



Appeal Decision

Site visit made on 5 February 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2020

Appeal Ref: APP/A5270/X/18/3215013
28 Nimrod Close, Northolt UB5 6JX

- 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 Ms Prema Gopal against the decision of the Council of the London Borough of Ealing.
 - The application Ref 181679CPE, dated 11 April 2018, was refused by notice dated 13 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 "Use of 28 Nimrod Road as 2 flats, 1x1 bed on first floor and 1 x studio in loft, continuous use for more than 4 years".
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Decision

1. The appeal is dismissed insofar as it relates to the 1 bedroom flat on the first floor. The appeal is allowed insofar as it relates to the studio flat in the loft and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Preliminary Matters

2. It is evident from the Council's statement that it does not dispute that the original layout of the building was as two self-contained flats at ground and first floor levels, of which No 28 was the first-floor unit. From the evidence before me it would also appear to be agreed by the parties that the creation of the studio flat has been facilitated through the development of a loft extension¹.
3. The description of use for which an LDC is sought, erroneously refers to "Nimrod Road" instead of "Nimrod Close". I am satisfied that this error can be corrected without resulting in injustice to the parties.

Reasons

4. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force (s191(2)). I have not been told that there was any extant enforcement notice relating to the property at the time of this application.

¹ A Building Regulation completion certificate for a loft conversion is dated 4 July 2011.

Accordingly it is necessary to consider whether, on the balance of probability, the use of the building for two flats has continued for a period of four years or more prior to the date of the application, therefore from or before 11 April 2014, so as to be immune from enforcement.

5. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued, without any material break in occupation, for the aforementioned four-year period.
6. The appellant has submitted various information in support of the application. These documents include tenancy agreements with an intermediary letting agency, Gold Estate Agents Ltd, and between the same agency and an individual tenant, under a sub-letting arrangement, dating from 2011. Copies of bank statements are also provided, dating back to the same time, which record payments of rental income to the appellant.
7. The 2011 tenancy agreement between the letting agency and the appellant cites the monthly rental amount that would be payable in relation to 28 Nimrod Close². The appellant has provided an almost continuous record of monthly bank statements covering the period from June 2011 to February 2018. This information indicates that the agreed monthly rental amount was regularly received from June 2011 until September 2016, with the amount appearing to increase marginally from October 2016.
8. A further tenancy agreement dated in 2016 between the appellant and the aforementioned letting agency, cites a higher monthly rental for 28 Nimrod Close³. Whilst the tenancy agreements provided do not distinguish between the respective individual addresses of the first floor and studio flats, the respective rental amounts for each flat appear consistently on the appellant's bank statements after this date, indicating that the two flats were being rented out concurrently from 2016. In addition the name of the occupier of the studio flat and the period of his tenancy there, as identified in email correspondence⁴, is consistent with the 2011 tenancy agreement with the letting agency.
9. Therefore, although the specific flats are not identified on the aforementioned tenancy agreements or on the bank statements, the regular receipt of the respective rental amounts from the letting agency, which correspond to the values in the tenancy agreements, weighs significantly in favour of the proposition that the studio flat was made into a separate unit of accommodation in 2011.
10. Furthermore the regular receipt of payments by the appellant weighs significantly in favour of the proposition that the same flat has been in continuous occupation between 2011 and 2018, when it would appear, from the aforementioned email correspondence with the appellant, that the tenant in question moved away from the property.
11. In terms of evidence weighing against the application, it is apparent that the tenancy agreement records for the respective flats are incomplete. Furthermore the Council raises the concern that the agreements, and electricity installation certification, fail to distinguish the respective units, each simply referring to 28 Nimrod Close as a single property. The Council also points out

² Dated 13 June 2011 - monthly rental income cited as £650

³ Dated 12 September 2016 - monthly rental income cited as £830

⁴ Dated 25 March 2018

that the tenancy agreements are not witness signed and that Council tax payments have not been made in relation to the studio flat. In addition there has been no sworn evidence provided in support of the appellant's case.

Studio flat conclusion

12. In terms of the studio flat, when looked at in the round, I consider that the shortcomings identified above are outweighed by the evidence of regular rental payments in relation to that unit; the identification of a specific occupying tenant there, together with the aforementioned email which serves to corroborate the tenancy period. Furthermore, it appears that the studio tenant has witness signed a separate tenancy agreement in relation to the first floor flat, shortly before the end of his own tenancy in March 2018.
13. I find this evidence to be sufficiently precise and unambiguous and, to my mind, indicates that it is more likely than not, that the studio flat has been occupied continuously over the required 4-year period. The Council has referred to the fact that the studio flat was advertised for rent on 31 March 2018 as evidence that it was not occupied in the period leading up to the application date. However, this would not be a pre-requisite as any 4-year period of continuous use prior to the application date would be sufficient to accrue lawfulness.

