



Appeal Decision

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 21 October 2022

Appeal Ref: APP/Y5420/X/22/3290797

76 Park Lane, LONDON, N17 0JR

- 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 Acorn Properties Solutions against the decision of the London Borough of Haringey.
 - The application ref HGY/2021/2495, dated 14 July 2021, was refused by notice dated 9 September 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 for the existing use as four self-contained flats.
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Procedural Matters

1. A site visit was not necessary as there is no dispute that the building is currently used as flats, with plans submitted showing the approximate layout.
2. The Council has not provided a statement, but there is a delegated report that has been taken to be the Council's case. The reasons given are that the applicant has not been able to demonstrate on the balance of probability that the property's lawful use has been as 4 self-contained flats from 15 July 2017 until the date of the application. However, the period of 4 years that the applicant has to demonstrate use is any 4 year period prior to the date of application.

Decision

3. 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.

Reasons

4. The applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the local planning authority has no evidence of its own, or 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".
5. The appellant says the use has continued from 2009. Council tax records indicate that the property was divided into 4 flats around 2009. While Council tax records are not definitive of continuous use, they are an indication of use at that time.

6. There are Energy Performance Certificates for the 4 flats undertaken in 2015. These again do not show continuous use, but indicate the use at the time.
7. Domestic Electrical Installation Condition Reports are provided for the 4 flats in 2014. These again do not in themselves show continuous use, but indicate that at the time the flats were likely to be in use.
8. There are Assured Shorthold Tenancies for the flats of various dates, starting in 2010 for flat 76a and ending in 2015 for the second floor flat. These are for a defined period, but this type of tenancy generally continues until notice is served on either side. These again indicated the use from around 2010, but not full evidence of continuous use.
9. There is various evidence from tenants, the first being related to use from 2010. The next is from April 2017. Each suggests the use is as flats. This evidence is not in the form of sworn statements and has not been tested, so it attracts less weight, but it is an indication of use.
10. The evidence provided is precise and not ambiguous.
11. The Council notes that it is for the applicant to provide evidence that is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. It says that the appellant's evidence fails to satisfy that test. However, whilst the Council is right to say that the burden of proof lies with the appellant, where relevant and cogent evidence is submitted and not refuted, it must be accorded weight. The Council did not say what was deficient or ambiguous about the evidence.
12. The Council produced no evidence to show that the use of the 4 flats has not been continuous for a 4 year period prior to the application. In fact the Council concentrates on the immediate 4 year period prior to the application. There is no indication that the flats' use started and either reverted to a single dwelling use or had no use for a material period, to the extent that enforcement action could not have been taken.
13. In this case no one piece of evidence shows the continuous use necessary, but together it indicates on the balance of probability that the 4 flats were formed around 2009/10, and there is no evidence of that use ceasing for any significant period of time.

Conclusion

14. 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 four 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.

Graham Dudley

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 14 July 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto 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 four self-contained flats (Use Class C3) has been demonstrated, on the balance of probability, to have occurred for a period in excess of 4 years prior to the date of the application.

Signed

Graham Dudley
Inspector

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Reference: APP/Y5420/X/22/3290797

First Schedule

Use as four self-contained flats.

Second Schedule

Land at 76 Park Lane, LONDON, N17 0JR

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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.