



Appeal Decision

Site visit made on 15 March 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 12th May 2022

Appeal Ref: APP/T5150/X/20/3265869
1100A Harrow Road, London NW10 5NL

- 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 S Lal against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/2781, dated 8 September 2020, was refused by notice dated 23 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 a certificate of lawful use or development is sought is Two flats above retail unit – one 1 bedroom flat on first floor and one two bedroom flat on second floor.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. On the appeal form and in his appeal submissions, the Appellant is referred to in the manner I have set out in my header, above. He is simply referred to as 'LAL' in the application form. I have used the name from the appeal form.
3. Similarly, the application form gives the address as 1100 Harrow Road, whilst all other submissions refer to 1100A Harrow Road. I have used the latter as all parties have used this.

Reasons

4. The main issue is whether the Council's decision to refuse to issue a certificate of lawfulness was well-founded.
5. The application sought a certificate for the lawful existing use of the two flats. Section 191(a) of the 1990 Act (the Act) states that if any person wishes to ascertain whether any existing use of buildings or other land is lawful he may make an application for a certificate of lawfulness. S191(2) sets out that the use will be lawful if no enforcement action can be taken against it or that it does not constitute a contravention of any of the requirements of any enforcement notice then in force.
6. There is nothing in the evidence to show that there is an enforcement notice in force that has any bearing on the case. The time limits for enforcement action are set out in S171B of the Act. From these and established case law, the Appellant has to demonstrate that the flats were used continuously for a period

- of four years prior to the date of the application to the Council, that is to say by 8 September 2016, and that the use was not thereafter lost for any reason. He needs to make his case on the balance of probability.
7. In brief, the Appellant's case is that he was, and is, able to demonstrate this. For its part, the Council's position is that the Appellant fails to demonstrate that the flats were in continuous use for four years at the time that the application was made.
 8. Number 1100A is a mid-terrace property with three-storeys. It has a commercial unit at ground floor level and two floors of residential accommodation, above. The residential accommodation is served by a door from the street, which is independent of the commercial unit. The door gives onto a communal hall and staircase. At first floor level is a one-bedroom self-contained flat ('Flat A') and room used for storage. At second floor level, there is a two-bedroom flat ('Flat B').
 9. Although no specific date for the commencement of the use has been given, the submitted evidence claims this was in the late 1990s.
 10. The evidence shows that an electricity meter was provided for Flat A in 1999. This was changed in November 2010 and again in 2017. It also shows that an electricity meter for Flat B was installed in 2003. A gas meter was installed for Flat A in May 2006 and one for Flat B in December 2007. These installations are corroborated in a letter from UK Power Networks, dated 8 June 2003, which provides context to the handwritten list of meter installations in the Appellant's Appendix G. An Energy Performance Certificate for Flat B was issued on 2 July 2018, with one for Flat A being dated 27 November 2018. The mere presence of meters does not, however, provide evidence of the use of the flats
 11. Letters from the Council relating to housing benefit payments indicate that Flat A was probably used by the same person, JS, between December 2004 and September 2005. For reasons of privacy, I refer to this person and others named in the evidence through their initials.
 12. Property Licences, issued by the Council under the Housing Act, with a handwritten 'Flat A' on one and 'Flat B' on the other, were submitted, they are dated 16 January 2019. These, however, do not demonstrate the length of time that the flats were actually used.
 13. In respect of Flat B, The Appellant's suggestion seems to be that as a Tenancy Agreement from 1997 is referred to in part of a solicitor's letter dated 12 August 2004, this indicates that the flat was used between the two dates. However, there is nothing to show that this was the case and, in any event, I note that the firm of solicitors had not seen the 1997 agreement and asked that it be found. Further, the letter refers to an agreement from February 2002 that it has seen, but that this was not signed. None of this provides evidence of the flat's actual use.
 14. A one-year Tenancy Agreement with Mr AF, dated 3 February 2002, was submitted. "Reviewed tenancy since 2/3/98" is hand printed at the top of this. However, no copy of the earlier agreement has been submitted. Letters relating to the property's owner authorising a Mr AO to manage the property dating from October 2003 and August 2004 are before me. The former indicates that AF was still occupying the flat, and that Flat A was also in use at the time. A

letter was submitted from a firm of solicitors to the property's owner relating to a Notice Requiring Possession for the flat. This is dated 12 August 2004. An invoice from a Tracing and Investigation Service shows that such a Notice was served on 19 August 2004 on, it seems, a Mrs FF, who I suspect to be related to Mr AF. I find that these documents provide good evidence of the continuous use of the flat for less than three years.

