



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Appeal Ref: APP/T5150/X/21/3269640

3C Sellons Avenue, London, NW10 4HJ

- 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 Churton Properties Developments Ltd (CPDL) against the decision of the Council of the London Borough of Brent.
 - The application ref 20/4020, dated 5 December 2020, was refused by notice dated 1 February 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 as a self-contained flat.
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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.

Main Issue

2. The main issue is whether the refusal of the LDC was well-founded. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice in force¹. 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. There is no evidence of an enforcement notice in relation to the appeal property at the time that the LDC application was made (5 December 2020). It is therefore necessary to consider whether its use as a self-contained flat continued for a substantially uninterrupted period of 4 years prior to that date. The relevant four year period does not need to fall immediately prior to the issuing of the notice as long as there is no evidence to show that the use has changed or been abandoned in the intervening period.
3. Planning practice guidance advises that in the case of applications for existing use, 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. The burden of proof is on the appellants.

¹ Section 191(2) of the 1990 Act

Reasons

4. The appellant's case is that the attic flat has been used as a self-contained residential unit since April 1993. They have provided 4 leases each with around a three year term in relation to the flat with various housing associations, starting in November 2007. Each lease is for the exclusive use of the whole of the attic flat, 3C Sellons Avenue, and the use permitted is as premises for temporary housing accommodation. The appellant has also provided an EPC certificate dated 6 December 2010 which refers to 3C Sellons Avenue described as the 'Top-floor flat' and an email from Council Tax which states that 3 Sellons Avenue has been registered as three separate units known as 3A, 3B and 3C since 1993.
5. The Council's case is that these documents provide evidence of a residential use but that they do not discharge the necessary burden of proof regarding the continuous occupation of the appeal property for the four year period prior to the LDC application.
6. The nature of the use permitted by the leases, temporary housing accommodation, is residential but the shorter-term nature of temporary accommodation would presumably result in a transient population of occupiers with much change and even some periods of vacancy. The evidence of the appellant is that they were receiving a rent for the flat to be used as a C3 dwelling, rent that is now being paid by the Council following the transfer of the lease in June 2020.
7. The appellant's case is that the breach of planning control took place in 1993. In terms of corroborative evidence, the earliest evidence provided is the lease dated 25 October 2007 which granted the commencement of the term from 26 November 2007. This means that from at least 26 November 2011 the tenant, at that time, Stadium Housing Association, had the occupation of the flat described in the lease as the Self Contained Flat known as 3C Sellons Avenue, London, NW10 4HJ. The term of the second lease commenced on 17 January 2011 which is over the initial three year term granted by the first lease. However, it is not uncommon for such short gaps between continuing leases, and the lease agreement allowed for the initial term to be extended by a further 6 months at the request of the tenant (and which would go beyond January 2011). These two leases alone provide a period of occupancy for the tenant of over 6 years. The fact that the housing association tenant took the second lease for the same use (i.e. temporary housing accommodation) indicates that they had a need for that use, and that the appeal property was being generally occupied as such. The appellant has not provided details regarding the people who lived at the property but he would not hold this information as his tenant for the appeal property was the housing association.
8. The EPC reports and the information from the Council Tax records corroborate the appellant's case. The Council has not provided its own evidence to contradict the case put by the appellant but says that the continuous use has not been made out on the balance of probability. However, the fact that the attic was physically a self-contained unit as corroborated by the EPC reports coupled with the ongoing availability for residential use by the tenants granted by the leases from at least 25 October 2007 indicated the material change of use of the land. The attic was not being used part of the rest of the house but was demised separately for a specific residential use.

9. The appellant's evidence is sufficiently precise and unambiguous to prove on the balance of probability that the attic flat was used as a self-contained residential unit for a period of more than 4 years from 25 October 2007, and that this use continued until the LDC application. There is no evidence before me to suggest that the appellant's case is less than probable or that this use was either changed or abandoned prior to the issue of the notice.

Conclusion

10. 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 as a self-contained flat 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.

Zoë Frank

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 5 December 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 use as a single dwellinghouse began more than four years before the date of the application and continued thereafter; and

The use does not contravene the requirements of any enforcement notice in force.

Signed

Zoë Franks

Date: [06 May 2022]

Reference: APP/T5150/X/21/3269640

First Schedule

The use of the second floor as a self-contained flat.

Second Schedule

Land at 3C Sellons Avenue, London, NW10 4HJ

IMPORTANT NOTES – SEE OVER

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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: [06 May 2022]

by Zoë Franks Solicitor

Land at: 3C Sellons Avenue, London, NW10 4HJ

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Scale: Not to Scale

