
Appeal Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2021

Appeal Ref: APP/N5660/X/20/3266087
371 Norwood Road, London SE27 9BQ

- 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 G Rasool against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 20/01870/LDCE, dated 7 June 2020, was refused by a notice dated 31 July 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 described as "continued use of first and second floors as 2 flats."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Considering the matters at appeal it was not necessary to visit the appeal premises. I am satisfied that I can reach a decision based on the representations and supporting information submitted by the main parties as a matter of course as part of the application and appeal process.
3. Section 191(4) of the Town and Country Planning Act 1990 as amended (the Act) indicates 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, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.

Main Issue

4. In order for a LDC to be granted under section 191 of the Act, the burden of providing relevant facts in this appeal rests on the appellant, and the test is the balance of probability. If there is no evidence to contradict or make the appellant's version of events less than probable and the appellant's evidence alone is sufficiently precise and unambiguous, a LDC should be granted. The main issue is whether the Council's refusal to issue a certificate of lawfulness is well-founded.

Reasons

5. The appellant considers that the change of use of the upper floors of the building to two flats benefited from planning permission granted under Class F, Part 3, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). In the alternative, he claims that the change of use took place more than four years before the date of the application and has continued without significant interruption thereafter, so as to be immune from enforcement action.
6. Class F (a), Part 3, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) states the development consisting of a change of use of a building to a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and up to two flats, from a use for any purpose within Class A1 of that Schedule is permitted development subject to conditions at F.1.
7. The appellant has provided a statutory declaration (SD) stating that in March 2014 he carried out building works at 371 Norwood Road and converted the first and second floors into two separate residential units known as Flat 1 and Flat 2. He states that the property is now in a mixed use for purposes within Class A1 (shop) and 2 flats above. However, no evidence has been provided to identify or confirm the lawful use of the premises in March 2014 when the conversion works were carried out. Consequently, the evidence provided is not sufficiently precise for me to confirm that the works undertaken in March 2014 were permitted development.
8. For the development to be immune from enforcement action, the appellant needs to demonstrate, on the balance of probability, that the change of use of the first and second floors to two self-contained flats took place more than four years before the date of the application and continued without significant interruption thereafter. The relevant date in this instance being 7 June 2016, and the test applies to each flat.
9. Having regard to case law, a consideration is whether the two flats had been in use throughout the whole of the four years, so that the planning authority could at any time during that period have taken enforcement action.
10. Furthermore, the change of use does not need to have been in the four year period immediately preceding the date of the LDC application, provided that there has been no subsequent change of use since that use became lawful.
11. The SD provided in support of his application states that the appellant undertook the conversion works in March 2014 and has been renting the first and second floors out as two separate flats since 28 April 2014. The SD lists the names of the occupiers for both Flat 1 and Flat 2 from April 2014. In addition, copies of tenancy agreements dating from 1 August 2016 have been provided as well as a Council Tax Bill dated 2 September 2016.
12. The Council Tax Bill and the tenancy agreements only provide evidence of occupancy of the premises since August 2016, which is after the relevant date. Furthermore, except for the assured shorthold tenancy agreement (ASTA) dated 1 August 2018, which relates to Flat B, 371 Norwood Road, the remaining ASTA and the Council Tax Bill only identify the property as No 371

Norwood Road. No ASTA has been provided that would confirm the occupation of a second flat.

13. Moreover, the occupier identified in the appellant's SD as residing in Flat 2 between May 2014 and 2018 also witnessed the signatures on the 2017 ASTA for 371 Norwood Road. However, the address given for this witness on the ASTA is not Flat 2, 371 Norwood Road but a different address in south west London.
14. For the reasons set out above there is clearly some ambiguity between the information set out in the SD and that provided in the supporting documentation. Overall, therefore, I consider that the information submitted with the LDC is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the property has been in continual residential use for a four year period as two self-contained flats for a period commencing on or before the 7 June 2016. In addition, it has not been demonstrated that the works claimed to have been undertaken in March 2014 would have been permitted development.

Conclusion

15. For the reasons given above I conclude that the Council's decision to refuse a certificate of lawful use or development 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 Pleasant

INSPECTOR