
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: 18th May 2022

Appeal Ref: APP/T5150/X/21/3267930
238 High Street, London NW10 4TD

- 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 Tim Offer of Offer Group Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/3583, dated 30 October 2020, was refused by notice dated 29 December 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 existing use as four self contained flats (Use Class C3).
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Decision

1. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is found to be lawful.

Application for costs

2. An application for costs was made by Mr Tim Offer against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Preliminary Matters

3. At my site visit, I was unable to access Flats A1 and A2. I was, however, able to see much of their accommodation through windows onto the rear yard. As the parties agreed on-site that there were two flats within this part of the property, and that these were laid out in accordance with Drawing Number 1633TO_LR Revision A, the lack of access does not affect my decision.

Reasons

4. The main issue is whether the Council's decision to refuse to issue a certificate of lawfulness was well-founded.
5. Section 191(a) of the 1990 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. S 191(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 with any bearing on the case. Therefore, the Appellant needs 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 on 30 October 2020. He needs to make his case on the balance of probability.
7. 238 High Street ('No 238') is a three-storey building, with access from High Street, which it fronts, and from Clifton Road to its rear. A shop unit faces the High Street at street level, together with a door that provides independent access to much of the rest of the property.
8. A communal hall behind the High Street door contains meters for the property's flats. This leads to Flat B1, a one-bedroom ground floor flat. From the hall stairs lead to the first and second floors. Flat B2, which is made up of a kitchen-living room, bedroom and shower room is located on the first floor. Two further flats lie at second floor level, though as they are not the subject of this appeal I did not enter them.
9. The property has a lower ground level. As the land falls rearwards, save for glass bricks set into the pavement there is little sign of this at the front of the property. I am told that the part of the lower ground level served by the glass bricks is used by the shop. To the rear at this level are two one-bedroom flats, numbered A1 and A2. These are accessed via a gate off Clifton Road. The plans show that Flat A1 has a kitchen, living room, shower room and bedroom. Flat A2 has similar rooms, save instead of a shower room it has a bathroom
10. Overall, the Council's position is that the Appellant's case lacks precision in respect of: the number of flats in the property; whether the flats have been used for the relevant period; and in identifying which flats are the subject of the appeal.
11. The Appellant claims that the flats that are the subject of the appeal have been in use since 22 September 2003. Exchanges of emails show that the property was in joint ownership from 1998 to 2003, when it was taken on solely by the person from whom the Appellant bought it. It is stated that the flats which are the subject of the appeal were "let out to Brent Council and this has been the case under our ownership". The Appellant has put a variety of evidence forward to support his case and, from the submissions, it makes sense to address this on a flat-by-flat basis.
12. Before doing so, I shall address the Council's remarks regarding the flats in the property and those which are the subject of the appeal. Although the submitted drawings show 5 flats outlined in red, it is clear from the submissions – especially the drawing entitled 'Section A-A'¹ – which are the four flats for which a certificate is sought.

Flat A2

13. The evidence shows that this flat was brought into Council Tax rating on 1 July 2005. A 'declaration' made by Potential Estates at the time stated that the occupant of the flat at that time moved in on 7 September 2005. A 6-month tenancy agreement for the flat was entered into on 7 September 2005. I have been given a further such agreement that was entered into between the owner and a different tenant on 1 June 2019.

¹ Drawing Number 1633TO_LR: SH4 Rev B

14. The latter tenant made a statutory declaration on 1 October 2020 in which he says that he occupied the flat as his only residence from 1 October 2014. This date was changed from 1 October 2016. In the absence of any reasoning as to why I should not, I take 2014 to be the case. I accept that there is no evidence to corroborate what is said in the declaration. However, evidence should not be rejected simply because it is uncorroborated. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. The statutory declaration is thin in terms of its content, but the claim it makes in its paragraph 1 clear. Therefore, I give substantial weight to this evidence.
15. The evidence that was put forward for the period up to the 1 October 2014 did not show precisely and unambiguously that, on the balance of probability, Flat A2 had been used for 4 years continuously. However, I give significant weight to the statutory declaration and, in the absence of any doubt that might outweigh this, I find that on the balance of probability Flat A2 had been used as a self-contained flat for a continuous period in excess of four years at the time that the application was made. A certificate should be issued in respect of this flat.

