



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 01 November 2021

Appeal Ref: APP/Y5420/X/21/3268221

Oliver Court, 113 Cornwall Road, London N15 5AX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Isaac Salem (Platinum (Cornwall Road) Limited) against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2020/2441, dated 21 August 2020, was refused by notice dated 9 November 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is 'Use of ground floor of Oliver Court as 8 no. self-contained flats (Use Class C3)(Flats A-H)'.
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Decision

1. The appeal is dismissed.

Procedural matter

2. Oliver Court is a three storey building that is stated on the application form to be 113 Cornwall Road. The building was constructed pursuant to planning permission HGY/2007/1575 (the 2007 PP) for the 'demolition of existing building and erection of 3 storey building comprising 8 x two bedroom flats, 330 square metres of office floorspace and refuse storage' at 103 Cornwall Road. The building is numbered, above a ground floor entrance door on its front elevation, as 103-149 Cornwall Road. The building will be referred to in this decision, in accordance with the application, as 113 Cornwall Road.

Reasons

3. The application for an LDC is for, as indicated in section 4 of the form, 'an existing use', and that use, set out in section 5 of the form, is as indicated in the last bullet point above. In section 6 of the application form it is clearly indicated that the LDC is not 'being sought for a use, operation, or activity in breach of a condition or limitation'. The application should therefore have been considered under the provisions of Section 191(2), which relates to LDC applications for existing uses and operations. Section 191(2) states that uses and operations are lawful if no enforcement action may be taken in respect of them and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no enforcement notice in force so for the purposes of the appeal the existing use for which an LDC is sought is lawful if the time for enforcement action has expired or for any other reason.

4. The Council considered the application, despite the information given in sections 4, 5 and 6 of the application form, as if it related to a matter constituting a failure to comply with any condition or limitation subject to which planning permission had been granted. They erred in doing so because the application does not relate to such a matter. They also erred in refusing the application for the reason that 'the use cannot be lawful by virtue of the provisions of Section 191(3)(b)'. Only a matter constituting a failure to comply with a condition can or cannot be lawful by virtue of the provisions of Section 191(3)(b) and the fact that there is an extant breach of condition notice in force is not relevant.

5. Section 171B(2) of the 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. For the purposes of the Act 'building' can be part of a building and a 'single dwellinghouse' can be two or more flats as long as they are self-contained.

6. The main issue, therefore, is whether Oliver Court was completed in accordance with the 2007 PP and its conditions before the ground floor office space was converted to 8 self-contained flats, and whether the flats were then occupied continuously for a period in excess of four years. The onus of proof falls on the Appellant but their evidence does not need to be corroborated by independent evidence. Furthermore, provided the Appellant's evidence is sufficiently precise and unambiguous there shall be no reason to withhold an LDC.

7. Three statutory declarations claim that the permitted development was completed in accordance with the 2007 PP and its conditions by July 2010. Two of the statutory declarations, one by a previous director of the Appellant Company, claim that the ground floor of the building was then converted to eight self-contained flats by October 2010. But the Final Certificate issued under Section 51 of the Building Act 1984, for the permitted development and submitted in evidence, is dated 27 June 2014. This evidence is contradictory to Council Tax records that indicate that Flats A-H were registered to be in Council Tax band B with effect from 1 September 2012. On the balance of probability, it is likely that the date of the Final Certificate was the date it was issued rather than the date that the building works were completed. Most weight is given to the statutory declarations which justify a conclusion, on the balance of probability, that Oliver Court was completed in accordance with the 2007 PP and its conditions before the ground floor office space was converted to 8 self-contained flats.

8. One year shorthold tenancy agreements have been submitted in evidence; two for Flat A which overlap by about ten months, one each for Flats B-G, but none for Flat H. The earliest, for Flat G, commenced on 3 June 2015 and the most recent, for Flat B, ended on 10 December 2020; a period of about five and a half years. There is no other evidence of any occupation of the flats; no records of any Council Tax payments, of any rent payments, or of any utility bill payments. For each flat, except Flat H for which there is no record of any occupation, the tenancy agreements only indicate that it was occupied for no more than fourteen months.

9. There is no evidence, even on the balance of probability, that any of the eight flats have been occupied for a continuous period in excess of four years. With regard to Section 171B(2) of the Act the Council could have taken enforcement action against the use of the ground floor of Oliver Court as eight self-contained flats at any time after the conversion works were completed in

2009. On the evidence now available the Council's refusal to grant an LDC in respect of use of ground floor of Oliver Court as 8 no. self-contained flats (Use Class C3)(Flats A-H) at Oliver Court, 113 Cornwall Road, London was well-founded and the appeal fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector