The Planning Inspectorate

Appeal Decision

Site visit made on 14 June 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 July 2022

Appeal Ref: APP/A5270/X/20/3252371
101 Dudley Road, SOUTHALL, Middlesex UB2 5AT

- 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 Bilhar Sidhu against the decision of London Borough of Ealing.
- The application, ref 194467CPE, dated 17 October 2019, was refused by notice dated 24 April 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 the continued use of three self-contained flats on the ground floor and two self-contained flats on the first floor (five flats in total).

Decision

1. The appeal is dismissed.

Preliminary Matter

2. Only the person or company who made the lawful development certificate application can lodge an appeal. The application was made by Mr Bilhar Sidhu of Jaujar Law Ltd. Their interest in the land, is stated as being a lessee, as opposed to "owner", "occupier" or "other", which are the remaining options to choose on the application form. The statement accompanying the application confirms that the application is made by Jaujar Law Ltd and that they are the managers of the property. Mr Ajit Singh Sidhu and Mr Jaujar Singh Sidhu are the owners, after buying the property on 10 July 2014. Tenancy agreements state that Mr Bilhar Sidhu is a Director of Jaujar Law Ltd. The owners signed a lease with Jaujar Law Ltd on 1 June 2017 to formalise the management arrangements of the flats. The appeal has been made by Mr Bilhar Sidhu but I am satisfied that he benefits from a right of appeal as his interest in the land, as a Director of Jaujar Law Ltd, is as a lessee.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded.

Background

4. The appeal site comprises a Victorian semi-detached property with a two storey half width rear projection and a single storey extension. Prior to the existing layout, it was formerly laid out as two flats, one on each floor, known as 101 and 101a Dudley Road. Now there are three self-contained flats on the ground

floor, known as 101, 101c and 101d Dudley Road, referred to on the plans as: ground floor front (GFF), ground floor rear left (GFRL) and ground floor rear right (GFRR). The two self-contained flats on the first floor are known as 101a and 101b Dudley Road and on the plans they are labelled: first floor front (FFF) and first floor rear (FFR).

Evidence in LDC cases

5. A certificate of lawful use or development is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action. The issue of a certificate depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority.

6. The burden of proof regarding decisive matters of fact rests on the applicant, now the appellant. He has asserted that the use of the building as five flats is lawful because it began more than four years before the date of the LDC application so the relevant date in this case is 17 October 2015. He must therefore adduce enough relevant, clear and unambiguous evidence to demonstrate the truth of that assertion. The relevant test of the evidence is, on the balance of probabilities, that is, what is more probable or likely than not.

7. With a change of use to a single dwelling house, and in this case each of the five self-contained flats is classed as a dwelling house for the purposes of the LDC, the time limit for taking action is four years. Establishing the start of that period involves a two stage process.

8. The first stage is to look at the physical works and ascertain the date that the flats were capable of providing viable facilities for living, rather than the date when all the works were completed. The second stage is to establish when the use of each flat actually commenced and whether there was a continuous residential use thereafter with viable facilities for living, to the extent that the Council could have taken enforcement action against the use of any flat at any time.

9. On the matter of continuous use, there is a difference between an established dwelling house or flat where an occupier does not have to be continuously or even regularly present in order for it to remain in use as a dwelling house or flat and where there is no established use. In the latter case, the use has to be affirmatively established at the start of the four years.

10. It is possible for the change of use of each flat to have commenced prior to actual occupation, provided that the premises were capable of being so used. It is a matter of fact and degree as to when the change of use occurs, and it is incorrect for a decision maker to simply regard the commencement of actual residential use after the conversion as giving rise to the change of use. It is not enough to conclude that because the premises were not in fact actually used, there had not been a change of use. On the other hand, it is more difficult to show a change of use just by physical works and nothing more.

Reasons

The appellant's case

11. The appellant states that at the time of purchase in 2014 the whole property was in use as two flats. Subsequently, the first floor accommodation was converted into two self-contained flats. These works were stated to have been completed on 5 November 2014 and the builder's invoice seeks to support this claim. The ground floor was then converted into three self-contained flats which were stated to have been completed on 14 March 2015, as shown in another builder's invoice.