Flat A1

16. Following a housing benefit claim from an occupant of a flat at No 238, the Council's Revenues and Benefits Manager wrote to the property's owner, 'Potential Estates', on 13 September 2005 seeking details regarding the claim. Part of the response was a 'declaration' in which it was confirmed that Flat A1 was a one-bedroom flat into which the occupant had moved on 5 July 2005.
17. A one-year tenancy agreement for this flat was made between the property owner and a different tenant, dated 27 February 2012. This tenant is shown in a computer printout of the Council's record of Housing Benefit payments to the property owners as having received benefit during January and February 2012.
18. Two tenancy agreements have been submitted for a further tenant. The first was dated 30 July 2019 and was for a 12-month period; the latter was dated 30 May 2019 and was for 6 months.
19. The Council Tax Valuation List dated 7 April 2019 shows that this flat was rated in Council Tax band B. An email from the Council confirms that this flat was first rated for Council Tax on 1 July 2005.
20. The evidence shows that on the balance of probability the flat has been formed for a considerable period of time. However, what is sought is a certificate for the use of the flats. As a matter of fact and degree, I do not find that the evidence before me demonstrates that the flat has been used for a continuous period of 4 years. As such, a certificate should not be issued for Flat A1.

Flat B1

21. This flat was brought into rating for Council Tax purposes on 22 September 2003. Again, three tenancy agreements for the flat have been submitted. They cover a year from 22 March 2005, a year from 18 August 2017 and 6 months from 18 May 2019. Whilst the names for the first and last tenancies were included, that for the second was redacted. In addition, records show that an occupant of the flat was granted housing benefit in early 2012.

22. The 'declaration' by Potential Estates stated that the occupant of the flat at that time moved in on 22 September 2003. As that person had the same surname and initials as the person named in the first tenancy agreement, it seems most likely to be the same person.
23. Again, the evidence shows that on the balance of probability Flat B1 has been in-situ for a considerable period. However, as I say above, it is for the Appellant to demonstrate the use of the flat for a four year period. On a fact and degree basis, the evidence does not demonstrate that this has occurred for a continuous four-year period on the balance of probability.

Flat B2

24. This flat was brought into rating for Council Tax purposes on 22 September 2003. Three tenancy agreements for the flat have been submitted. They cover a year from 7 June 2010, 12 months from 18 August 2017, and 6 months from 18 May 2019. The tenants on the first and last agreements were legible, whilst that for the second had been redacted.
25. The tenant in the first agreement received housing benefit during the latter part of 2013. As this was after the period of his agreement, I find that on the balance of probability he was still resident in the flat.
26. None of the evidence above demonstrates a continuous use of the flat for four years prior to the application being made to the Council.
27. In a statutory declaration, the person named in the last tenancy agreement states that he has occupied the flat as his only residence "since 2016". This would make him the person whose name was redacted in the second tenancy agreement.
28. The statutory declaration states that the signatory occupied the flat as his only residence "since 2016"; this was altered from 2014. Again, for the same reason as given above, I take the amended date to be the case. However, if the signatory's use of the flat commenced on or after 31 October 2016, the required four years would not have accrued prior to the application being made to the Council. Without a more accurate date for the commencement of the signatory's use of the flat, I cannot conclude that this shows four years' continuous use of it.
29. Although a statutory declaration is to be afforded significant weight, this lacks precision. It is incumbent upon the Appellant to demonstrate his case precisely and unambiguously. In respect of Flat B2, this is not achieved by either the statutory declaration, either read alone or in association with the other evidence that has been submitted. Accordingly, a certificate should not be issued for this flat.

