



Appeal Decisions

Site visit made on 19 October 2020

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

an Inspector appointed by the Secretary of State

Decision date: 30 October 2020

Appeal A: APP/C5690/X/19/3236836

23 Lincombe Road, Bromley BR1 5HJ

- 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 Mrs Tanya Erol against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/19/111749 dated 1 April 2019, was refused by notice dated 5 June 2019.
- 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 the use of a single-storey side extension as a separate self-contained one bedroom flat.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Appeal B: APP/C5690/C/19/3240045

23 Lincombe Road, Bromley BR1 5HJ

- The appeal is made under section 174 of the 1990 Act as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Tanya Erol against an enforcement notice issued by the Council of the London Borough of Lewisham.
- The enforcement notice was issued on 19 September 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Property from a single family dwelling house to two (2) self-contained residential dwelling units.
- The requirements of the notice are:
 1. Cease the use of the property known as 23a Lincombe Road as a self-contained residential flat.
 2. (a) Remove all kitchen fixtures and fittings including cookers, cooker hoods and kitchen cabinets from the flat known as 23a Lincombe Road;
(b) Create a permanent internal opening and access between the two units on the ground floor level.
 3. Remove all materials, debris, waste and equipment resulting from compliance with requirements 2a and 2b above.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal is allowed and the enforcement notice is quashed.

Appeal A: APP/C5690/X/19/3236836

Preliminary Matters

1. 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 appellant'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.
2. 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 expired¹.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded. It is necessary to consider whether the appellant has shown, on the balance of probability, that the material change of use of the side extension to a single dwellinghouse occurred on or before 1 April 2015², and that use continued after the date of change without any significant interruption.

Evidence

4. The appellant has submitted sworn evidence in the form of a Statutory Declaration. This states that the side extension, which is known as No 23A, has been used continuously and without interruption as a separate independent self-contained unit for more than four years prior to the date of the declaration.
5. Supporting information includes Tenancy Agreements for No 23A in the name of Mr and Mrs Vadeoglu for a period of 12 months from 1 August 2013 and a further 12 months from 1 April 2017. That tenancy ended in May 2018. A new Tenancy Agreement for six months, commencing May 2018, with a different named tenant has been submitted. There is a more recent Tenancy Agreement for 12 months commencing 10 January 2019 between the landlord and new tenants. An associated Council Tax bill in the new tenants' names, addressed to No 23a and dated 11 March 2019, has been provided.
6. Several documents relating to Council Tax and benefit claims have been submitted; many are addressed to E and/or U Vadeoglu at 23 Lincombe Road. These relate to the periods 2013/14, 2016/17 and 2017/18 and concern

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

² Four years prior to the date of application.

payments, reductions and changes of circumstance. One such invoice, dated 21 December 2017, specifies a 'vacation reduction'.

7. In addition, there is a letter from the Council, dated 4 December 2017, which states that the annex [No 23A] is separate from the main house and has been since 31 March 2017. A letter from the VOA, dated 13 May 2018, states the properties were rated separately from 2 January 2017. Separate bills to the appellant at No 23 have been supplied, albeit that property was reported to be empty from 2 January 2017 to 31 March 2018. However, the use and occupation of the main house is not at issue here as the LDC relates to the annexe.
8. Other evidence includes documents relating to the electoral register, dated March 2014, February 2015 and 2018, addressed to No 23 listing E and U Vadeoglu as the last known occupants, and a Fire Safety visit letter to Mrs Vadeoglu at No 23, dated 3 December 2014. DWP and Pension Service letters, dated September, October and December 2013 were sent to Mrs U Vadeoglu at No 23.
9. Utility bills have been submitted as follows: Virgin Media, dated August 2014, addressed to E Vadeoglu at No 23; Southern Electric annual bill 2013/14 to Mr and Mrs Vadeoglu at No 23, dated 14 August 2014; SSE letters to Mr Vadeoglu at No 23 concerning energy supplies and final balance 2014/2015; British Gas to Mrs Vadeoglu at No 23, dated 7 July 2015; SSE letter addressed to Mrs Vadeoglu at No 23 concerning 2015/16 discount and Ovo Energy, dated June and November 2015 and March 2017, addressed to U Vadeoglu at No 23.
10. In addition, mortgage documents addressed to the appellant at No 23 dating from Nov 2016 have been supplied. Utilities bills to the appellant at No 23 have been provided as follows: – 14 October 2014, 6 August 2015, 15 February 2017, 21 July 2017, 15 August 2017, 18 May 2018, 7 November 2017, 18 September and 7 November 2018 (water); 26 September 2016, 17 November 2017, 6 November 2018 (media); November 2016 and August 2017 (TV licence).
11. The Council counters that the majority of documents supplied relate to No 23 and not 23A Lincombe Road, so they were largely discounted. It is argued that the address on one of the Tenancy Agreements for Mr and Mrs Vadeoglu appears to have been tampered with, through the addition of an 'A' on the address line, and no Tenancy Agreements have been provided for the months between 2 August 2014 and 31 March 2017, which equates to a significant gap.