12. Thereafter, the appellant states that each of the flats was rented out to several individuals for a continuous 4 year period. The appellant relies on various documents to support the use of each flat, and for ease, I list them before I begin my assessment of each flat. For the most part though, the appellant relies on the tenancy agreements for each flat to support his case.

The Council's case

13. The Council question much of the appellant's evidence and rely on their own Council tax records, which begin in 2017 for the new flats, to dispute the appellant's case.

Assessment

14. Having regard to the first stage of the assessment, the appellant relies principally upon the production of two invoices from the same plumbing, heating and building firm. The first is numbered 501 and is dated 5 November 2014 and the second is numbered 149 and is dated 14 March 2015. It is not clear why the later invoice has an earlier number. Where invoices are pre-printed from a book, they would normally follow consecutively but this builder appears to use templates, which are then typed with the details of the job. These sorts of invoices can be generated by a computer in which case they would again follow consecutively. However, in the absence of any explanation as to why they do not follow consecutively, such as the builder changing his computer, this brings into question the authenticity of the invoices.

15. The invoices are headed "To subdivide the flat into 2 self-contained flats" and "To subdivide the ground floor flat into 3 self-contained flats" and list the removal of various fittings. On the ground floor the installation of a new bathroom in the "back" flat and one in the "front" flat are listed. The invoice also lists the installation of new kitchens on the ground floor, one with an electric hob and two with gas hobs. Although there are currently two ground floor "back" flats, the details of the bathrooms appear to accord with what I saw at the site visit, in that it appears the floorspace has been subdivided to create a new bathroom in Flat 101d (GFRR) and in Flat 101 (GFF). The bathroom for Flat 101c is in the same position adjacent to the same divided rooms on two sides as the bathroom for the former large flat that occupied the whole of the ground floor.

16. The builder's invoices do not contain any words to the effect that the works to create the flat were complete by the dates on the invoices. In addition, the completed works are uncorroborated by any independent inspection, such as

by a building control officer or the Valuation Office Agency, but it is known that new gas boilers were fitted in each flat.

17. However, the flats were not inspected by a Gas Safe registered plumber until at the earliest on 31 March 2015 (Flat 101). The documents show the first inspection dates of the other flats as 31 March 2015 for Flat 101d and 31 August 2015 for Flats 101a, 101b and 101c. There is no explanation as to why the Gas Safe inspections were carried out in August 2015 for the flats that were stated to have been completed in November 2014 and the first inspection dates for the ground floor flats are a mixture of March and August 2015 dates for flats stated to have been completed by 14 March 2015.

18. Handwritten notes on the front of the invoices show that instalments were paid such as "Already paid £3000 up to 29.10.14" and various amounts between 7 February 2015 and 28 February 2015. In each case this just left final balances to pay, which are shown as being paid on 8 November 2014 and 15 March 2015. This pattern of payments is not unusual for a large building project with the final payment paid when a commissioning person is satisfied that the works are complete. Moreover, it is unlikely that the final invoices would have been submitted and paid for unless the flats were complete. However, given the unexplained numbering of the invoices, payment for the completion of the flats is uncorroborated such as by extracts from bank statements.

19. The appellant relies on various unsworn letters from friends of former tenants, former tenants and current tenants. These state in relation to when the flats were created:

"*I required urgent accommodation...and entered into agreement on 13 October 2014...shortly after occupation I witnessed the conversion of the first floor flat…from a single self-contained flat into two self-contained flats...Early October 2014 partitions were placed to divide the first floor front flat with the first floor rear flat.*"

"*I befriended the (former ground floor tenant) and recall (them) moving out… early 2015...I recall the works were undertaken in approximately 2 months... all conversion works ended spring 2015.*"

"*I moved to (Flat 101c)...on 1st of March 2015...when I moved in, I noted the builders where completing (Flat 101d).*"

"*These five flats have been there from early 2015.*"

Some of the letters are specific, such as the erection of partitions on the first floor in October 2014 and that on 1 March 2015 the builders were completing Flat 101d. However, some of these statements are inconsistent with other evidence and so there is no other clear information to corroborate the invoices to show when each flat was complete/provided with viable facilities for living. There may be a perfectly reasonable explanation with regard to the invoices, but it is not before me. I therefore afford the invoices limited weight when it comes to establishing a date for the creation of each of the flats.