Overall findings

30. The evidence points, on the balance of probability, to there having been four flats in the property for more than four years. However, this is not what is applied for in the certificate; the application was for the use of four flats. It was, therefore, for the Appellant to demonstrate that each of the four flats had been used for a continuous period of four years prior to the application being made.

31. Largely by reason of the statutory declaration that was submitted by its occupant, on a fact and degree basis the required level of evidence was provided for Flat A1. However, this was not the case with the other flats, where the evidence of use lacked the necessary precision.

Conclusion

32. The Appellant has proven the necessary use in relation to Flat A2 but has failed to do so in relation to Flats A1, B1 and B2.
33. Section 193(4) provides that an LDC may be issued for the whole or part of the land specified in the application.
34. 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 Flat A2 was not well-founded and that the appeal should succeed to that extent.
35. In addition, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Flats A1, B1 and B2 was well-founded and that the appeal should fail to that extent.
36. I will therefore exercise the powers transferred to me under section 195(2) and (3) of the 1990 Act as amended.

Roy Curnow

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 30 October 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black 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:

It has been demonstrated precisely and unambiguously that at the date that the application to the Council was made, on the balance of probability Flat A2 has been continuously used as a self-contained flat for a period in excess of four years and this use was not thereafter lost.

Signed

Roy Curnow
Inspector

Date 18th May 2022

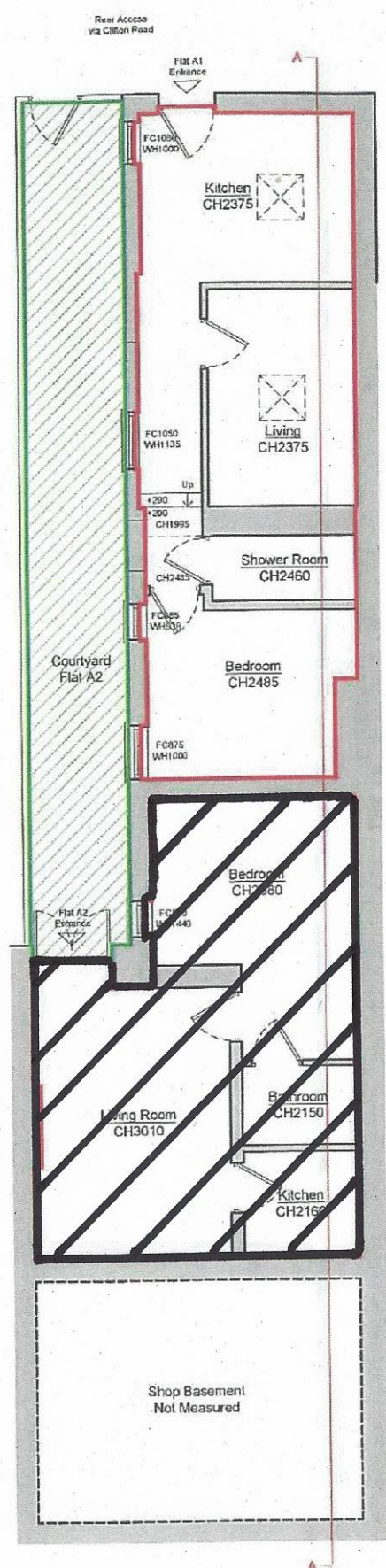
Reference: APP/T5150/X/21/3267930

First Schedule

Use of Flat A2, as shown outlined and hatched in black on the floor plan attached below, as a self-contained flat

Second Schedule

Flat A2, 238 High Street, London NW10 4TD



FLOOR PLAN - NOT TO SCALE

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: 18th May 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

Land at: Flat A2, 238 High Street London NW10 4TD

Reference: APP/T5150/X/21/3267930

Scale: Not to scale

