



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal Ref: APP/Q5300/X/20/3248177
85 Bury Street, Edmonton, London N9 7JN

- 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 C Casseeram against the decision of the Council of the London Borough of Enfield.
 - The application Ref 19/03332/CEU, dated 16 September 2019, was refused by notice dated 10 December 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 as '4x self-contained flats for over 4 years'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The development for which the LDC is sought was described on the application form as 'conversion of No. 85 into 4 independent flats'. The Council in their decision notice described the development as 'Use of property as 4x self-contained flats for over 4 years'. The appellant has then used this description on the appeal form. I have therefore used this description as it more accurately describes what is being sought by the LDC. I believe there would be no injustice if I proceed on this basis.
3. In an LDC appeal, the planning merits are not relevant. My decision rests on the application of relevant planning law and judicial authority to the facts of the case.
4. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers without causing prejudice to any party¹.

¹ The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

5. Section 191(2) of the Act states that uses and operations are lawful at any time if (a) no enforcement action may be taken in respect of them and (b) they do not contravene any requirement of an enforcement notice then in force. Section 191(4) indicates that the relevant time for determining lawfulness is at the time of the application which in this case is 16 September 2019.
6. Looking at s191(2)(b) first, albeit the Council's officer report states that an initial enforcement letter was sent on 5 August 2019, I have been provided with no evidence that this resulted in the issue of an enforcement notice. Thus, s191(2)(b) is satisfied since no enforcement notice is in force.
7. To satisfy the requirements of s191(2)(a) the appellant needs to demonstrate, on the balance of probability, that the time set out in s171B(3) is met. That is, that each of the four self-contained flats had been lawful as a Class C3 residential unit for a continuous 4-year period prior to the date of the LDC application. 16 September 2015 is the relevant date and not 5 August 2015 as indicated in the officer's report.

Main Issue

8. Thus, the main issue is whether the Council's decision to refuse a LDC was well founded. Accordingly, it is necessary to consider whether the appellant can show, on the balance of probabilities, that the appeal property has been in continuous use as four self-contained flats, for a continuous period of four years commencing on or before 16 September 2015.

Reasons

The appellant's case

9. The appellant states that the accommodation as four self-contained flats has been managed by Stef & Philips Ltd since June 2013 who in turn sublet the property to Housing Action Management Limited (HAML). The property accommodates clients from council housing waiting lists and those in need of emergency accommodation. The Local Housing Authority put forward tenants and in this particular case the tenants were housed from Hackney, Islington and Lewisham. There are no tenancy agreements, HAML sign contracts with the Local Housing Authorities. The appellant states that the residential use began in June 2013 and relies upon the following documents:
 - Existing ground and first floor plans.
 - A deed of agreement.²
 - Occupation Summary for each flat.
 - Electricity and gas bill invoices covering periods between 11 June 2015 and 4 January 2019.
 - Council Tax Bills covering the yearly periods 1 April 2015 to 1 January 2020 dated 13 March 2015 to 12 March 2019. All addressed to HAML with handwritten annotation referring to 85 Bury Street and HMO.
 - Two letters³ from management agents.
 - Various copies of correspondence including emails and forms.

² Deed of Agreement dated 27 May 2013.

³ Letter dated 130919 Housing Action Management Ltd & Letter dated 161019 Stef & Philips Ltd.

The Council's case

10. The Council has provided no evidence to refute that submitted by the appellant. The Council comments that the appellant's utility bills and Council Tax records refer to the property as a single dwellinghouse and not as four separate independent units.

*Assessment in relation to each flat***Flat 1**

11. In respect of Flat 1, the occupation summary is as follows:

Occupier	Start date	End date
Tenant 1	2 Jun 2015	10 Nov 2015
Unoccupied due to flood and repair	Dec 2015	Jan 2016
Tenant 2	24 Feb 2016	20 Mar 2016
Tenant 3	23 Mar 2016	13 Oct 2016
Tenant 4	25 Oct 2017	present