20. The tenancy agreements for each flat show that the landlord is variously:

- Mr Ajit Singh Sidhu trading as Jaujar Investments;

- Mrs Gurpal Kaur Sidhu trading as Jaujar Investments; and

- Jaujar Law Ltd (Mr Bilhar Singh Sidhu Director).

Whilst it is stated that Mr Ajit Sidhu is one of the owners and that Jaujar Law Ltd are lessees and managers, Mrs Gurpal Sidhu's position is not explained.

21. The appeal is accompanied by layout plans that show the former and existing layout of the property. I have had regard to these plans when assessing the evidence as it is accepted by the parties that these accurately represent the former and existing layouts.

<u>Flat 101 (GFF)</u>

22. In respect of this flat there are the following tenancy agreements:

Occupier	Start date	End date
Tenant 1	11 Feb 2015	10 Aug 2015
Tenant 1	11 Aug 2015	10 Aug 2016
Tenant 1	11 Aug 2016	10 Aug 2017
Tenants 2+3	27 Nov 2016	26 May 2017
Tenant 4	27 May 2017	27 Nov 2017
Tenant 4	27 Nov 2017	26 Nov 2018
Tenant 4	27 Nov 2018	26 Nov 2019
Tenant 5	8 Mar 2019	8 Sept 2019

The appellant also relies on the following documents:

- A Council tax bill for 101 Dudley Road for the period 2 February 2015 to 10 February 2015, which is shown to have been paid on 5 March 2015;

- A copy of a building insurance Statement of Fact for five flats dated 2 July 2015;

- A copy of a letter dated 27 August 2019 from a Gas Safe registered plumber (with a copy of his passport) trading as DSK, with copies of Domestic/Landlord Gas Safety Records appended, dated 31 March 2015, 29 March 2016, 16 August 2017 and 16 August 2018 to show when the boiler was inspected; and

- Letters from a friend of a former tenant and a former tenant which seek to provide details of who lived where and when within the building.

23. Tenancy agreements are contracts and on their own they are not evidence of use; they only show intent and that a particular person agreed on a certain date to rent a property. The early tenancy agreements are not witnessed with a handwritten signature by a person who is not the landlord and later agreements just show a rubber stamp, in lieu of a written signature. This shows the name and address of either Jaujar Investments, Jaujar Estate Ltd or

Jaujar Law Ltd. Although it is known that Mr Bilhar Sidhu is a Director of Jaujar Law Ltd and that Mt Ajit Sidhu trades as Jaujar Investments, it is not known what connection Jaujar Estates Ltd has with the site. The tenancy agreements are also not accompanied by any proof of identity of the tenant. The only verification of Tenant 1 is from a former tenant and there is no verification for subsequent tenants.

24. With regard to the occupation of the unit, it appears this began on the 11 February 2015 according to the tenancy agreement, which was a month before the claimed completion of the flat. However, there is no explanation from the appellant as to how this occurred when the flat was incomplete according to the invoice. If there were viable facilities for living on 11 February 2015, there is no evidence to show what these were. In addition, landlords are required to provide a copy of the latest gas safety record before a new tenant moves in but in this case the first gas safety record is dated 31 March 2015. There is no explanation as to why this is the case. There is evidence from the occupier of Flat 101c that when they moved into their flat on 3 March 2015, Flat 101 was occupied. So it seems the use of the flat may have begun at some point in March 2015, but as I discuss later, there is some ambiguity about the commencement of use for Flat 101c.

25. The tenancy agreements also show a break in occupation. Tenant 1 appears to have occupied the flat for about two years but there is no evidence submitted to show that they continuously occupied the flat. Tenant 1 signed their last tenancy agreement on 11 August 2016 for a 12 month period but Tenants 2 and 3 signed their tenancy agreement on 27 November 2016 which was before Tenant 1's 12 month period had expired. Although the appellant recognises there is a gap between the occupiers, he provides no details as to when Tenant 1 vacated the property. There is also no evidence to show what happened during the break. It is therefore difficult to assess whether the break in occupation is significant or not. There is another break in occupation between Tenants 4 and 5 where I make the same remark.

