



Appeal Decision

Site visit made on 10 August 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/Q5300/X/20/3244381
13 Fotheringham Road, Enfield EN1 1QF

- 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 Mr George Nartey against the decision of the Council of the London Borough of Enfield.
 - The application Ref 19/02985/CEU, dated 27 August 2019, was refused by notice dated 22 October 2019.
 - 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 the use of the property as 2 x self contained flats (1 x 1-bed and 1 x 3-bed).
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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 proposed operation which is considered to be lawful.

Preliminary Matter

2. I have used the description of the development as set out in the Council's Decision Notice. This is more concise than that contained in the application form.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) is not well-founded.

Reasons

4. The appeal building is a semi-detached property split into two flats, 13A and 13B. 13A on the ground floor is a one bedroom flat and 13B has three bedrooms and covers the two upper floors.
5. The relevant test of the evidence is 'on the balance of probability' (i.e. that it is more probable than not). 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 his evidence alone is sufficiently precise and unambiguous.
6. The appellant has submitted a sworn statement made by Mrs Beverley Marcus. She states that she lived in the ground floor flat with her family between

February 2008 and November 2017. This covers the period between September 2016 and August 2017, which the Council state is not accounted for for Flat 13A. She also states that there were tenants in the upstairs flat, who were there prior to her moving in and remained there throughout her occupation of the ground floor flat.

7. The appellant states that the flats have been occupied since 2003 to the present day with a total of three families occupying Flat 13A during this period and only one tenant occupying Flat 13B and remains so to this day.
8. The Council confirm that there is sufficient evidence that the property was in use as two flats between 2003 and 2013. Based on the extensive evidence submitted, I find no reason to conclude otherwise. The evidence needs to prove that, on the balance of probabilities, the property has been in use as two flats for the four-year period prior to the application being made. However, that is not to say any evidence supporting this use prior to the four-year period cannot be taken into account. As the evidence pertaining to the use of the flats between 2003 and 2013 clearly indicates that the flats were in use during that period, a material change in the use of the property to two flats had occurred and therefore accrued lawful status. Therefore, the question is whether a further material change of use from the two flats to some other use took place after 2013.
9. The evidence submitted regarding the flats post 2013 includes gas safety records for both Flat 13A and Flat 13B dated 2014, 2015, 2016 and 2017. Furthermore, there is a First Utility bill addressed to Flat 13A, dated 2014 and a Thames Water bill addressed to Flat 13A for 2014-2015. In addition, copies of Housing Benefit Notifications have been submitted for Mr Rencber of Flat 13A, dated 2019, and for Mr Keshinro for 2004, 2006, 2007, 2013, 2014, 2015, 2017, 2018 and 2019. Therefore, when read in conjunction with all of the evidence submitted in support of the proposal, there is no evidence that a material change of use of the flats to some other use took place after 2013.
10. I note that the two flats have only been registered for Council Tax since January 2018. However, that does not equate with them not being in use prior to this period. Indeed, the substantial evidence submitted by the appellant clearly indicates that they were.
11. Taking the above into account, I find on the balance of probabilities that the building has been in use as two flats continuously for the four-year period prior to the application being made and is therefore lawful.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Alexander Walker

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 27 August 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:

It has been demonstrated on the balance of probabilities that the property had been in continuous use as two, self-contained flats for a period of 4 years ending with the date of the application and had thereby become immune from enforcement action.

Signed

Alexander Walker
Inspector

Date 16 September 2020

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First Schedule

The use of the property as 2 x self contained flats (1 x 1-bed and 1 x 3-bed)

Second Schedule

Land at 13 Fotheringham Road, Enfield EN1 1QF

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 my decision dated: 16 September 2020

by **Alexander Walker MPlan MRTPI**

Land at: 13 Fotheringham Road, Enfield EN1 1QF

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Scale: Do not scale

