



Appeal Decision

Unaccompanied site visit made on 25 February 2020

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 4 March 2020

Appeal Ref: APP/Q5300/X/19/3235934

193 Hedge Lane, London, N13 5BZ

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawful Use and Development ("CLUD").
- The appeal is made by Mrs M. Kernagham ("the Appellant") against the decision of the Council of the London Borough of Enfield ("the Council").
- The application Ref 19/02247/CEU, dated 18 June 2019, was refused by notice dated 23 August 2019.
- The application was made under Section 191(1)(a) & 191(1)(b) of the 1990 Act.
- The use and development for which a CLUD is sought is the conversion of a single family dwelling-house into 1 x 2-bed & 1 x 3-bed self-contained units involving conversion of garage into a habitable room involving alterations to front elevation, single-storey side extension, extension to roof at side to form gable end with rear dormer and front rooflights.

Summary of Decision: The appeal is allowed, and a CLUD is issued, in the terms set out below in the Formal Decision.

Procedural Matters

1. The Council do not dispute that the operational development referred to in the application is lawful. Accordingly, a Certificate of Lawfulness in respect of those matters should be granted.
2. In my Appeal Decision I will refer to:
 - a) The building containing the flats known as Nos. 193 and 193A as "the Property".
 - b) The ground floor flat within the Property as No. 193.
 - c) The flat on both the first and second floor levels within the Property as No. 193A.
3. The appeal application was made on 18 June 2019. The Appellant has to show, on the balance of probabilities, that the Property has been used as two flats from on or before 18 June 2015 ("the Relevant Date") and that the use has continued throughout the four year period up to 18 June 2019.

Background Matters

4. Lewis Berkley Building Control Limited ("Lewis Berkley") are approved Inspectors for the purposes of the Building Act 1984.

Application for costs

5. An application for costs was made by the Appellant against the Council. This application is the subject of a separate Costs Decision.

Reasons

6. It was clear from my site visit that there are two flats within the Property. Each flat is entered by a separate lockable door located within an enclosed porch. There are also separate doorbells for each flat.
7. No. 193 is a two bedroom flat occupied by the Appellant.
8. No. 193A is a three bedroom flat occupied by the Appellant's son and his friends.
9. On 29 January 2015 Lewis Berkley wrote to the Council and provided a Final Certificate confirming, amongst other things, the completion of the conversion of the Property to two flats.
10. The Appellant has provided various documentation which indicates, amongst other things:
 - a) Energy supplies for No. 193A between 19 March 2015 and 17 January 2019.
 - b) Energy supplies for No. 193 between 8 April 2015 and 28 February 2019.
11. The Council are concerned at the limited amount of information that has been submitted in support of the application. There are no Tenancy Agreements in this case because the occupant of No. 193A is the appellant's son and there is no formal agreement regulating his occupation of No. 193A. I do not find that surprising given their close family relationship. I have explained above that the two flats within the Property are physically independent of each other and the lack of a Tenancy Agreement does not alter my view on this matter. I have also noted the separate utility bills which support my view that the flats are functionally independent of each other.
12. I note that the works referred to in the Lewis Berkley Final Certificate refer to external works, but it also quite clearly states that it relates to the conversion of the former single family dwelling at the Property to two flats.
13. I am aware that the Valuation Office Agency have only banded the Property as two flats from 1 April 2017. No explanation has been provided as to why they were not banded before that date. This raises some concerns but on the balance of probabilities I am of the view that the use of the Property as two flats commenced before the Relevant Date and there is no evidence to suggest that the use has not continued until the date of the application.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a CLUD in respect of the conversion of the Property into two self-contained units involving:
 - a) The conversion of the garage into a habitable room;
 - b) Alterations to the front elevation;

- c) The erection of a single-storey side extension;
- d) The extension of the roof at the side to form a gable end;
- e) A rear dormer; and
- f) Front rooflights

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 and grant the Appellant a CLUD under Section 191.

Formal Decision

15. The appeal is allowed and attached to this Appeal Decision is a CLUD describing the extent of the existing use and development which is considered to be lawful.

Tim Belcher

Inspector

Certificate of Lawful Use and Development ("CLUD")

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

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 June 2019 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this CLUD, were lawful within the meaning of Section 191(2) of the 1990 Act, for the following reason:

1. The operational development referred to in the application was substantially completed more than four years before the application.
2. The flats at No. 193 and No. 193A were completed and occupied more than four years before the date that the application was made.
3. There has been no substantial break in the occupation of either of the flats in the four year period prior to the application date.

Accordingly, no enforcement action could be taken against these matters and they do not constitute a contravention of any requirement of any Enforcement Notice then in force.

Tim Belcher

Inspector

Date: 4 March 2020

Reference: APP/Q5300/X/19/3235934

First Schedule

The conversion of a single family dwelling-house into 1 x 2-bed & 1 x 3-bed self-contained units involving conversion of the garage into a habitable room involving alterations to front elevation, single-storey side extension, extension to roof at side to form gable end with rear dormer and front rooflights.

Second Schedule

193 Hedge Lane, London, N13 5BZ

NOTES

This CLUD is issued solely for the purpose of Section 191 of the 1990 Act.

It certifies that the use and operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under Section 172 of the 1990 Act, on that date.

This CLUD applies only to the extent of the use and operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use or 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.



Plan

This is the plan referred to in the CLUD dated 4 March 2020

by **Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)**

193 Hedge Lane, London, N13 5BZ

Reference: APP/Q5300/X/19/3235934

Do Not Scale