26. The Council tax bill dated 26 February 2015 is ambiguous as it refers to 101 Dudley Road, which is the address of one of the previous flats before the conversion works took place. It is also addressed to Mr Ajit Sidhu. The due period in the bill is before the "completion" of the new flat, which is said to be 14 March 2015. The appellant offers no explanation on this matter.

27. The copy of the faxed letter to the Council tax and benefits team from Mr Ajit Sidhu, dated 11 February 2015, refers to Tenant 1 and provides their National Insurance number, which supports the use of the flat at this point.

28. A building insurance Statement of Fact just repeats the information provided by the person (in this case "Mr Ajit Singh Sidhu" and "Dr Jaujar Singh Sidhu") applying for insurance, should there be a claim in the future. It is not evidence of continuous use but it does support the appellant's intentions. Similarly, the gas safety records are not evidence of continuous use but they do show a residential use for each inspection day.

29. The two letters of support provide some details which add to the appellant's case but they are not specific in relation to the creation of Flat 101 as they refer to "early 2015". Although Tenant 1 is recalled by name, no date is provided as to when they moved in. Nevertheless, they provide some evidence of a residential use.

Summary

30. Based on the evidence in relation to Flat 101, it has not been demonstrated, on the balance of probabilities, when the residential use began or that occupation was continuous over any four year period before the relevant date. There is also no substantiated evidence to show during either of the two breaks in occupation that the flat continued to exist, such that if the Council had visited, they would have been able to take enforcement action against an unauthorised residential use.

Flat 101c (GFRL)

31. In respect of this flat there are the following tenancy agreements:

Occupier	Start date	End date
Tenant 1	1 Mar 2015	31 Aug 2015
Tenant 1	1 Sept 2015	31 Aug 2016
Tenant 1	1 Sept 2016	31 Aug 2017
Tenant 1	1 Sept 2017	31 Aug 2018
Tenant 1	1 Sept 2018	31 Aug 2019

The appellant also relies on the following documents:

- A letter dated 22 August 2019 from the tenant stating that he moved into the flat on 3 March 2015 with his partner.
- A copy of the tenant's Residence Permit;
- A copy of a Council tax reminder notice dated 30 April 2019 addressed to the tenant and their partner at GFRL, 101 Dudley Road;
- A copy of two Summons dated 22 May 2019 addressed to the tenant and their partner for Council tax arrears dating from 16 August 2017;
- A copy of a building insurance Statement of Fact for five flats dated 2 July 2015;
- A copy of a letter dated 27 August 2019 from DSK, with copies of Domestic/Landlord Gas Safety Records appended dated 31 August 2015, 30 August 2016, 16 August 2017 and 16 August 2018 to show when the boiler was inspected; and
- Letters from a friend of a former tenant and from former tenants, which seek to provide details of who lived where and when within the building.

32. For the reasons already discussed with regard to the invoices, it appears that the flat may have been capable of occupation by 14 March 2015. However, I note that the Gas Safety Record was not issued until August 2015. As landlords are required to provide a copy of the Record to new tenants before they move in, it is not clear what happened in this case.

33. With regard to the occupation of the unit, the tenancy agreement seeks to support occupation as beginning on 3 March 2015 before the completion of the flat. However, there is no explanation from the appellant how occupation was possible before completion or whether it actually occurred, notwithstanding the tenant's letter. The early tenancy agreements are not witnessed with a handwritten signature by a person who is not the landlord. Later agreements show a rubber stamp in lieu of a written witness signature with the name and address of Jaujar Estate Ltd. The appellant though has provided a copy of a Residence Permit to show proof of identity. Tenancy agreements are contracts and on their own they are not evidence of use; they show that a particular person agreed on a certain date to rent a property.

34. Part of the evidence of continuous use in this case is derived from the Council tax reminder notice and the Court summons issued in 2019 but this only relates to unpaid Council tax from 16 August 2017. There is no other evidence to support the case for continuous use from 3 March 2015 other than the tenant's signed letter and Tenant 1's signed letter from Flat 101d. The latter states that the occupiers of Flat 101c were still in occupation in April 2018 when they moved out. The Council confirm that their Council tax records for the flat only begin in August 2017. Prior to this the whole property was recorded as being in use as two flats from the 1990s.