12. Regarding tenant 1, the appellant has provided an 'Official Order to Place a Household into Temporary Accommodation' form dated 2 June 2015 which indicates that tenant 1 would collect the keys on this date.
13. An email dated 10 November 2015 from HAML explains that tenant 1 had to be rehomed due to a flood in Flat 1. This is reflected in the occupation summary which shows that Flat 1 was unoccupied December 2015/January 2016 due to flooding and repairs.
14. Regarding tenant 2, a letter⁴ offering temporary accommodation has been provided. Albeit 24 February 2016 is entered on the occupation summary as the start date, this is an offer of accommodation and does not confirm the exact date when tenant 2 commenced occupation of the flat. A 'cancellation of temporary accommodation' letter⁵ demonstrates that this tenancy ended on 21 March 2016.
15. Regarding tenant 3, an email dated 24 March 2016 indicates that tenant 3 moved into the flat on 23 March 2016 and a further email indicates that the same tenant was still living in the accommodation on 20 September 2016.
16. Although the entry at the top of the occupation summary indicates an end date of 13 October 2016 further down the summary is indicates that the tenant moved out in September 2017. An email dated 13 October 2017 confirms tenant 3 moved out. Thus, it is likely that the end date shown at the top of the occupation summary is an error and the correct date was 13 October 2017. The flat was then unoccupied until tenant 4 moved in.
17. Regarding tenant 4, albeit the occupation summary shows a start date of 25 October 2017, details of a new booking for this tenant are provided in an email dated 25 October 2017 but it is not clear if occupation started on this

⁴Letter from Lewisham Housing Options Centre dated 24 February 2016, Appellant's submissions Pack B.

⁵Letter from Lewisham Housing Options Centre dated 21 March 2016, Appellant's submissions Pack B.

date. The occupation summary indicates that tenant 4 was residing in the flat on 16 September 2019.

Summary

18. The specific evidence in relation to Flat 1 identifies a number of periods when it was unoccupied, namely a period between December 2015 and January 2016 due to flooding and repair work. Thereafter, based on the evidence provided, occupation of the flat did not recommence until at the earliest, 24 February 2016. Flat 1 was also unoccupied between 13 October 2017 to at least 25 October 2017. Thus, it has not been demonstrated, on the balance of probabilities, that Flat 1 was occupied on a continuous basis for a 4-year period prior to 16 September 2019.

Flat 2

19. In respect of Flat 2, the occupation summary is as follows:

Occupier	Start date	End date
Tenant 1	9 Jun 2015	16 April 2018
Tenant 2	24 April 2018	12 Dec 2018
Tenant 3	9 Jan 2019	23 Jul 2019
Tenant 4	17 Jul 2019	31 Jul 2019
Tenant 5	27 Aug 2019	1 Sept 2019

20. Regarding tenant 1, an email dated 9 June 2015 provides the name and contact details of tenant 1 but does not state when occupation commenced. An email dated 16 April 2018 cancels the accommodation.
21. Regarding tenant 2, an unsigned 'Accommodation and Subsistence Form' states an occupation start date of 24 April 2018. An email dated 7 December 2018 confirms cancellation of this accommodation booking with effect from 12 November 2018. This email contradicts the occupation summary which indicates that tenant 2 vacated the property on 12 December 2018.
22. Regarding tenant 3, an email dated 9 January 2019 provides the name and contact details of tenant 3 but does not state when occupation would commence. Also, a 'Right to Rent' letter dated 9 January informs that the required checks had been carried out on the tenant but does not confirm when occupation commenced. A 'Temporary Accommodation Cancellation Notice' shows that tenant 3 left the property on 24 July 2019.
23. Regarding tenant 4, an email dated 17 July 2019 shows accommodation booking details for this tenant. The occupation summary shows this date as the start date for tenant 4, however, this conflicts with the evidence regarding the previous tenant, which indicates that tenant 3 did not vacate the premises until 24 July 2019. Other than the occupation summary there is no evidence to indicate when tenant 4 commenced occupation of the flat.
24. An email from HAML dated 1 August 2019 demonstrates that due to a flood at Flat 2 the tenant had to be rehomed. A further email dated 5 August 2019 cancels the accommodation for tenant 4 with effect from 31 July 2019.

25. Regarding tenant 5, an email dated 27 August 2019 gives booking confirmation "until such time that the client accommodation is deemed habitable". There is no evidence to indicate whether tenant 5 moved into the flat on 27 August 2019 as indicated on the occupation summary or later when the accommodation was "deemed habitable". The occupation summary indicates that tenant 5 vacated the property on 1 September 2019. The occupation summary also indicates that tenant 5 moved out in August 2019.

Summary

26. The specific evidence in relation to Flat 2 shows that it was unoccupied for a week from 16 April to 24 April 2018. The flat was also unoccupied between 12 November 2018 and 9 January 2019. Due to flood, the flat became vacant again from 31 July 2019. In addition, the occupation summary is not clear as it indicates an overlap of tenants in July 2019. Furthermore, the evidence suggests that the flat was unoccupied from 31 July 2019 and occupation did not resume until at least 27 August 2019. Moreover, the occupation summary gives imprecise dates regarding when tenant 5 vacated the accommodation. Having regard to the occupation summary, it would appear that Flat 2 was unoccupied for the period end of August/1 September 2019 to the 16 September 2019.
27. Thus, it has not been demonstrated, on the balance of probabilities, that Flat 2 was occupied on a continuous basis for a 4-year period prior to 16 September 2019.