Analysis

12. The Statutory Declaration provided by the appellant is properly sworn and witnessed and carries significant weight. This clearly states how the premises has been used and occupied during the relevant period. There is no dispute that the extension was built prior to the relevant date and the Council has accepted that the subdivision occurred sometime before 31 March 2017³.
13. The Tenancy Agreements are incomplete, as the Council points out, and I accept that one of these appears to have been altered to suggest it always pertained to No 23A. However, the other evidence cannot be discounted.

³ Letter from the Council dated 4 December 2017, which states that the annex [No 23A] is separate from the main house and has been since 31 March 2017.

14. The utilities bills and other official documents show that Mr and Mrs Vadeoglu were living at No 23 between 2013 to 2017. Although No 23A is not specified on these documents, it is apparent from the other information addressed to the appellant, also at No 23, that there were two households at the address.
15. When Mr and Mrs Vadeoglu vacated the flat in May 2018, new Tenancy Agreements were in place which strongly suggests there was no significant interruption in occupancy. Although, one of the Council Tax letters suggests a 'vacation reduction', it does not specify that the premises was empty at that time.
16. The Council's own evidence is relatively limited. While some of the documents are challenged there is nothing before me that casts doubt on the appellant's version of events as detailed in sworn evidence. Overall, I consider the appellant's evidence to be sufficiently precise and unambiguous.

Conclusion

17. I find that the appellant has shown, on the balance of probability, that the material change of use of the side extension to a single dwellinghouse occurred on or before 1 April 2015, and that use continued after the date of change without any significant interruption.
18. 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 the use of a single-storey side extension as a separate self-contained one bedroom flat 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.

Formal Decision

19. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Appeal B: APP/C5690/C/19/3240045

Preliminary Matter

20. The appellant indicated that they did not wish to appeal on ground (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of the alleged breach. Nonetheless, their evidence includes that which was submitted in relation to Appeal A, the LDC appeal at the site. This constitutes a ground (d) appeal, which I am obliged to consider. The Council has seen and commented on the all evidence submitted and I have had regard to their comments. Therefore, I am satisfied that I can include this further ground of appeal without prejudice.

The appeal on ground (d)

21. The appeal site comprises an end-terrace house. A relatively large, single-storey extension has been erected in the side garden. This has been separated from the main house and now forms a self-contained flat, No 23a. The flat contains one bedroom with a shower room and a kitchen/dining/living area. I saw that the flat was occupied by a family at the time of my visit.

22. In order to succeed on ground (d), the appellant must show that there was a material change of use of the property to two self-contained residential dwelling units on or before 19 September 2015⁴ and that this use then continued for four years after the date of change without any significant interruption.
23. It is important to establish whether there was any period during the four years when No 23A was not physically occupied, even though available, when the Council could not have taken enforcement action against the use. Although the allegation also includes the original house, there is no dispute that this is an established dwellinghouse. As such, the occupier does not have to be continuously or even regularly present in order for it to remain in use as a dwellinghouse.
24. As set out above, I have found the appellant's evidence in relation to No 23A, the subject of the LDC appeal, to be sufficiently precise and unambiguous. The same evidence and test is applicable to the appeal on ground (d). Therefore, I am satisfied that the appellant has shown that there was a material change of use of the property to two self-contained residential dwelling units on or before 19 September 2015 and that this use then continued for four years after the date of change without any significant interruption.

Conclusion

25. For the reasons given above, I conclude that the appeal should succeed on ground (d). Accordingly, the enforcement notice will be quashed. In these circumstances the appeals on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Formal Decision

26. The appeal is allowed and the enforcement notice is quashed.

Debbie Moore

Inspector

⁴ Four years prior to the issue of the Notice.



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 1 April 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:

The appellant has shown, on the balance of probability, that the material change of use of the side extension to a single dwellinghouse occurred on or before 1 April 2015, and that use continued after the date of change without any significant interruption.

Signed

Debbie Moore

Inspector

Date: 30 October 2020

Reference: APP/C5690/X/19/3236836

First Schedule

The use of a single-storey side extension as a separate self-contained one bedroom flat.

Second Schedule

Land at 23 Lincombe Road, Bromley BR1 5HJ

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/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: 30 October 2020

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

Land at: 23 Lincombe Road, Bromley BR1 5HJ

Reference: APP/C5690/X/19/3236836

Scale: NTS