35. A building insurance Statement of Fact just repeats the information provided by the person applying for insurance, should there be a claim in the future. It is not evidence of continuous use but it does support the appellant's intentions. Similarly, the gas safety records are not evidence of continuous use but they do show a residential use for each inspection day.

36. The two letters of support provide some details which add to the appellant's case but they are not specific in relation to Flat 101c as they refer to "early 2015". Although Tenant 1 and their partner are recalled by name, there is no clear date from these letters as to when they moved in or that they have lived there continuously for a particular period.

Summary

37. Based on the evidence in relation to Flat 101c, it has not been demonstrated, on the balance of probabilities, when the residential use began or that occupation was continuous over any four year period before the relevant date.

<u>Flat 101d (GFRR)</u>

In respect of this flat there are the following tenancy agreements:

Occupier	Start date	End date
Tenant 1	3 Apr 2015	2 Oct 2015
Tenant 1	3 Oct 2015	2 Oct 2016
Tenant 1	3 Oct 2016	2 Oct 2017
Tenant 1	3 Oct 2017	2 Oct 2018
Tenant 2	17 Jun 2018	16 Jan 2019
Tenant 2	17 Jan 2019	16 Dec 2019

The appellant also relies on the following documents:

- A copy of Tenant 1's passport;
- A copy of a Council tax bill addressed to Tenant 1 at GFRR 101 Dudley Road for the tax year 2018/19, which shows a balance brought forward from 16 August 2017;
- A copy of a Council tax bill addressed to Tenant 2 at GFRR 101 Dudley Road for Council tax year 2018/19 showing tax due from 17 June 2018;
- A copy of a letter dated 10 August 2018 addressed to Tenant 2 at GFRR 101 Dudley Road setting out Council tax support details;
- A copy of a building insurance Statement of Fact for five flats dated 2 July 2015;
- Domestic/Landlord Gas Safety Records dated 31 March 2015, 6 April 2016, 16 August 2017 and 16 August 2018 to show when the boiler was inspected; and
- Letters from a friend of a former tenant and a former tenant which seek to provide details of who lived where and when within the building.

38. For the reasons already discussed, it appears that there may have been a flat with viable facilities for living by 14 March 2015. Tenant 1 states that they moved in on 3 April 2015 and that they were told about the flat from a friend who used to live on the first floor. They also recall the tenant and their partner in Flat 101c who were still living there when they vacated the flat on 1 April 2018. Tenant 1 from Flat 101c states that they recall works were on-going with Flat 101d when they moved into their flat.

39. Turning now to the tenancy agreements, as previously discussed they are contracts and on their own they are not evidence of use. The early tenancy agreements are not witnessed with a handwritten signature by a person who is not the landlord. Later agreements show a rubber stamp, in lieu of a written witness signature, with the name and address of Jaujar Estate Ltd. Only Tenant 1 has provided a copy of their passport as proof of identity. Tenant 2 is only verified by Council tax bills.

40. The tenancy agreements also show a break in occupation. Tenant 1 appears to have occupied the flat for about two years and states that they left on 1 April 2018. There is no substantiated evidence to show that they continuously occupied the flat but after they left, there is then a gap of about two and a half months before Tenant 2 signs a new agreement on 17 June 2018. There is no evidence to show what happened during the break and in the absence of such evidence I find that the break period is significant. Sometimes flats are decorated between a changeover of tenants but the flat is small and as such it is unlikely that this would have taken more than a week.

41. Part of the submitted evidence of continuous use in this case is derived from the Council tax bills issued on 9 August 2018 and 2 February 2019. One shows Council tax paid from 16 August 2017 to 31 March 2018 and the other that no Council tax is payable due to the provision of "Ctsupport Pensioner Scheme". There is no other substantiated evidence to support the case for continuous use from 3 April 2015 and the Council confirm that their Council tax records for the

flat only begin in August 2017. Prior to this, the whole building was recorded as being in use as two flats from the 1990s.

42. A building insurance Statement of Fact just repeats the information provided by the person applying for insurance, should there be a claim in the future. It is not evidence of continuous use but it supports the appellant's intentions. Similarly, the gas safety records are not evidence of continuous use but they do show a residential use for each inspection day.

