aiossa is stated to have lived in the flat until 29/9/13 the last bank payment was dated about 3 months earlier on 23/6/18. It also indicates that David Albiston is stated to have lived in the flat until 24/7/14. It notes that the tenancy agreement was altered by hand and that the last payment of rent, dated 25/6/14, was for a different amount than the agreed rent. Other rent payment records show discrepancies between the payments and the agreed rent.

20. The Council indicates that the ASTA for Folasade Rotibi did not mention the flat number and had a different reference, 2000 as opposed to 2002 for others. Similarly the ASTA in the names of Colin Brewster and Kiraanpreet Dhaliwell had yet a different reference, 2001 and there were no corroborating bank statements. It is indicated in the PS that Folasade Rotibi moved in on the same date as Colin Brewster and Kiraanpreet Dhaliwell. With regard to Razvan Tocaci the first payment is recorded as 28/12/16 whereas the move in date was around 6 weeks later on 12/02/17. It is stressed that no Council Tax bills (effective from 16/6/2014) were submitted as evidence and no utility bills.

21. The case officer's report indicates that he carried out a visit to the flat and was informed by the occupant that it had been booked on Airbnb from 27/7/17 to 30/7/17. The Council thus contends that at that time the flat was let out on a short term let and was not in Class C3 residential use. However, this was after the date of the LDC application and is not included in the relevant 4 year period.

### **Conclusion**

22. From the above information relating to the ASTAs and other supporting information I consider that, on the balance of probability, the appellant company has shown that Flat 2 at No 20 had been in continuous Class C3 residential for the relevant 4 year period from 8 June 2013 to 8 June 2017.

23. I acknowledge that there are some gaps in the evidence and that some of the reference numbers are different and that not all of the ASTAs refer specifically to Flat 2 at No 20. However, taken as a whole it seems to me that the evidence submitted is sufficiently precise and unambiguous to prove the appellant company's case. Where the ASTAs do not refer to Flat 2 they either have a reference or relate to 20 Danbury Street 'Ground'.

24. I also acknowledge that the bank statements do not provide a comprehensive record for the period. However, there are examples of payments which link the persons named with number 20 and the relevant ASTA. In the case of payments by tenant Rottibi for example there are payments made during the period of the relevant ASTA which specifically relates to No 20 'Ground'. I noted this particular unit during my visit and the plan shows the one bedroom flat on the ground floor.

25. The periods between tenancies are relatively short and of lengths which can normally be expected between tenancies. There are no unexplained long gaps in occupancy and the AirBnB dates identified by the Council are after the date of the LDC application.

26. For the above reasons I consider that the Council's decision not to issue a LDC for this unit was not well-founded. The appeal therefore succeeds and a LDC will be issued.

### ***Appeal B - Ref: APP/V5570/X/17/3181737: Flat 3, 20 Danbury Street***

27. Flat 3 is a 1 bedroom flat on the first floor and has a similar layout to Flat 2 on the ground floor. The submitted plan shows a reception/kitchenette, a bedroom and

a rear bathroom. The flat is shown to have a total area of 40.23m<sup>2</sup>. On the appeal form the date of the LDC application was shown as 23 May 2017 and the PS is also dated 23 May 2017. However, the Council has referred to the application date as being 8 June 2017. I have taken the earlier date as being the start of the relevant 4 year period.

28. The PS dated 23 May 2017 indicates that there have been 3 sets of occupants between 29/9/12 and the 'present day', which, taken for the purposes of this appeal, would be 23/5/17. The PS is supported by two ASTAs in the names of Romana Karim and Arthur James Pugh and Kristen Farebrother and Krystyna Kanokova.

29. The first is dated 5 July 2014 and the submitted copy has had the address changed by hand from 'second' to first floor. It is referenced 2003 with an expiry date of 5 January 2015 and has a 'roll-over' clause. The PS indicates that the tenants moved out on 9 July 2015. There are bank statements showing payments to Eurolets by Karim R between 7/7/14 and 24/6/15 with references to 'Bills first floor 20 Dan'. There is also a deposit record repayment to each the tenant dated 9/7/15. The Council Tax banding is shown to have been effective since 16/6/14, just before this tenancy commenced.

30. The second ASTA is dated 14 August 2015 and is entitled '20 Danbury Street' Flat 3 with a reference of 2003; an expiry date of 13 February 2016 and a roll-over clause. The PS indicates that these were still in occupation on 23 May 2017. There are bank statements (26/8/15 and 2/11/15) showing payments by Farebrother K relating to 'Flat 3 20 Danbury' of £900. There is a further bank statement which does not identify the flat which shows payments from 25/8/15 by Kanokova K in the sums of £703 (25/8/15 to 29/3/16) and £800 (from 27/4/16 to 27/4/17). The ASTA for this tenancy showed a rental of £1603. The 26/8/15 and 2/11/15 payments of £900 plus the £703 payments add up to the total of the rent shown in the ASTA.

