



Appeal Decision

Site visit made on 25 May 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/Q5300/X/20/3262801 209 Fox Lane, Southgate N13 4BB

- 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 Achilleas Zikos c/o Prime Locations against the decision of the Council of the London Borough of Enfield.
 - The application Ref 20/02093/CEU, dated 3 July 2020, was refused by notice dated 13 August 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 property as 3 self-contained flats, Ground Floor Flat 1, First Floor Flat 2 and Top Floor Flat 3.
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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 for costs was made by Mr Achilleas Zikos c/o Prime Locations against the Council of the London Borough of Enfield. This application is the subject of a separate Decision.

Preliminary Matter

3. The Council's decision notice refers to a 'rule' on 'one opportunity to obtain planning permission after the event', from Planning Practice Guidance (PPG)¹. But the application which is before me is for an LDC. It is not an application for planning permission and so no such rule applies for this application and this has no bearing over whether the appeal development is lawful or not for the purposes of section 191 of the 1990 Act.

Main Issue

4. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

¹ Enforcement and post-permission matters, Paragraph: 013 Reference ID: 17b-013-20140306

Reasons

5. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use.
6. Section 191(2) of the same Act states that for the purposes of this Act uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
7. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
8. The PPG states that the applicant is responsible for providing sufficient information to support an application². In the case of applications for existing use, it states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
9. 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 building³ to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
10. So I must consider, based on the evidence provided, whether any part of the appeal building changed use to a self-contained flat and was used as such continuously, apart from de minimis breaks, for at least 4 years after the date of the change and before the date of the application.
11. The application form states the use began on 31 December 2010. The evidence indicates that in June 2011 the Council received a retrospective application for planning permission, ref TP/11/0862, for conversion of the appeal property into 3 self-contained flats. The Council describes this as being for a breach that took place in 2009. Whilst this application was subsequently withdrawn, it indicates the building was laid out as 3 flats by 2011.
12. In its report, the Council states: "The application [*sic*] has submitted evidence which largely supports the fact that the property has been in use for multiple residential use for at least 4 years, starting in 2009 and officers do not dispute the evidence as it is clear there has been a number of tenants residing at the property over the years".

² Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

³ Under section 336 of the 1990 Act "building" includes any part of a building

13. However, in response to the appellant's costs application, the Council has said that the above statement does not imply that officers were satisfied that the conversion of the property into 3 separate flats had taken place but merely that there had been a number of tenants who had resided at the property.
14. For each of the 3 flats, evidence has been provided by the appellant which includes assured shorthold tenancy agreements, tenant deposit certificates, utility bills, dated photographs and correspondence. These support the appellant's version of events, that 3 flats have existed in the building and been used continuously for at least 4 years prior to the date of the LDC application. No specific criticisms have been made by the Council of any of these items provided by the appellant.
15. Having reviewed all of the above items I have no reason to dispute any of them either. Moreover, they are supported by sworn declarations, which appear to be properly witnessed and signed, from Loucas Demetriou, Angela Savva and Alexandru Sandu, of the letting agents. But the Council states that it holds 'conflicting' information regarding the use of the property.
16. The Council had the property registered as a House in Multiple Occupation (HMO) until December 2019. But this does not mean that this was how the property was laid out or used up until that time. Indeed, the Council asked the Valuation Office to band the property as 3 flats, with effect from 5 December 2019, as according to the Council "it appears to be **being** used in this way," (my emphasis). No other evidence has been provided that the property has ever been used as an HMO and so in light of all the other documentation provided by the appellant, I am not satisfied Council Tax records are determinative in this case.
17. In relation to the aforementioned 2011 planning application, the Council says what has been described in the LDC application does not fully reflect the extent of what was applied for in 2011. In particular, the top floor flat is now a 1 bed flat whereas in the 2011 application it was described as a studio flat. However, the layout of the ground and first floor flats are the same now as in 2011 and I am not satisfied the Council's concern regarding the layout of the top floor makes any difference as to whether the top floor flat has achieved lawfulness or not. Its layout could simply have been changed since 2011, with the insertion of the partition that now separates the kitchen from the bedroom.
18. My attention has been drawn to allegations of deception and deliberate concealment. But given the conversion of the property into 3 flats was plainly brought to the attention of the Council via the 2011 retrospective planning application, I do not accept that deception or concealment apply in the case of this appeal, whether Council Tax has been paid by the appropriate party or not. It was incumbent on the Council to exercise its discretion and take enforcement action⁴ within 4 years of the breach occurring, if the Council considered it expedient to do so, having regard to the provisions of the development plan and to any other material considerations.
19. The Council states that disregard has been shown for it, due to works carried out at the property which do not benefit from planning permission, and that a precedent may be set for others to do the same. But this makes no difference

⁴ Defined in section 171A(2) of the 1990 Act, ie by issuing an enforcement notice

to the outcome in this case and is the reason why planning enforcement powers exist for local planning authorities, under Part VII of the 1990 Act.

20. Representations have been received raising concerns relating to planning merits such as noise and smells as well as other matters such as Building Regulations, Party Wall Agreements and Council Tax. But as the PPG makes clear, views expressed by third parties on the planning merits of the case are irrelevant when determining an LDC application⁵ and planning merits are not relevant at any stage in this particular application or appeal process⁶. Other enforcement powers exist in respect of Building Regulations, Party Wall Agreements and Council Tax and so any contravention of these regimes has no bearing on whether the appeal development is lawful or not for planning purposes.
21. Taking into account all of the above points, on the basis of the appellant's evidence, which is sufficiently precise and unambiguous, the 3 flats which are the subject of this appeal have been continuously used as self-contained flats for 4 years prior to the date of the LDC application.

Conclusion

22. 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: 'Use of property as 3 self-contained flats, Ground Floor Flat 1, First Floor Flat 2 and Top Floor Flat 3,' 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.

L Perkins

INSPECTOR

⁵ Lawful development certificates, Paragraph: 008 Reference ID: 17c-008-20140306

⁶ Lawful development certificates, Paragraph: 009 Reference ID: 17c-009-20140306

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 3 July 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:

The 3 flats have been continuously used as self-contained flats for 4 years prior to the date of the LDC application.

Signed

L Perkins
INSPECTOR

Date: 24 June 2021

Reference: APP/Q5300/X/20/3262801

First Schedule

Use of property as 3 self-contained flats, Ground Floor Flat 1, First Floor Flat 2 and Top Floor Flat 3.

Second Schedule

Land at: 209 Fox Lane, Southgate N13 4BB

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: 24 June 2021

by L Perkins BSc (Hons) DipTP MRTPI

Land at: 209 Fox Lane, Southgate N13 4BB

Reference: APP/Q5300/X/20/3262801

Scale: Not to scale

