Appeal Decision

Site visit made on 19 November 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2020

Appeal Ref: APP/T5150/X/19/3222785
250 High Road, London NW10 2NX

- 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 Saloria Investment against the decision of the Council of the London Borough of Brent.
- The application Ref: 18/1741, dated 4 May 2018, was refused by a notice dated 3 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 existing use as 5 self-contained flats (Use Class C3) at first and second floors.

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.

Application for costs

2. An application for costs was made by Saloria Investment against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Procedural Matter

3. The original application described the existing use for which a lawful development certificate was being sought as a ground floor A1 shop and first floor as C3-dwelling 5 self-contained flats. However, during the application process the appellant confirmed that the application related solely to the existing use of the five flats at first and second floors and not to the ground floor shop. The Council determined the application on that basis and so have I.

4. The appellant's original application included a statement setting out the evidence included within the application and in support of it. The statement referred to bank statements in a supporting appendix. However, it is clear from the Council Officer's report that the bank statements were not available to the Council when they made their decision. The appellant has subsequently confirmed that due to a technical error the appendix containing the bank statements had failed to be upload to the Council's system. The bank statements have been included as part of the appeal submission and the Council have had an opportunity to comment on them. The purpose of the

Certificate of lawfulness of existing use or development (LDC) procedure is to arrive at an objective decision based on the best facts and evidence available at the time the decision is taken. I have therefore taken all the evidence submitted with the application, including the omitted bank statements, into account in making my decision.

5. Section 191 (4) of the Town and Country Planning Act 1990 as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.

Reasons

6. The first and second floors of the building have been subdivided to create five flats. Each flat is equipped with some kitchen facilities and a bathroom. At the time of my site visit all were in occupation.

Main issue

7. In order for a LDC to be granted under section 191 of the 1990 Act, the burden of proving relevant facts in this appeal rests on the appellant, and the test of the evidence is the balance of probability. If there is no evidence to contradict or make the appellant's version of events less than probable and the appellant's evidence alone is sufficiently precise and unambiguous, a LDC should be granted.

8. The main issue is whether the Council's refusal to issue a certificate of lawfulness is well-founded. That turns on whether the appellant can demonstrate, on the balance of probability, the change of use to self-contained flats took place more than four years before the date of the application and continued without significant interruption thereafter so as to be immune from enforcement action. The relevant date in this instance being 4 May 2014 and the test applies to each flat.

9. Having regard to case law, a consideration is whether this building had been used as five self-contained flats throughout the whole of the four years, so that the planning authority could at any time during that period have taken enforcement action.

10. Furthermore, the change of use does not need to have been in the four year period immediately preceding the date of the LDC application, provided that there has been no subsequent change of use since that use became lawful.

Summary of cases

11. The appellant maintains that the flats were converted and completed in 2004 providing evidence from around 2006 to 2018 in the form of Council tax documents, tenancy agreements and bank statements to demonstrate the continuous use of five self-contained flats. In addition, some documents from the energy suppliers have been provided although these do not necessarily provide proof of occupancy. The Council do not consider that the appellant's evidence demonstrates a continuous use of the flats for at least four years, albeit their statement of case concedes that the original application was

seemingly able to demonstrate that Flat 1 of the premises has been in continuous use for a period in excess of four years. However, the Council did not take the bank statements into account and nor has any evidence been provided by them that would contradict or otherwise make the appellant's version of events less than probable.

Assessment of evidence

12. The appellant has provided copies of correspondence from London Energy relating to establishing new supplies for each individual flat. That correspondence is dated early 2005 and is therefore consistent with the appellant's date for the conversion taking place in 2004. Furthermore, there is correspondence with Brent Revenues and Benefits Services and Harrow Valuation Office relating to visits for new Council tax banding and clarification of occupancy of the flats dated 2006 for each of the flats. The date of this correspondence again is consistent with the conversion date.

13. The remaining evidence is in the form of tenancy agreements and bank statements. There are no utility bills, however the tenancy agreements make it clear that the tenant is responsible for payment of utilities and Council tax. I appreciate that in isolation the tenancy agreements do not provide proof of occupation. However, where there is corroborating evidence such as rent payments for the individual flats, it is in my view appropriate to attach significant weight to them. In particular, when the Council has not provided any evidence to the contrary.

