
Appeal Decision

Site visit made on 3 July 2019

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2019

Appeal Ref: APP/N5660/X/18/3208792
152 Norwood Road, London SE27 9AZ

- 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 Mr Danish Hanif against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 18/01953/LDCE, dated 7 May 2018, was refused by notice dated 10 July 2018.
 - 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 described as "Continued use of the upper part as 3 self-contained flats".
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Reasons

2. The description of development on the application form, for which a certificate is sought, is not well expressed. First of all, a LDC sought under s191(a) of the Act is to ascertain whether the existing use was lawful "at the time of the application" and not "continued use" thereafter (see s191(4)). In addition, "upper part" of the property is insufficiently precise. What is addressed is the three upper floors. I therefore intend to adopt the description given on the appeal form, that is: "Use of the three upper floors at 152 Norwood Road as three self-contained flats".
3. For clarification, it should be noted that contrary to what is set out in the Introduction to the Appellant's case, this appeal is not against a refusal of planning permission and neither is it concerned with seeking retrospective planning permission. That being the case, conditions as addressed in section 3 of the Appellant's case are not relevant. The matter to be determined is simply whether at the date of the application, the use was lawful.
4. Clarification was sought from my office as to whether there was an enforcement notice in force at the property since the Appellant had indicated that there was on the appeal form, but the Council had said there wasn't on the questionnaire. This is important since a use cannot be found lawful if, at the time, there was an enforcement notice in force relating to the matter for which an LDC is sought. However, the Council has clarified that there is no such

- enforcement notice and it may be that some confusion had arisen due to a Planning Contravention Notice having been served.
5. For the appeal to succeed, the use as three flats would have had to have continued for a period of four years from commencement with no material change thereafter. The latest date that the use could have started would thus be 7 May 2014, that is four years before the date of the application. The appropriate test is "on the balance of probability" and not the more onerous "beyond reasonable doubt". Thus, not every avenue needs to be covered – rather the test is what is more likely than not to have occurred.
 6. The application form states that the use commenced on 1 February 2012. In support of this, two Statutory Declarations have been submitted, one from a Landlord's Portfolio Manager and one from a Letting Agent. These paint a clear picture that the three flats were formed in 2012 and that have been let from that date onwards. The latter, in particular, says the author has personally handled the lettings and management from 1 February 2012 to the present time and that the flats have been in continuous use. This sworn evidence, each one made as a solemn declaration under the 1835 Statutory Declarations Act with all that that implies, must carry substantial weight.
 7. In addition, the Appellant has provided a number of other documents including tenancy agreements for each of the flats dating from 2012, records of tenants' deposits, notes of service call outs, Energy Performance Certificates and Gas Safety Records. Although accepting that the documents span the majority of the required four-year period, the Council seems to discount the relevance of the tenancy agreements and service call outs on the basis that they largely show interactions between the letting agent and tenants and are not verifiable by the Council. However, I find no reason to do so.
 8. The government's Planning Practice Guidance (PPG) advises that if a local planning authority has no evidence itself, nor from any 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. The Appellant's evidence, comprising two properly sworn statements and a wealth of supporting documents, is clear and precise. The PPG does not suggest that it is necessary to produce evidence from an independent source.
 9. The only available contradictory evidence is that flats 1 and 2 were not registered for Council Tax until 2017. In my experience, it is not an unusual occurrence for a flat conversion not to be registered for Council Tax despite the need to do so. Indeed, in this case there is independent evidence in the form of Energy Performance Certificates indicating that the three flats were assessed in June 2014 with certificates issued for each on 7 July 2014. This clearly indicates that the flats were in existence at that time and negates any reliance being placed on the Council Tax records.
 10. The Appellant's evidence is that the flats have been in continuous use. Based on the evidence provided it seems to me highly likely that the use as three flats has continued since they were formed in 2012. Neither occupation, nor physical state alone is determinative of use, but both are relevant. Thus, even though there may have been periods of vacancy, for example between lets, it seems to me that there would have been no time when the Council would not

have been able to take enforcement action such that it could not count towards the rolling period of four years giving rise to immunity.

11. To require even more documentary evidence than has been provided when there is nothing of substance to cast doubt on the Appellant's version of events is, in my view, applying a more rigorous test than "balance of probability". I conclude that it is more likely than not that the three upper floors have been in use as three flats for a period in excess of four years prior to the date of the application.
12. For the reasons given above I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the three upper floors at 152 Norwood Road, London SE27 9AZ as three self-contained flats was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

Inspector

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 7 May 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and outlined in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken in respect of the use because the time for taking such action had expired (s191(2)(a) of the Act) and the use does not contravene the requirements of any enforcement notice in force (s191(2)(b) of the Act).

The use began more than 4 years before the date of the application and has continued thereafter.

B M Campbell

Inspector

Date 17 July 2019

Reference: **APP/N5660/X/18/3208792**

First Schedule

Use of the three upper floors as three self-contained flats

Second Schedule

Land at 152 Norwood Road, London SE27 9AZ

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land 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 the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, 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: 17 July 2019

by B M Campbell BA(Hons) MRTPI

Land at 152 Norwood Road, London SE27 9AZ

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Not to Scale

