



Appeal Decision

Site visit made on 18 August 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2020

Appeal Ref: APP/T5150/X/20/3244211
154A Harlesden Road, London NW10 3RE

- 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. Ebele Muorah against the decision of the Council of the London Borough of Brent.
 - The application Ref 19/3992, dated 7 November 2019, was refused by notice dated 2 January 2020.
 - 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 described as: Change of a dwellinghouse into two flats.
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Decision

1. 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.

Application for Costs

2. An application for costs was made by Ms. Ebele Muorah against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

4. The appellant states the property has been in use as two flats since September 2015 and that a partition was erected at the same time. The Council's evidence does not dispute this claim, indicating that no enforcement action may be taken, pursuant to section 171B(2) of the 1990 Act. However, the Council's decision states that the existing use as two self-contained flats is not lawful as it contravenes an enforcement notice which requires the use of the property as two flats to cease.

5. The Planning Practice Guidance¹ states that an enforcement notice is not in force where an enforcement appeal is outstanding or an appeal has been upheld and the decision has been remitted to the Secretary of State for redetermination, but that redetermination is still outstanding.
6. From the evidence available to me, an enforcement notice issued by the Council on 24 July 2017, required (inter alia) the use of the property as flats to cease. An appeal decision (Ref: APP/T5150/C/17/3182904) dated 22 August 2019 purported to uphold that enforcement notice. However, that appeal decision has been the subject of an appeal to the High Court under section 289 of the 1990 Act.
7. As a consequence of the section 289 appeal, the matter of the appeal against the enforcement notice was remitted to the Secretary of State for redetermination on 15 January 2020. Therefore, on the date of this LDC application ie 7 November 2019, there was no enforcement notice "in force" for the purposes of section 191(2)(b) of the 1990 Act, and, the enforcement notice is of "no effect" pending the final determination of the appeal as per section 175(4) of the 1990 Act.

Conclusion

8. 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 a change of a dwellinghouse into two 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.

L Perkins

INSPECTOR

¹ Lawful development certificates. Paragraph: 003 Reference ID: 17c-003-20140306

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 7 November 2019 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:

No enforcement notice was in force on the date of the application.

Signed:

L Perkins
INSPECTOR

Date: 10 September 2020
Reference: APP/T5150/X/20/3244211

First Schedule

Change of a dwellinghouse into two flats

Second Schedule

Land at 154 Harlesden Road, London NW10 3RE

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations 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: 10 September 2020

by **L Perkins BSc (Hons) DipTP MRTPI**

Land at: 154A Harlesden Road, London NW10 3RE

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Scale: Note to scale