Flat 3

28. In respect of Flat 3, the occupation summary is as follows:

Occupier	Start date	End date
Tenant 1	22 Mar 2013	5 July 2016
Tenant 2	8 Jul 2016	20 Nov 2016
Tenant 3	12 Dec 2016	present

29. Regarding tenant 1, an email dated 26 October 2013 shows that this tenant was living in the flat on this date.
30. An email dated 5 July 2016 indicates that tenant 1 handed in the keys for this accommodation.
31. Regarding tenant 2, the occupation summary indicates two moving in dates for this tenant – 8 July 2016 and August 2016. An incomplete unsigned 'Notice of admission to temporary accommodation/reception centres' form indicates that this tenant commenced occupation of the flat on 8 July 2016. A 'Temporary Accommodation Cancellation Notice' dated 17 November 2016 indicates the last night of occupation was 20 November 2016.
32. Regarding tenant 3, an email dated 7 December 2016 indicates that the accommodation booking for this tenant was to start on 12 December 2016. An email on the same day from HAML confirms that the tenant had already been living in the property for two weeks prior to 7 December 2016. However, no exact date for moving in has been given. The occupation summary indicates that tenant 3 was still residing in the flat on 16 September 2019.

Summary

33. Based on the specific evidence in relation to Flat 3, the occupation summary indicates that the flat was unoccupied between 20 November 2016 to 12 December 2016. However, this is inconsistent with the email evidence provided which indicates tenant 3 commenced occupation of the flat two weeks prior to 7 December 2016. In any event, I am of the view that the appellant has not demonstrated that the use between tenant 2 and tenant 3 was continuous. Consequently, it has not been demonstrated, on the balance of probabilities, that the residential use has been continuous over a 4-year period prior to 16 September 2019.

Flat 4

34. In respect of Flat 4, the occupation summary is as follows:

Occupier	Start date	End date
Tenant 1	1 April 2015	15 Mar 2019
Tenant 2	21 Mar 2019	Present

35. Regarding tenant 1, there is an incomplete unsigned 'Official Order to Place a Household into Temporary Accommodation' form dated 1 April 2015. An email dated 15 March 2019 confirms that this tenant had vacated the property and cancels the accommodation booking accordingly.
36. Regarding tenant 2, an email dated 21 March 2019 indicates arrangements being made for accommodation booking for this tenant. It does not give an exact start date of occupation. The occupation summary indicates that tenant 2 was still residing in the flat on 16 September 2019.

Summary

37. Based on the specific evidence in relation to Flat 4, it has not been demonstrated that, on the balance of probabilities, the residential use has been continuous over a 4-year period before the relevant date.

Further assessment

38. Some of the specific dates in the appellant's occupation summary are not reflected in the appellant's documentary evidence. Given the number of discrepancies I have already referred to above, I find the occupation summary cannot be fully relied upon.
39. I accept that Stef & Philips Ltd have acted as managing agent since June 2013 and have sublet the property to HAML. However, whilst the submitted letters state that colleagues have "visited the property regularly and witnessed continuous occupation", there is insufficient information in these documents to show that occupation was continuous for each of the four flats over the requisite period.
40. It has been held that it has been necessary to make a finding as to whether the periods of non-occupation were *de minimis* or not. It is generally accepted that a few days gap in the occupancy for redecoration purposes is usual and it would not be unreasonable for this to be extended when flooding occurs. However, the periods of non-occupation that I have identified above, in my

view amount to a significant period which as a matter of fact and degree results in an interruption of the continuous use.

41. A ground and first floor plan have been provided showing the individual layout of each flat. The appellant argues that for at least four years the flats have been occupied as independent units and that the internal layout as shown on the plan contains no communal space which might suggest an HMO use. However, the plan is dated 2019 and no evidence has been provided to show when the works to create each flat were carried out.
42. Finally, the appellant's electricity and gas bills are addressed to No 85 and not individual flats. Notwithstanding that for management purposes, HAML as placing agents, pay a single bill to the utility company rather than four individual bills, no evidence has been provided in relation to each of the four individual meters at the property. Moreover, it is not known why some of the utility bills and a number of the Council Tax bills are annotated by hand "HMO". As such, they do not entirely support the appellant's claims.

Overall summary

43. Having regard to the totality of the evidence, I am not persuaded that on the balance of probabilities, the property has been used as four self-contained flats for a continuous period of four years without interruption. This is because the appellant's evidence is not sufficiently precise and unambiguous. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted but the appellant's own evidence appears to show several unexplained discrepancies.

Conclusion

44. For the above reasons, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of 85 Bury Street, Edmonton, London N9 7JN as four self-contained flats, was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR