



Appeal Decision

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

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Appeal Ref: APP/C5690/X/20/3248221

48 Brownhill Road, London SE6 2EJ

- 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 Stuart Williams of Figure Properties Limited against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/19/113675, dated 28 August 2019, was refused by notice dated 12 November 2019.
- The application was made under section 191(1)(a) of the 1990 Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is seven independent residential units¹.

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.

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 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*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 expired³. It is necessary to examine whether there was any period during the four years when any of the units were not physically occupied, even though available for occupation, when the Council could not have taken enforcement action against the use.

¹ The description is taken from the application form.

² S171B(2) applies to a change of use of part of a building to a single dwelling.

³ Section 191(2)(a) of the 1990 Act as amended.

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 occurred on or before 28 August 2015⁴, and that use continued after the date of change without any significant interruption, such that it would have been too late for the Council to take enforcement action.

Reasons

4. The appellant claims that the house was formerly a single dwelling, which was converted in March 2010. Each residential unit contains cooking, personal washing and toilet facilities and, thus, provides all the facilities required for day-to-day private domestic existence. It is maintained that each unit has been occupied since the conversion works were completed.
5. The appellant has submitted supporting evidence including invoices relating to the conversion works in 2010, Assured Shorthold Tenancy documents (ASTs) for each of the studios, inventory lists, digital photographs, landlord statements and a statement from the letting agent confirming their management of the property since at least January 2012.
6. The Council has re-considered its position in the light of further evidence submitted in support of the appeal. In particular, the Council highlights the additional ASTs, which cover some of the gaps previously identified, further landlord statements, which cover the period from at least 2012 to 2019 for each of the units, and related inventory documents. The Council considers these documents provide evidence of the use of the property as seven self-contained units. It is confirmed that there is no reason to dispute the additional information submitted.
7. I have considered the totality of the evidence provided by the appellant, and I find that this is sufficiently precise and unambiguous. There is no significant evidence to contradict or otherwise make the appellant's version of events less than probable. As such, there is no good reason for me to disagree with the Council's clarified position in relation to the application, which invites me to allow the appeal and issue the LDC.

Conclusion

8. I find that the appellant has shown, on the balance of probability, that the material change of use to seven independent residential units occurred on or before 28 August 2015, and that use continued after the date of change without any significant interruption.
9. 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 the property at 48 Brownhill Road as seven independent residential units was not well-founded and that the appeal should succeed.
10. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

⁴ Four years prior to the date of application.

Formal Decision

11. 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.

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 28 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:

The appellant has shown, on the balance of probability, that the material change of use to seven independent residential units occurred on or before 28 August 2015, and that use continued after the date of change without any significant interruption.

Signed

Debbie Moore

Inspector

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First Schedule

Seven independent residential units

Second Schedule

Land at 48 Brownhill Road, London SE6 2EJ

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, 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: 25 November 2020

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Scale: NTS

