

Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

Decision date: 1 December 2021

Appeal Ref: APP/Y5420/X/21/3279853
113 Norfolk Avenue, Wood Green, London N13 6AL

- 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 Ms R Arsan against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2021/1126, dated 13 April 2021, was refused by notice dated 2 July 2021.
 - 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 a dwellinghouse.
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Decision

1. The appeal is dismissed.

Introduction and background information

2. The appeal site is located within the residential area of Wood Green at the junction of Norfolk Avenue and Devonshire Hill Lane. The semi-detached property comprises a 20th century brick-built and rendered dwelling and is typical of similar semi-detached and terraced houses in the area.
3. The LDC application form referred only to No to 113A. The submitted plans show that this is a two-storey side extension to the original dwelling at No 113. The plans clearly show Nos 113A and 113 as two separate units with each providing all of the necessary facilities for normal day-to-day living. The LPA dealt with the application on the basis that what is being sought is a LDC confirming the lawfulness of Nos 113 and 113A as two separate self-contained residential dwellings (Class C3 dwellings). I have dealt with the appeal on the same basis.
4. The two-storey side extension to No 113 was granted planning permission in 2004 (HYG/2004/1339) and built around 2008. A Building Control Certificate was issued on 15 July 2016 (BC/FP/0008/2417/B) for a 2-storey side and single storey rear extension. In 2012 a LDC had been granted for the separate residential use of a building which had been at the bottom of the garden to No 113. This is now a bungalow at No 233 Devonshire Hill Lane.

The Main issue

5. The main issue is whether or not the appellant has demonstrated that, on the balance of probability, Nos 113 and 113A have been used as two separate self-contained residential units for a period of 4 years and is immune from enforcement action.

Reasons

6. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered and the relevant test, relating to the submitted evidence, is '*the balance of probability*'.

7. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information (my underlining), a LPA may be justified in refusing to grant a certificate. However, PPG also indicates that if an LPA has no contrary evidence itself and there is none 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.

8. In support of the application a Decision Notice for the above planning permission HGY/2004/1339 and the Building Control Certificate, reference BC/FP/0008/2417, were submitted. A tenancy agreement for 12 months relating to No 113A (on plan shown as the area of the 2-storey side extension) is also submitted and is dated 6 July 2020. Further documents submitted were a letter from British Gas to No 113A addressed to the appellant and dated 6 July 2020 and a Council Tax Bill for 113 Norfolk Avenue dated 23 September 2020 and also addressed to the appellant. Reference is made in the appeal statement to affidavits/sworn statements but none were submitted either at application stage or at this appeal stage.

9. In refusing the application the Council has stressed that the submitted evidence is very limited and, in any case, does not cover the necessary 4 year period required. It is clearly stated in the refusal notice that '*The applicant has not demonstrated that, on the balance of probability, 113 and 113A Norfolk Avenue have been used as two separate self-contained units for a period of 4 years and is not immune from enforcement action and is therefore unlawful*'

10. It is indicated that the 2004 planning permission and the Building Control Certificate issued in 2016 merely relate to the 2004 approved works to No 113 Norfolk Avenue and that they provide no firm evidence relating to when No 113A might have been occupied as a separate single dwellinghouse. The Council also indicates in its statement that the Valuation Office information and Council Tax record for No 113A have both been deleted.

11. Having considered all of the LDC application evidence, I acknowledge that planning permission and Building Control approvals were granted for the side extension that now forms the unit at No 113A. However, this is neither precise nor unambiguous evidence, in itself, to demonstrate that 113A has been used continuously as a separate dwellinghouse for a necessary and relevant continuous 4-year period. There is no firm evidence to indicate how the extension was used when it was first completed and very little evidence of how it was occupied and by whom.

12. I accept that the tenancy agreement goes some way to demonstrating that 113A was used separately from the main house. However, this is dated 6 July 2020 and so again there is nothing to indicate that on 13 April 2021 (the date of the LDC application) No 113A had been occupied separately as a dwellinghouse for a continuous 4-year period prior to that date. Normally it would be necessary to show tenancy agreement(s) going back for such a period, together with corroborating Utility, Council Tax and Electoral Register information to demonstrate that No 113A had been used separately from No 113 for the required period.

13. In this case the submitted gas bill is addressed to the appellant as opposed to any separate occupier of No 113A. The same is the case for the Council Tax bill dated 23 September. Neither cover a 4-year period. I agree, therefore, with the Council that the evidence submitted in support of the LDC is extremely limited. It does not go anywhere near to covering the necessary 4-year period which would be required. If, as the Council has indicated, the Valuation Office and Council Tax details have been deleted, this adds further ambiguity to the appellant's case.

14. In conclusion, therefore, I can only agree with the Council that the appellant has not demonstrated that, on the balance of probability, 113 and 113A Norfolk Avenue have been used as two separate self-contained units for a continuous period of 4 years. Thus the property is not immune from enforcement action and is therefore unlawful. The appeal must, therefore fail.

15. In reaching my conclusions in this appeal, case I have taken into account all of the LDC application details and all of the appeal submissions. However, none of these alter my decision that on 13 April 2021, No 113A was not lawful for planning purposes as a separate dwellinghouse in Use Class C3.

16. As indicated above, no affidavits or Statutory Declarations were submitted with the LDC application or with the appeal documents and, in effect, when it was suggested that these could be made available, it was too late to submit them in relation to the appeal process. However, if such documents become available, along with any other supporting evidence of a 4 -year period of occupation, the appellant is not precluded from submitting a further LDC application.

Formal Decision

17. The appeal is dismissed and a Lawful Development Certificate is not issued.

Anthony J Wharton

Inspector