First-floor flat conclusion

14. In terms of the first floor flat, although the Council would appear to accept that this is original, I am mindful that s55(3)(a) of the Act states that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. It therefore follows that when the studio flat was created, the residual first-floor flat also became a new unit of accommodation, which would have required planning permission.
15. The appellant states that she occupied the first floor flat until moving away in August 2016, after which the flat was rented out. Whilst the 2016 tenancy agreement and the receipt of regular monthly rental payments thereafter would support the claim that the flat was rented out from then until early 2018, there is a lack of evidence before me to support the proposition that the unit has been in continuous residential use, without any material interruption, in the period before it was rented out in September 2016. Accordingly I am unable to conclude, on the balance of probability, that this unit has remained in continuous residential use for the required 4-year period.
16. I am mindful that planning practice guidance states "*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.*"
17. Despite the Council not providing any different, detailed information to contradict the appellant's own evidence, for the above reasons I am not persuaded that, overall, the appellant's evidence is sufficiently precise and unambiguous to demonstrate that the 'new' first-floor flat is lawful.

Overall Conclusion

18. S.191(4) allows the local planning authority to modify the terms of the application, giving a certificate in somewhat different terms so as to accord with the facts and evidence, rather than an outright refusal. The Secretary of State or Inspector can exercise the same power in s.191(4), on appeal, as the local planning authority has on the application.
19. Therefore for the reasons given above, and having considered all of the documentation provided by the appellant, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "Use of 28 Nimrod Close as 2 flats, 1x1 bed on first floor and 1 x studio in loft" at 28 Nimrod Close, Northolt UB5 6JX was well-founded insofar as it relates to the first floor flat only.
20. However, insofar as it relates to the studio flat in the loft, I conclude that the Council's refusal to grant a certificate of lawful use or development was not well-founded. The appeal succeeds to that extent. I will exercise, accordingly, the powers transferred to me under section 195(2) of the 1990 Act as amended, and grant a certificate relating to that part.

Roy Merrett

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 April 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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:

The appellant has shown, on the balance of probability, that the use of the part of 28 Nimrod Close, Northolt known as the studio flat in the loft changed to use as a self-contained residential flat before 11 April 2014 and was used continuously and without significant interruption for at least four years thereafter.

Signed

Roy Merrett

Inspector

Date: 19th February 2020

Reference: APP/A5270/X/18/3215013

First Schedule

1 studio flat in the loft

Second Schedule

Land at 28 Nimrod Close, Northolt UB5 6JX

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: 19th February 2020

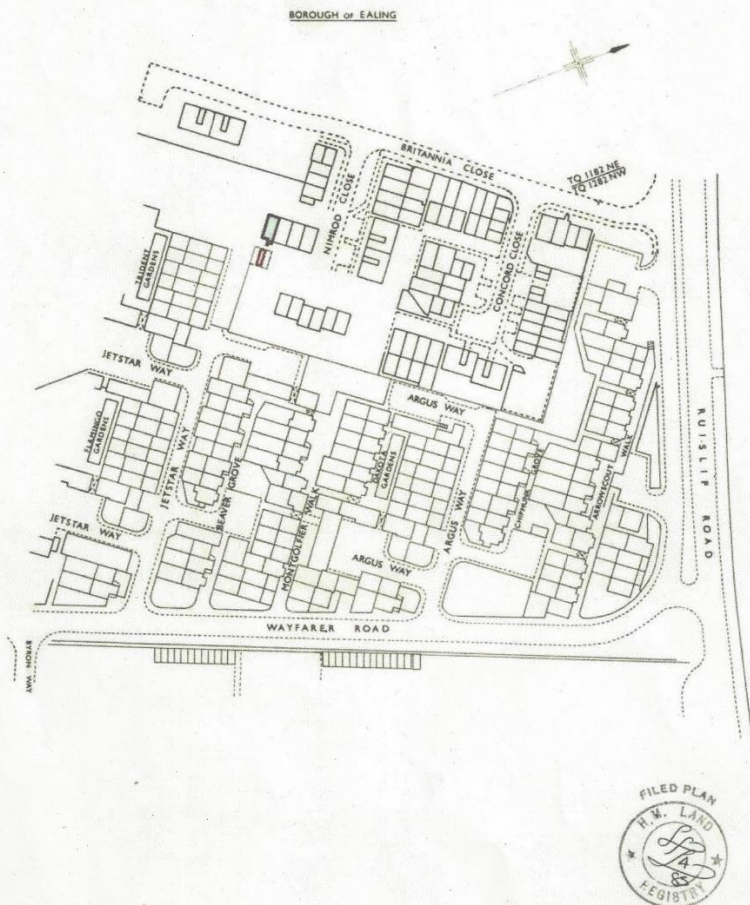
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Land at: 28 Nimrod Close, Northolt UB5 6JX

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Scale: Not to Scale

H.M. LAND REGISTRY		TITLE NUMBER	
		NGL513310	
ORDNANCE SURVEY PLAN REFERENCE	COUNTY GREATER LONDON	SHEET	NATIONAL GRID TQ 1282
			SECTION H
Scale: 1/1250		© Crown Copyright 1983.	



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