43. The two letters of support provide some details, which add to the appellant's case but they are not specific in relation to the completion of Flat 101d as they refer to "early 2015". Although Tenant 1 is recalled by name, it is stated in one letter that they moved out "summer 2018", which is inconsistent with Tenant 1's own statement. Both letters provide general support on the matter of continuous use in that the letter writers state they visited Tenant 1 but it is not known when and how often.

Summary

44. Based on the evidence in relation to Flat 101d, there may have been a flat with viable facilities for living by 14 March 2015 and that occupation may have begun on 3 April 2015. However, it has not been demonstrated, on the balance of probabilities that occupation was continuous over any four year period before the relevant date. There is no substantiated evidence to show during the break in occupation that the flat continued to exist, such that if the Council had visited, they would have been able to take enforcement action against an unauthorised residential use.

Flat 101a (FFF)

45. In respect of this flat there are the following tenancy agreements:

Occupier	Start date	End date
Tenant 1	13 Oct 2014	12 Apr 2015
Tenant 1	13 Apr 2015	12 Apr 2016
Tenant 1	13 Apr 2016	12 Apr 2017
Tenant 2	14 Nov 2016	15 May 2017
Tenant 3	2 Feb 2017	1 Aug 2017
Tenant 4	29 Jul 2017	28 Jan 2018
Tenant 4	29 Jan 2018	28 Jul 2018
Tenant 5	20 Jul 2018	19 Jan 2019
Tenant 5	20 Jan 2019	19 Jan 2020

The appellant also relies on the following documents:

- A copy of Tenant 1's passport;

- A copy of a Council tax bill dated 17 October 2014 addressed to two unknown individuals at 101a Dudley Road;
- A copy of a letter from Tenant 1 dated 21 August 2019 providing details of their occupation;
- A copy of a Benefit Decision Notice addressed to Tenant 1 at 101a Dudley Road dated 5 May 2015;
- A copy of a statutory declaration dated 8 May 2020 from an administrator at Jaujar Law Ltd;
- A copy of a letter dated 29 August 2019 from Tenant 3 providing details of their occupation;
- A copy of Tenant 4's Residence Documentation;
- A copy of a gas bill dated 12 February 2018 addressed to Tenant 4 at 101a Dudley Road;
- A copy of a Council tax bill issued 21 August 2018 addressed to Tenant 5 at FFF 101a Dudley Road;
- A copy of a building insurance Statement of Fact for five flats dated 2 July 2015;
- Domestic/Landlord Gas Safety Records dated 31 August 2015, 30 August 2016, 16 August 2017 and 16 August 2018 to show when the boiler was inspected; and
- Letter from a friend of a former tenant which seeks to provide details of who lived where and when within the building.

46. Tenant 1 states that they moved into the premises in early October 2014, which was before the works of conversion had taken place, as they urgently needed accommodation. There is some inconsistency in their recounting of events as they state they asked the landlord for a <u>one bedroom</u> flat and Mr Bilhar Sidhu stated that a <u>one bedroom</u> flat would be available shortly as it was in the process of being created. Tenant 1 signed their tenancy agreement on 13 October 2014 and at an unknown date they moved in and witnessed the conversion works, namely the erection of partitions to create the two flats. They state that the conversion works took about three weeks but the flat they subsequently occupied has <u>two bedrooms</u>. Notwithstanding this, Tenant 1 of Flat 101c recalls on 3 March 2015, when they moved into Flat 101c, that Flat 101a was occupied. However, as I have already found, there is some ambiguity about the commencement of use for Flat 101c.

47. With regard to the occupation of the flat, it appears based on the submitted evidence that this began before it was created. There is no explanation from the appellant to show how this was possible as converting the first floor from one flat to two flats would have involved more than just erecting partitions. The existing gas and water pipework and the electricity wiring would presumably have had to be separated, in addition to fitting new boilers in each flat, radiators and the removal and fitting of new bathrooms and an additional kitchen. All of this would have resulted in significant upheaval and, probably, the gutting of the first floor, as to work around an existing tenant would be less efficient, would raise safety issues and would no doubt cost more money. The

tenancy agreement shows no reduction in rent while these works were taking place and there is no substantiated evidence that the tenancy agreement reflected the changing circumstances of the flat.