31. Thus, between 5 July 2014 and up until at least 27 April 2017 I consider that the evidence, on the balance of probabilities indicates that Flat 3 was in continuous use as a Class C3 residential unit. That leaves it necessary for the appellant to show that the flat was also in continuous use as a Class C3 residential unit between the 23 May 2013 (the relevant 4 year start date) and 5 July 2014.

32. The PS indicates that during most of this period (up until 21 June 2014) the flat was occupied by James Ellis and Amy Loxley. No ASTA is submitted for this period. There is however an e-mail from James Ellis to Eurolets to confirm that he and Amy Loxley would be vacating the flat on 21 June 2014. There is another e-mail from James Ellis to Eurolets dated 14 September 2014 thanking Sarah (Eurolets) for a reference and indicating changes to a name and a date. The change in date was for a 'move in date' 29/9/2014 to 29/09/12. The first date could not have been correct since it is after the flat was vacated. Thus it suggests that Ellis and Loxley moved into a Eurolet flat on 29/9/12, the date given in the PS.

33. On 20 May 2013 there is record of a payment by 'Ellis 2003' to Eurolets (UK) Ltd in the sum of £1300. The same amount is shown as being direct credit payments to Eurolets (UK) Ltd, 'Ref Ellis 2003' on 27/8/13 and 19/3/14.

34. The Council refers to the lack of an ASTA for Ellis and Loxley and indicates that at the time of the application it was not possible to prove the existence of this tenancy. It also indicates that there was a 1 month gap between the two tenancies above which did have ASTAs.

## **Conclusion**

35. I do not consider that a one month gap between the ASTAs is significant. However, like the Council, I query why there was no ASTA or any other comprehensive records to indicate the occupancy of James Ellis and Amy Oxley for the full period from 29 September 2012 to 21 June 2014. Having seen the full set of ASTAs for Flat 2, I find it unusual that the appellant company has not provided a copy of an ASTA for Flat 3 for this period.

36. I acknowledge that there is some evidence relating to the Ellis/Loxley occupation of the flat, for example an e-mail indicating a moving out date. There is also an e-mail relating to a reference being given and bank statements with a reference 2003, taken to mean No 20 Flat 3. However, in my view, this is not sufficiently precise and unambiguous to indicate that Flat 3 was continuously occupied for the relevant 4 year period from 23 May 2013 to 23 May 2017.

37. On the balance of probability I do not consider that Flat 3 at No 20 Danbury Street has been in continuous use as a Class C3 residential unit between 23 May 2013 and 23 May 2017. It follows that I consider the Council's decision not to issue a LDC to be well-founded. The appeal, therefore fails and a LDC will not be issued.

38. The appellant company is not precluded from re-submitting a LDC application for Flat 3 assuming that the necessary evidence is available. However, for this appeal the period needed to relate to a continuous period dating back from the date of the LDC application to the relevant date 4 years prior to the applications has not been conclusively shown.

## **Other Matters**

39. In reaching my conclusions in both of these appeals I have taken into account all of the other matters raised by the Council and by and on behalf of the appellant company. These include the background and planning history, the appellant's planning statements and occupancy histories; the submitted ASTAs; the Council's delegated reports and statements; the submitted plans and the photographic evidence. However, none of these carries sufficient weight to alter either of my conclusions on these two units and nor are any other factors of such significance so as to change any of my decisions.

## **Formal Decisions**

40. Appeal A is allowed and a Lawful Development Certificate is attached below.

41. Appeal B is dismissed.

*Anthony J Wharton*

Inspector



The Planning Inspectorate

## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2010: ARTICLE 35

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**IT IS HEREBY CERTIFIED** that on 8 June 2017 the development described in the First Schedule hereto in respect of the Flat specified in the Second Schedule hereto, was lawful within the meaning of section 191(1) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken against the use of the Flat and the use of the Flat was not in contravention of any enforcement notice which was in place at the time of the LDC application.

Signed

*Anthony J Wharton*

Inspector

Date: 23 October 2018

Appeal Reference: APP/V5570/X/17/3181740

### **First Schedule**

The use of the Flat for Class C3 residential use

### **Second Schedule**

Flat 2, Ground Floor, 20 Danbury Street, London N1 8JU

### **Notes:**

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended) and relates only to the use of Flat 2, No 20 Danbury Street, Ground Floor indicated on the attached plan.

It certifies that the use described in the First Schedule at the Studio/Flat specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of development described in the First Schedule and to the Flat specified in the Second Schedule. Any use of the Flat which is materially different from that described, or which relates to any other Flat may result in a breach of planning control which is liable to enforcement action by the local planning authority.

## Plan

This is the plan referred to in the Lawful Development Certificate dated 23 October 2018

*Anthony J Wharton* BArch RIBA RIAS MRTPI

Flat 2, Ground Floor 20 Danbury Street, London N1 8JU

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