Flat 1

14. There are tenancy agreements commencing August 2008 and a final assured shorthold tenancy agreement dated 25 November 2016. Whilst there is a lack of clarity in relation to the term of the tenancy and the precise flat reference of the agreement dated 14 May 2010, there is evidence of consecutive tenancy agreements commencing on 16 January 2012 through to November 2016. In addition, the agreements are corroborated by bank statements which show regular rent payments in relation to this flat being made between September 2010 and 16 December 2014. This evidence demonstrates continuous occupancy for the relevant four year period on the balance of probability.

Flat 2

15. There are 12-month tenancy agreements commencing August 2009 and August 2010 and an assured shorthold tenancy agreement dated 8 September 2014 which it is indicated runs until 2018. In addition, the bank statements show that regular rent payments were made for this flat between September 2010 and January 2015. This evidence demonstrates continuous occupancy for a four year period.

Flat 3

16. There are two short term tenancy agreements. One is dated August 2009 and the other July 2010. From March 2012 there are continual 12 month agreements running through until 2018. Regular payments of rent are identifiable to this flat dating from 11 May 2011 until December 2014.

Flat 4

17. There are short term agreements spanning from August 2009 until August 2011 and an assured tenancy dated 30 January 2013. Further agreements are dated November 2015 and March 2017. The bank statements show rent payments identifiable to this flat from May 2011 until January 2015.

Flat 5

18. There are short term tenancy agreements spanning from July 2008 until a final agreement dated 23 August 2010 and a security deposit dated August 2009. Again, the rent payments are identifiable between May 2011 until January 2015.

19. Whilst there appears to be some gaps in the tenancy agreements for Flats 4 and 5, it is clear from a clause in the agreements that when a tenant continues to occupy the property under the same contractual terms as the assured tenancy after the fixed term end date has passed, there is no need for a new agreement as it rolls forward on a monthly basis. This would provide a reasonable explanation for what appear to be gaps.

20. Whilst the appellant has provided a considerable amount of information, the corroborating evidence in the form of rent payments for Flats 3, 4 and 5 fall just short of demonstrating continuous occupancy for a four-year period. However, given the circumstances of this case, that would not necessarily mean that the local planning authority would not have been able to take enforcement action. Relevant factors in this case would be the physical evidence that the property has been converted to five separate and clearly identifiable living units and their individual occupation. Consequently, I am mindful that even if one of the flats was not occupied during a Council site inspection, it would still be possible to identify the use to which the premises were being put and, if expedient, to initiate enforcement action against it.

21. Consequently, I am satisfied that the evidence when taken in the round, is sufficiently precise and unambiguous. Bearing in mind the relevant test of the evidence is on the balance of probability, with no evidence from the Council that would contradict or otherwise make the appellant's version of events less than probable, I consider that the appellant has made his case.

Conclusion

22. Thus, for the reasons given above, I conclude, on the evidence now available, that the Council's reason for refusal to grant a lawful development certificate in respect of the use of the first and second floors of 250 High Road, London as five self-contained flats was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Elizabeth Pleasant

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 4 May 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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:

On the balance of probability the use commenced more than four years prior to the date of the application for the Lawful Development Certificate and continued substantially uninterrupted thereafter throughout the relevant period.

Signed

Elizabeth Pleasant

INSPECTOR

Date: 10 January 2020
Reference: APP/T5150/X/19/3222785

First Schedule

Use of first and second floor of property as five self-contained flats (Use Class C3)

Second Schedule

Land at 250 High Road, London NW10 2NX

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated:10 January 2020

by Elizabeth Pleasant DipTP MRTPI

Land at: 250 High Road, London NW10 2NX

Reference: APP/T5150/X/19/3222785

Scale: Not to Scale

PROJECT 250A HIGH ROAD,WILLESDEN, NW10 2NX	DATE 31.01.2018	DRAWN BY LI	REVISION	DESCRIPTION	BY	DATE
	SCALE 1:1250@A4	CHECKED BY LV				
DRAWING TITLE LOCATION PLAN			DRAWING NO. 180104-00-P1	REVISION		

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