48. Tenant 1 subsequently signed two further tenancy agreements and is identified by a copy of their passport. Their letter confirms that they vacated the flat on 17 October 2016. As with the tenancy agreements for the other flats, the early tenancy agreements for Tenant 1 are not witnessed with a handwritten signature by a person who is not the landlord. Their last agreement shows a rubber stamp in lieu of a written signature with the name and address of Jaujar Investments.

49. Tenant 2 signed their agreement on 14 November 2016 for a period of six months and it is rubber stamped in lieu of a written witness signature with the name and address of Jaujar Estate Ltd. However, there is no proof of identity with this agreement but a statutory declaration from an administrator at Jaujar Law Ltd indirectly verifies Tenant 2. She states she made an error in her letter dated 14 November 2016 sent to the Council tax team. She advised that Tenant 2 moved in on 14 November 2016 and she also mistakenly advised that Tenant 1 had vacated the property in 2014, when it was October 2017.

50. It appears that there is a gap in occupation of about one month between Tenant 1 and Tenant 2. Sometimes flats are decorated between a changeover of tenants and with small flats, as in this case, it is unlikely that this would have taken more than a week. There is no information from the appellant to show what happened during this break in continuous use.

51. It is not known when Tenant 2 left as Tenant 3 signs their agreement on 2 February 2017. A letter from Tenant 3 states that they moved into Flat 101a on 2 February 2017. The rent proved to be unaffordable and so they moved into Flat 101b in July 2017.

52. A new tenant was quickly found for the vacant Flat 101a as Tenant 4 signed their agreement on 29 July 2017. Once again, it is rubber stamped in lieu of a written witness signature with the name and address of Jaujar Estate Ltd, as is the second agreement signed on 29 January 2018 and proof of identity is provided with a copy of a Residence Permit. The latter agreement was for a six month period and would have expired on 29 July 2018.

53. As Tenant 5 signed their agreement on 20 July 2018, it is not clear when Tenant 4 vacated the flat. They may have occupied it for virtually the full six months or they may have left sooner. The appellant has not explained what happened. There is no proof of identity for Tenant 5 and as with the earlier agreements, the witness signature is a rubber stamped name.

54. Part of the evidence of continuous use for this flat is derived from a Council tax bill dated 17 October 2014 addressed to two unknown individuals at Flat 101a. It is not clear why this bill has been included as it states it is a "Closing charge for period 18 July 2014 to 12 October 2014". Given that the start of the period is July 2014, it is probably in relation to the former large flat occupying the whole of the first floor known as Flat 101a and possibly marks the end of the use of that flat. However, the Council's records show that the first assessment of Council tax for the new flat formed from the subdivided original Flat 101a was not until 16 August 2017.

55. In addition, there is a copy of a Benefit Decision Notice addressed to Tenant 1 dated 5 May 2015. This is produced for Tenant 1 as there has been a change in State Benefits and it details that benefit payments will start on 1 April 2015. As such, a residential use by Tenant 1 is supported from that date but it is not clear whether this is in relation to the original Flat 101A or the new Flat 101a.

56. The February 2018 overdue gas bill addressed to Tenant 4 shows handwritten annotations which record an old meter number and that new readings were given on 11 March 2018. This supports a residential use by Tenant 4 but it is not clear whether the meters were changed at this point to support a new flat. The Council tax bill dated 21 August 2018 addressed to Tenant 5 supports their residential use.

57. A building insurance Statement of Fact just repeats the information provided by the person applying for insurance, should there be a claim in the future. It is not evidence of continuous use but it supports the appellant's intentions. Similarly, the gas safety records are not evidence of continuous use but they do show a residential use for each inspection day.

58. Finally, the letter from a friend of a former tenant provides general support on the matter of continuous use in that the letter writer states they visited Tenant 1. However, it is not known when and how often and what the layout of Flat 101a was at that time.

