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# Appeal Decision

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

**an Inspector appointed by the Secretary of State**

**Decision date: 01 May 2020**

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**Appeal Ref: APP/Q5300/X/19/3227105**  
**226 Green Street, Enfield, EN3 7NB**

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
  - The appeal is made by Ms Rukhsana Nazir against the Council of the London Borough of Enfield.
  - The application Ref. 18/00945/CEU is dated 20 February 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 described on the application form as "conversion of existing house to two flats [and] conversion of annexe to a 2 bed residential unit".
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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. Both the appellant and the Council have agreed to the appeal proceeding on this basis. The Council also suggested that the appellant provides photographs to confirm the layout of the flats. This information was not provided but, given the nature of the appeal and the limited matters in dispute, I am satisfied that photographs are not necessary.
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.
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. 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 expired<sup>1</sup>.

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<sup>1</sup> Section 191(2)(a) of the 1990 Act as amended.

4. I have taken the address of the property, given in the banner heading above, from the application form.

### **Main Issue**

5. As the Council failed to determine the application, what must be considered is whether the appellant has shown on the balance of probability that the development would have been lawful at the date of the application and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

### **Reasons**

#### *Evidence*

6. The appeal relates to a two-storey, semi-detached house which has an outbuilding in the rear garden. The plans, submitted with the application, indicate that the house has been subdivided into two flats, each with one bedroom (known as Nos 226 and 226a, which occupy the ground and first floors respectively). The plan relating the outbuilding indicates that it comprises two bedrooms, a lounge/diner, a kitchen and a shower room. The outbuilding is known as No 226b.
7. The appellant has submitted a Statutory Declaration, dated 16 February 2018, in which it is stated that the property has been in use as two separate dwellings since October 2006. It is also stated that the 'Granny Flat' has been in continuous use as a two-bed flat since March 2008. It is confirmed that all three dwellings have been occupied independently and by unrelated persons. The statement has been signed and witnessed under the Statutory Declaration Act 1835.
8. In a supporting statement, the appellant indicates that the house was subdivided sometime in 2004 and was available for occupation as two separate units from August 2006. It is stated that the first tenant moved into No 226a in October 2006 and remains in the property to date.
9. Other documentation includes quotations and an invoice for separate gas and electricity supplies at the house<sup>2</sup>; gas and electricity bills addressed to the appellant at No 226a, dated October and November 2006, July 2008, November 2008, February 2009 and March 2009<sup>3</sup>; and a water bill to a named tenant at No 226a, dated December 2008<sup>4</sup>. Also supplied as evidence are copies of housing benefit landlord schedules, showing from regular payments from December 2006 to May 2017<sup>5</sup>.
10. I understand that the ground floor flat, No 226, was initially occupied by the appellant. Various utilities bills addressed to the appellant, dated March 2006 and February 2008, have been supplied<sup>6</sup>. It is explained that the appellant moved out of No 226 in March 2008 when the premises was let. Official documents addressed to the tenant have been submitted, dated May 2008,

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<sup>2</sup> Exhibits A and B.

<sup>3</sup> Exhibits C, E and N.

<sup>4</sup> Exhibit F.

<sup>5</sup> Exhibit D.

<sup>6</sup> Exhibit G.

February 2009 and April 2012<sup>7</sup>, along with utility bills dated November 2014, May 2015, November 2016 and May 2017<sup>8</sup>.

11. I understand that the former outbuilding, No 226b, was occupied by the appellant in March 2008, after vacating the ground floor flat. This building already had a separate electricity supply and an additional gas supply was applied for in February 2008<sup>9</sup>. Various documents addressed to the appellant at No 226b are supplied; including utilities bills dating from October 2008<sup>10</sup>.

### *Analysis*

12. It is necessary to consider whether the appellant has shown that the material change of use to two flats and a two-bed residential unit occurred on or before 20 February 2014<sup>11</sup>, and that each unit has been occupied for residential purposes after the date of change without any significant interruption.
13. The Statutory Declaration provided by the appellant is properly made and authorised. It carries significant weight as sworn evidence. Crucially, this statement confirms that all three units have been occupied, independently, for residential purposes since at least 2008. The supporting information, detailed above, provides some corroborative evidence.
14. The Council states that it is not in possession of any evidence which would reasonably contradict the appellant's case. From all that I have read, there is no reason for me to disagree with the Council's position. 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 any of the flats were vacant for significant periods of time, to the extent that the Council would not have been able to take enforcement action during those periods.
15. Therefore, it is considered that the appellant has shown, on the balance of probability, that the development would have been lawful at the date of the application and was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

### **Conclusion**

16. For the reasons given above I conclude, on the evidence now available, that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

### **Decision**

17. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operations which are considered to be lawful.

*Debbie Moore*

Inspector

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<sup>7</sup> Exhibits H, H1 and K.

<sup>8</sup> Exhibit J.

<sup>9</sup> Exhibit M.

<sup>10</sup> Exhibits P, R and S.

<sup>11</sup> Four years prior to the date of application.

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## 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

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**IT IS HEREBY CERTIFIED** that on 20 February 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 flats and a two-bed residential unit occurred on or before 20 February 2014, and that each unit has been occupied for residential purposes after the date of change without any significant interruption.

Signed

*Debbie Moore*

Inspector

Date: 01 May 2020

Reference: APP/Q5300/X/19/3227105

### ***First Schedule***

Conversion of existing house to two flats [and];  
Conversion of annexe to a 2 bed residential unit

### ***Second Schedule***

Land at 226 Green Street, Enfield, EN3 7NB

## 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: 01 May 2020

**by Debbie Moore Bsc(HONS), MCD, MRTPI, PGDip**

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**Reference: APP/Q5300/X/19/3227105**

Scale: NTS

