



Appeal Decision

Site visit made on 3 February 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2022

Appeal Ref: APP/Q5300/X/20/3260597

19 Lowden Road, Edmonton N9 8RL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Joe Das against the decision of the Council of the London Borough of Enfield.
 - The application ref 20/01579/CEU, dated 24 May 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 described as: Established use of Property as 2 Self Contained Flats.
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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.

Preliminary Matters

2. I have taken the description of development in the heading above from section 5 of the application form, omitting its reference to the address of the property as its inclusion is superfluous. I am satisfied this description is clear and consistent with the wording used in the Council's decision notice.
3. By a letter dated 12 January 2022, arrangements were made for me to inspect the site, accompanied by a representative of the Council and the appellant. No one attended to represent the Council. Given the nature of the dispute in this case and having tried to contact the Council (via the case officer) to find out if a Council representative was on their way, I determined the most suitable course of action was to proceed with my visit.

Main Issue

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

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 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 Planning Practice Guidance states that the applicant is responsible for providing sufficient information to support an application¹. 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 building² 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 based on the evidence provided, I must consider 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. According to the appellant, the appeal property was converted into 2 self-contained flats in late 2015 and subsequently rented as 2 self-contained flats from January 2016. Correspondence with utility companies provided indicates a new gas service and electricity meter were installed for '19A' in 2015. Utility bills for No 19 and No 19A have been provided, dating back to 2015.
12. A mortgage survey report provided, dated 7 January 2016, indicates that a refurbishment of the property had been designed in a way which facilitates the use of the property as 2 self-contained units. It notes there are 2 electrical metres, 2 boilers and 2 consumer units.
13. In respect of the evidence provided by the appellant, the Council considers it is "highly probable" that the building has been occupied as independent units for a minimum of 4 years. I have no reason to disagree with the Council in this regard. However, the Council states that Council Tax records and statements suggest that the building is listed for Council Tax purposes as a single unit from January 2016 onwards and not 19 and 19A. Be that as it may, in light of the other evidence, this does not necessarily mean the building was not used as 2 flats during this time as Council Tax is not necessarily conclusive in respect of lawfulness.

¹ Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

² Under section 336 of the 1990 Act "building" includes any part of a building

14. In light of a lack of evidence to contradict or otherwise make the appellant's version of events less than probable, taking into account all of the above points, I am satisfied on the basis of the appellant's evidence, which is sufficiently precise and unambiguous, that on the balance of probability the 2 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

15. 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 the established use of the property as 2 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.

L Perkins

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 24 May 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 building has been used as 2 self-contained flats continuously for 4 years prior to the date of the application.

Signed

L Perkins
INSPECTOR

Date: 17 February 2022
Reference: APP/Q5300/X/20/3260597

First Schedule

Established use of Property as 2 Self Contained Flats.

Second Schedule

Land at 19 Lowden Road, Edmonton N9 8RL

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: 17 February 2022

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Scale: Not to Scale

