



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 April 2021

Appeal Ref: APP/N5090/X/20/3261864

58 Sturgess Avenue, Hendon, London NW4 3TS

- 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 Namir Moslawy and David Levi against the decision of the Council of the London Borough of Barnet.
 - The application Ref: 20/3638/191, dated 6 August 2020, was refused by notice dated 5 October 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 "Use of the building as two self-contained flats. Flat 9 and Flat 10 at 58 Sturgess Avenue, London NW4 3TS".
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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 found to be lawful.

Application for Costs

2. An application costs made by the appellants against the Council is the subject of a separate decision.

Main Issue

3. The main issue is whether the existing use of the outbuilding as two self-contained flats is lawful.

Reasons

4. An earlier appeal decision (Ref: APP/N5090/C/19/3224484) decided on 27 May 2020 considered an Enforcement Notice (EN) aimed at the use of the building in the current appeal for two self-contained dwellinghouses. There were several grounds of appeal in that case. Particularly relevant was an appeal under s174(2)(d) of the 1990 Act based on the claim that at the date the EN was issued, no enforcement action could be taken in respect of the alleged breach of planning control. The previous Inspector concluded that it was too late to take enforcement action against the use of the building as two dwellinghouses which led him to allow the appeal and quash the EN. I shall return to this background later in my decision.

5. For now, I turn to what may be the relevant time period over which “no enforcement action could be taken” referred to above and the time period relevant to the determination of this appeal. In the previous appeal the Inspector considered the cases put by both sides related to the time limits specified under s171B(2) and (3) of the 1990 Act. In short, the Council argued that it should be ten years, while the appellant asserted that it should be four years. The Inspector ruled that on the basis the Council had framed the alleged breach of planning control, and based on the evidence before him, the time limit under s171B(2) should apply ie. the ‘four years’ time limit. He went onto consider the appeal accordingly.
6. Under s174(2)(d), the Inspector concluded that *“the appellant has... demonstrated on the balance of probabilities that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice. The evidence is clear and unambiguous and the specific evidence provided by the appellant relating to the occupation of the dwellings is not contested”*. He further concluded that the ground (d) appeal should succeed. This means that under s191(2) of the 1990 Act the use of the building as two dwellinghouses was lawful. The Inspector stated that he could not issue a LDC to this effect as there was no corresponding appeal before him. If there had been, I consider I can confidently conclude that he would have granted a LDC at that time. The appeal I am now dealing with relates to a LDC application for the same use.
7. The Council did not challenge the previous Inspector’s finding by way of the High Court. There is nothing therefore to show that the previous Inspector’s findings were legally flawed. Also, despite the Council’s concerns raised in this appeal about why the ‘ten years rule’ should still apply, which appears to be very similar evidence to that already considered by the earlier Inspector, in deciding the LDC application the Council clearly had in mind that the four year time limit was the correct approach because the decision notice refers to *“the evidence submitted is considered insufficient to show that the outbuilding was in use as indicated by the plans for a duration of **4 years**...”* (my emphasis). Had the Council considered that the ten years’ time limit should apply, it should have determined the application that way from the outset. Against this background, I find nothing of any substance to veer me away from finding that the four-year time limit should apply again now.
8. The Council took the four-year time limit when considering the LDC application to be *“a duration of 4 years prior to 10th of August 2020 as required under section 191 of the Town and Country Planning Act (1990)”*. However, whilst under s191(4) of the 1990 Act the relevant date for ascertaining whether the existing development is lawful is the date of the LDC application, the relevant time limit when considering breaches of planning control under s171B(2) of the 1990 Act is *“four years **beginning** with the date of the breach”* (my emphasis). That is what the previous Inspector did. He did not go back four years from the EN was issued (6 February 2019). He started to look at a four-year period from around July 2014 and found that by the time the EN was issued, over four and half years later, it was too late to take enforcement action.
9. As I have already referred to above, that means the use of the building was therefore lawful. There is no evidence, such as the implementation of a planning permission inconsistent with the lawful use or by a material change of use to some other use since May 2020, to show that the lawful use established

has been lost. Also, whilst I note that the Council has issued a further EN against the building, that is the subject of appeals against it (not before me). Consequently, the two flats/dwellinghouses in the outbuilding are not a contravention of any of the requirements of any enforcement notice in force. Therefore, the existing use applied for was found to be lawful last year and it was clearly still lawful at the date of the LDC application.

10. As such, 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 building as two self-contained 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.

Gareth Symons

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 6 August 2020 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:

In accordance with s191(2) of the Town and Country Planning Act 1990 (as amended) no enforcement action could be taken against the use of the building as two flats because the time for enforcement action had expired and the use did not contravene the requirements of any enforcement notice in force.

Signed

Gareth Symons

Inspector

Date 1 April 2021

Reference: APP/N5090/X/20/3261864

First Schedule

Use of the building as two self-contained flats.

Second Schedule

Land at Flat 9 and Flat 10 at 58 Sturgess Avenue, Hendon, London NW4 3TS

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: 1 April 2021

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Land at: 58 Sturges Avenue, Hendon, London NW4 3TS

Reference: APP/N5090/X/20/3261864

Scale: Do not scale.

