
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: 9 March 2020

Appeal Ref: APP/Q5300/X/19/3229121

97 North Circular Road, London, N13 5EH

- 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 (CLU).
- The appeal is made by Chris Anthony Estates Limited ("the Appellant") against the decision of the Council of the London Borough of Enfield ("the Council").
- The application Ref 18/00419/CEU, dated 30 January 2018, was refused by notice dated 29 March 2018.
- The application was made under Section 191(1)(a) of the 1990 Act.
- The use for which a CLU is sought is five self-contained flats.

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

Procedural Matters

1. The Appellant has to show, on the balance of probabilities, that there have been five self-contained flats at 97 North Circular Road for four years prior to the date of the application. Accordingly, the use must have commenced on or before 30 January 2014 and continued throughout the four year period until 30 January 2018.

Reasons

2. I do not intend to repeat in detail the evidence that was submitted in support of the application and appeal.
3. I carried out a site visit on 25 February 2020 and was able to see the layout of the flats and was able to assess that these flats had been established for many years.
4. The Appellant has:
 - a) Provided details of when they first managed each of the flats at No. 97, which range between March 2006 and October 2007.
 - b) Provided letters from four of the current tenants confirming when they went into occupation of their flat, all of which pre-date 30 January 2014.
 - c) Explained that the flats have been let to tenants on housing benefits through the private sector housing section at the Council.
5. I am also advised that Council Tax records show five flats at No. 97 since 2013.

6. The Council have raised concerns that an Energy Performance Certificate dated 16 October 2008 covered the whole of the property whereas Energy Performance Certificates dated 6 November 2017 only covered four of the individual flats. No explanation for this has been provided as to why this is the case. None of the aforementioned Energy Performance Certificates were submitted to me. However, the Energy Performance Certificate dated 16 October 2008 predates the relevant period. Further, I am informed that the Valuation Office Agency have listed the flats since 19 March 2004 which clearly pre-dates the 2008 Energy Performance Certificate.
7. The Council have also suggested that there are a number of discrepancies with the documentation submitted and that the evidence submitted could not support the statement that No. 97 had been in use as five self-contained flats for a continuous uninterrupted period of at least four years. The Council have not specifically identified their evidential concerns. Having regard to the totality of the evidence before me I do not agree with the Council's assessment.

Conclusion

8. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a CLU in respect of the use of 97 North Circular Road, London, N13 5EH as five self-contained flats was not well-founded and that the appeal should succeed. Accordingly, I will exercise the powers transferred to me under Section 195(2) of the 1990 Act and grant the Appellant a CLU under Section 191.

Formal Decision

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

Tim Belcher

Inspector

Certificate of Lawful Use ("CLU")

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 30 January 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown cross-hatched in black on the plan attached to this CLU was lawful within the meaning of Section 191(2) of the 1990 Act, for the following reason:

On the balance of probabilities, the use of five self-contained flats at No. 97 has been carried on for four years prior to the application date without any significant interruption. Accordingly, no enforcement action could have been taken against the said use.

Tim Belcher

Inspector

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First Schedule

The use of the property described in the Second Schedule as five self-contained flats.

Second Schedule

97 North Circular Road, London, N13 5EH

NOTES

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

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 CLU 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 CLU dated (9 March 2020)

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

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Do Not Scale

