



Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 27 April 2020

Appeal Ref: APP/Q5300/X/19/3219901

107 Brownlow Road, Southgate, London N11 2BN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Nick Antoniou against the decision of the Council of the London Borough of Enfield.
 - The application Ref 18/03641/CEU, dated 19 September 2018, was refused by notice dated 16 November 2018.
 - The application was made under section 191(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is "use of property as 2 x 2 bed self-contained flats".
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Preliminary Matters

1. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. Neither the appellant nor the Council has objected to the appeal proceeding on this basis.
2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.
3. Section 171B(2) of the 1990 Act as amended states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Each flat is classed as a single dwelling for the purposes of s171B(2). Uses are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired¹.

¹ Section 191(2)(a) of the 1990 Act as amended.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

Evidence

5. The appeal property is a two-storey, semi-detached house which has been converted into two self-contained flats, known as 107 (ground floor) and 107a (first floor) Brownlow Road. The appellant has submitted a Statutory Declaration, dated 5 July 2017, stating that the conversion into two self-contained flats was completed by May/June 2012 and the flats have been occupied since that date.
6. In relation to No 107, the tenant has provided a Statutory Declaration stating that they have occupied the ground floor flat since 1 February 2014. This statement is supported by a copy of the Tenancy Agreement between the signatory of the declaration and the appellant, as landlord, for a period of 12 months from 1 February 2014. In addition, there is a copy of an earlier Tenancy Agreement for a period of 12 months, dating from 7 June 2012. This is in the name of two different tenants who appear to have been the previous occupants of the ground floor flat.
7. In respect of No 107a, a further Statutory Declaration, submitted by a tenant and dated 5 July 2017, states that they had been living in the first floor flat since 21 July 2012. There is a supporting Tenancy Agreement, dated 21 July 2012, for a fixed term of 6 months and a copy of the tenant's rent book showing monthly payments from 21 July 2012 up to 8 July 2017.
8. There is a subsequent Tenancy Agreement for No 107a, in the name of a different tenant, dated 5 July 2017, for a period of 12 months and 10 days. This is supported by bank statements showing monthly rental payments from that tenant, dating from 29 September 2017. It is stated that this tenant occupied the first floor flat when the previous tenant, who signed the Statutory Declaration, moved out.
9. The appellant has provided additional evidence including Gas Safety Records as follows: 107/107a dated 25 May 2012, 107a/b dated 9 Sept 2013, 107 dated 30 Aug 2014, 107a dated 2 August 2014, Flat a/b 15 Sept 2015, 107/107a dated 29 Sept 2016, 107/107a dated 29 September 2017, and 107/107a dated 13 November 2018. Also, an electrical installation certificate for No 107 dated 26 June 2012 has been provided.
10. A transaction history relating to energy charges for No 107, in the name of the corresponding tenant, shows payments from 2 July 2015 to 23 April 2017 and from 6 December 2017 to 6 September 2019.
11. I have also been provided with gas and electricity bills relating to No 107a dated; 17 October 2012 (gas), 17 April 2013 (electricity) and 12 May 2017 (gas and electricity), all in the name of the corresponding tenant. Partial copies of electricity bills for No 107a show payments were made on 23 August 2017, 30 Mar 2018, 29 May 2018, 4 December 2018, 18 June 2019, 29 August 2019 and 2 October 2019 by the subsequent tenant.

12. Finally, bank statement have been submitted showing regular rental payments from the relevant tenants of both flats; February to September 2019 for No 107, and 5 January to 2 November 2019 for No 107a.
13. The Council has cited evidence that it considers contradicts that of the appellant. This includes information from electoral services, which advised the property had been recorded on the electoral register as one dwelling. The number of persons registered during the relevant period varied from between 2 and 5. Records from the Valuation Office Agency (VOA) show that the property had only been 'banded' as one dwelling at 107 Brownlow Road. The Post Office address finder only listed one property and made no reference to flats.

Analysis

14. It is necessary to consider whether the appellant has shown, on the balance of probability, that the material change of use to two dwellinghouses occurred on or before 19 September 2014², and that each unit has been occupied for residential purposes after the date of change without any significant interruption.
15. The Statutory Declarations provided by the appellant, and the tenants, are properly made and authorised. These carry significant weight as sworn evidence. Crucially, the sworn evidence is corroborative and confirms the date of conversion and occupation of the property as two self-contained flats. The declarations from the tenants are supported by Tenancy Agreements. While these, in themselves, do not show occupancy, the utilities bills and transaction histories provided strongly suggests the flats were occupied at those dates. The bills are in the name of the relevant tenants. While the bank statement are limited in terms of the dates, and some postdate the application, they show that rental payments were being made by the tenants previously identified.
16. The Council's evidence suggests that numerous persons have lived at the property. However, no names are provided so I am unable to assess whether this shows the named tenants were not registered. There is no dispute that the conversion has taken place, so the registration of No 107 as a single property is probably incorrect. The electoral register simply suggests that other people were living at the premises. Similarly, the VOA banding and Post Office records are likely to be incorrect. As explained, the Council is not denying the conversion took place.
17. The Council suggests it would expect official documentation to be provided, such as building control or housing department letters. I agree these would be helpful, but not crucial to the appellant's case.
18. Overall, I am satisfied that the appellant's evidence is sufficiently precise and unambiguous. The sworn evidence is backed up by records showing the flats were occupied by the identified tenants during, and prior to, the relevant period. There is nothing to suggest that either of the flats was vacant for significant periods of time, to the extent that the Council would not have been able to take enforcement action during those periods.

² Four years prior to the date of application.

19. Therefore, I find that the appellant has shown, on the balance of probability, that the material change of use to two dwellinghouses occurred on or before 19 September 2014, and that each unit has been occupied for residential purposes after the date of change without any significant interruption.

Conclusion

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of use of property as 2 x 2 bed 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.

Decision

21. 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.

Debbie Moore

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 19 September 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:

The appellant has shown, on the balance of probability, that the material change of use to two dwellinghouses occurred on or before 19 September 2014, and each unit has been occupied for residential purposes after the date of change without any significant interruption.

Signed

Debbie Moore

Inspector

Date: 27 April 2020

Reference: APP/Q5300/X/19/3219901

First Schedule

Use of property as 2 x 2 bed self-contained flats

Second Schedule

Land at 107 Brownlow Road, Southgate, London N11 2BN

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 /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 Lawful Development Certificate dated: 27 April 2020

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Land at: 107 Brownlow Road, Southgate, London N11 2BN

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Scale: NTS