Summary

59. On the basis of the evidence in relation to Flat 101a, it has not been demonstrated, on the balance of probabilities, when the residential use began or that the occupation was continuous over any four year period before the relevant date. In part this is because there is some inconsistency as to when the occupier of Flat 101c began their use and this therefore casts doubt on their statement as to when occupation of Flat 101a began. There is also no substantiated evidence to show during the breaks in occupation that the flat continued to exist, such that if the Council had visited, they would have been able to take enforcement action against an unauthorised residential use.

<u>Flat 101b (FFR)</u>

60. In respect of this flat there are the following tenancy agreements:

Occupier	Start date	End date
Tenant 1	20 Jan 2015	19 Jul 2015
Tenant 1	20 Jul 2015	19 Jul 2016
Tenant 1	20 Jul 2016	19 Jul 2017
Tenant 2	26 Jul 2017	25 Jul 2018
Tenant 2	26 Jul 2018	25 Jul 2019
Tenant 2	26 Jul 2019	25 Jul 2020

The appellant also relies on the following documents:

- Copies of passports for Tenants 1 and 2;
- A letter dated 29 August 2019 from Tenant 2;
- Copy of Council tax support decision notice dated 16 October 2018;
- A copy of a building insurance Statement of Fact for five flats dated 2 July 2015;
- Domestic/Landlord Gas Safety Records dated 31 August 2015, 30 August 2016, 16 August 2017 and 16 August 2018 to show when the boiler was inspected; and
- Letter dated 21 August 2019 from a former tenant which seeks to provide details of who lived where and when within the building.

61. If, as purported by the appellant, the flat was capable of providing viable facilities for living by 5 November 2014, then there is an unexplained gap of about three months before Tenant 1 signs their agreement on 20 January 2015. The tenancy agreements, as previously discussed, are contracts and on their own they are not evidence of use. The early tenancy agreements are not witnessed with a handwritten signature by a person who is not the landlord. Later agreements show a rubber stamp, in lieu of a written witness signature, with the name and address of Jaujar Investments or Jaujar Estate Ltd. However, both tenants have provided proof of identity.

62. The appellant states there is a one week gap between Tenants 1 and 2 and that this is insignificant with regard to the accrual of a continuous use period. I agree as sometimes flats are decorated between a changeover of tenants and with small flats, as in this case, it is unlikely that this would have taken more than a week.

63. Part of the submitted evidence of continuous use in this case is derived from Tenant 2's letter and the Council tax support decision notice. Tenant 2 states that they initially moved into Flat 101a, a two bedroom flat, on 2 February 2017. At this point they were aware that Tenant 1 occupied Flat 101b. The rent proved to be unaffordable for Flat 101a and so they moved into Flat 101b, a one bedroom flat, in July 2017 after Tenant 1 vacated it. The decision notice supports their use from April 2018, when the benefit was allocated, until October 2018, the date of the notice.

64. A building insurance Statement of Fact just repeats the information provided by the person applying for insurance, should there be a claim in the future. It is not evidence of continuous use but it supports the appellant's intentions. Similarly, the gas safety records are not evidence of continuous use but they do show a residential use for each inspection day.

65. The letter from the former tenant of Flat 101a corroborates that Tenant 1 occupied Flat 101b from when it was capable of providing viable facilities for living. However, this evidence contradicts the date on the first tenancy agreement signed by Tenant 1. I note the occupier of Flat 101c states that Tenant 1 was in residence in March 2015 when they moved into Flat 101c but as it is not clear when the occupier of Flat 101c moved into their flat, I afford this limited weight.

Summary

66. Based on the evidence in relation to Flat 101b, it has not been demonstrated, on the balance of probabilities, when the residential use began or that occupation was continuous over any four year period before the relevant date.

Overall Summary

67. Having regard to the totality of the evidence, I am not persuaded that the residential use for any of the flats began more than four years before the relevant date and continued without material interruption for a period of four years thereafter. This is because the appellant's evidence alone is not sufficiently precise and unambiguous to justify the grant of a certificate. The appellant's own evidence does not need to be corroborated by independent evidence to be accepted but the appellant's own evidence appears to be inconsistent, with several unexplained discrepancies.

Conclusion

68. 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 continued use of three self-contained flats on the ground floor and two self-contained flats on the first floor (five flats in total) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

D Fleming

INSPECTOR