15. The first page, though not one with signatures, of a one-year Tenancy Agreement dated 23 March 2011 was submitted in relation to Flat B. This was between the owner and tenant KZ. No evidence was submitted stating how long KZ actually used the flat.
16. The same part of another Tenancy Agreement, dated 1 September 2013, has been submitted. This was between tenant MD and the owner and was for 6 months. A letter from a firm of solicitors, relating to regaining possession of Flat B from MD is dated 26 September 2014. Extrapolating from these, I find that it is demonstrated that MD used the flat for a little over a year.
17. A water bill for Flat B for the period from 14 September 2015 and 31 March 2016, and dated 5 October 2015, was submitted. This, however, is a bill for prospective water services use rather than proof of actual water usage, let alone residential use of the flat. That bill was addressed to the property's owner, not a specific tenant of Flat B.
18. A year-long Tenancy Agreement for Flat B, dated 1 April 2016, signed by tenant LBDN, was submitted. The Appellant's statement says this refers to Flat A, but the agreement refers to the 2nd Floor Flat. Further references to LBDN's occupation of Flat B are given in an undated letter regarding the Tenancy Deposit Scheme that gives the date of LBDN's Tenancy Agreement as the date the scheme was begun. A water bill dated 17 May 2017 and covering the period up to 6 June 2017 to 6 March 2018 was addressed to LBDN. Again, however, this only shows prospective rather than actual usage. Even a most liberal interpretation of these documents demonstrates a continuous use by LBDN of a little under 2 years.
19. An Assured Shorthold Tenancy Agreement for 12 months with PT, dated 11 December 2020, was submitted to show on-going use of the flat. This, however, post-dates the application, so adds little to the Appellant's case.
20. I have been supplied with copies of bank statements. One of these shows a consistent sum of money being received into an unnamed account on 6 occasions during the period 9 May 2016 to 3 October 2016. These entries have 'Flat B' handwritten next to them. The other statement shows that an LS paid a largely consistent sum of money into the account between 5 December 2018 and 3 August 2020. These payments are not annotated, however. These contribute to the overall picture, but do not demonstrate the use of the property precisely and unambiguously.
21. The Google Street View images of the front door from June 2008, Nov 2017 and July 2019 do not prove the use of the flats. I find similarly with regards to certificates for fire alarm and emergency lighting tests carried out on 19 May 2021.
22. In the light of the evidence that has been submitted in support of the application and added to at the appeal stage, it seems probable that there have

been two flats in the premises for a considerable period of time. However, the Appellant is required to show that their use for residential purposes is lawful.

23. The evidence shows that Flats A and B have been used for residential purposes for varying lengths of time. However, it does not demonstrate that either has been used for a continuous 4-year period, as required, and there are significant gaps between those periods where the use has been demonstrated on the balance of probability. Furthermore, some of the submitted evidence lacks precision. The assertions that the use has been carried out for four years, in the written submissions, is not substantiated by the supporting evidence. This did not include any statements, sworn or otherwise, from occupants of the flats regarding the use; whilst this is not necessarily imperative for a successful application, it might well have helped.
24. It is incumbent upon the Appellant to demonstrate on the balance of probability that the property has been continuously used as two flats for four years and that this use was not thereafter lost. He has failed to do this.

Conclusion

25. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Two flats above retail unit – one 1 bedroom flat on first floor and one two bedroom flat on second floor 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.

Roy Curnow

Inspector