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## Appeal Decision

Site visit made on 13 October 2022

**by L Perkins BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 October 2022**

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**Appeal Ref: APP/C5690/X/21/3281117**

**Unit 5, Ashby Mews, London SE4 1TB**

- 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 Joseph Lowe against the decision of the Council of the London Borough of Lewisham.
  - The application Ref DC/21/121112, dated 30 March 2021, was refused by notice dated 12 April 2021.
  - The application was made under section 191(1)(a) and 191(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The use/development for which a certificate of lawful use or development is sought is described as: Existing Use: Use of the entire property as a single dwellinghouse.  
Building Works: Installation of terrace and screening on flat roof at first-floor level.
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### Decision

1. In respect of the existing use, 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.

### Preliminary Matters

2. The description in the heading above has been taken from the application form. However, the appellant states that no appeal is made against the Council's decision regarding the terrace and screening on the flat roof at first floor level. So there is no need for me to consider this component of the application any further and I have dealt with the appeal on this basis.
3. Planning Practice Guidance<sup>1</sup> is clear that planning merits are not relevant at any stage in a lawful development certificate application or the appeal process for such an application. Therefore I cannot take them into account. They include matters such as privacy and the suitability of residential development on the site.
4. My attention has been drawn to an agreement under section 106 of the 1990 Act, dated 24 June 2014. The appellant states that the planning permission for the appeal building, reference DC/14/086274, of the same date, was granted pursuant to this agreement and that the agreement contains conditions restricting the use of the property to that of a live/work unit. However, the enforcement of obligations under section 106 does not constitute "enforcement action" for the purposes of section 191, defined in section 171A(2).

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<sup>1</sup> Lawful development certificates - Paragraph: 009 Reference ID: 17c-009-20140306

5. In other words, a finding that the use is lawful under section 191 does not necessarily mean that the section 106 agreement cannot be enforced and so the section 106 agreement has had no bearing on my decision. Nothing has been provided to lead me to a different view on this matter.

### **Main Issue**

6. The main issue is whether the Council's decision to refuse the application was well-founded or not.

### **Reasons**

7. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use.
8. Section 191(2) of the same Act states that for the purposes of this Act uses are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
9. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
10. The Planning Practice Guidance states that the applicant is responsible for providing sufficient information to support an application<sup>2</sup>. In the case of applications for existing use, it states that 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.
11. Section 171B(2) of the 1990 Act states that 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 4 years beginning with the date of the breach.
12. So based on the evidence provided, I must consider whether the building on the appeal site changed use to a single dwellinghouse and continued to be so used for 4 years after the date of the change and before the date of the application, such that the Council could have taken enforcement action at any time during that 4 year period.
13. The appellant has declared that the use began on 1 March 2016 and has provided statutory declarations, including from people who have worked in and/or visited the property, before and after the change of use. They all

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<sup>2</sup> Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

support the appellant's case which is that the building was used as a live/work unit from November 2015 to February 2016, after which the entire property has been used as a single dwellinghouse.

14. The Council describes the evidence in support of the application as 'unambiguous' but says that it 'directly contradicts' the supporting information submitted with a 2019 application for planning permission for the site, reference DC/19/110383. In particular, my attention has been drawn to a document entitled 'Planning, Design and Access Statement & Heritage Statement', submitted in support of the above planning application.
15. According to the Council, a "studio" is annotated on the existing and proposed plans for the 2019 application and this is identified in paragraph 4.2 of the above document as "B1 studio space". This being the case, it is the Council's view that in January 2019, when the above application was submitted, the property was in use as a live/work unit, rather than as a dwellinghouse.
16. The Council's reading of the above document is that it refers to existing and proposed uses of the site by the appellant, at that time, for a number of different employment-related purposes. However, according to the appellant, read as a whole, the document was referring to proposed employment use.
17. This is supported by language used in the document. Paragraph 4.4 states that the appellant was "hoping to use" the employment space in order to support several of his businesses. It notes that the employment space shown in the accompanying drawings "will partially be used as an office" and the other areas "will be used as a photography studio". These statements are clearly expressed in the future, rather than present tense.
18. According to the appellant, the purpose of the 2019 application was to regularise the existing residential use on the ground floor but also allow an element of future business use in a different layout to that authorised by the planning permission.
19. I find this a plausible explanation, given that the 2019 application was submitted following a planning enforcement investigation by the Council. In particular, my attention has been drawn to an email from a Council planning enforcement officer, dated 6 November 2018, following her site inspection on 25 October 2018. In this email she states:  
  
*"Neither is it considered that the B1 use at the property which is present would be sufficient to characterise the overall use of the property as a mixed B1/C3 use. It is therefore considered that there has been a breach of planning control involving the material change of use of the land to use as a self-contained dwelling."*
20. So whatever was shown on existing drawings for the above application, by the date of the planning enforcement officer's site inspection, the use of the property according to her was that of a dwellinghouse and not a live/work unit. I find this a compelling piece of evidence in support of the appellant's case.
21. It is reinforced by a subsequent letter, sent by the same officer, dated 6 March 2019, making it clear that the Council intended to issue an enforcement notice, alleging a material change of use of the property from a mixed B1/C3 use to a C3 use. (Although, based on the information provided, no enforcement notice to this effect was ever issued).

22. With knowledge of the Council's objection to the use of the property as a dwellinghouse, to such an extent that it would issue an enforcement notice, it is entirely logical that the appellant would seek to appease the Council with the submission of a planning application proposing a mixed use. In light of the above, I am satisfied that the employment-related purposes referred to in the 2019 documentation were proposed rather than existing and so the 2019 documentation does not contradict the appellant's case.
23. I note the Council's comments about the appeal decision which followed the 2019 application, reference APP/C5690/W/19/3230242, dated 20 December 2019. But whatever the Inspector for that appeal made of the existing use of the site when they visited, I have reached the conclusion I have given the clear views expressed by the Council's planning enforcement officer in her correspondence, following her own internal inspection of the site.
24. Taking all of the above into account, I am satisfied that there is no evidence which contradicts or otherwise makes the appellant's version of events less than probable. The appellant's evidence is sufficiently precise and unambiguous and on the balance of probability the building has been used as a single dwellinghouse for 4 years prior to the date of the application.

### **Conclusion**

25. 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 use of the entire property as a single dwellinghouse, 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.

*L Perkins*

INSPECTOR

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## 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

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**IT IS HEREBY CERTIFIED** that on 30 March 2021 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 building has been used as a single dwellinghouse for 4 years prior to the date of the application.

Signed

*L Perkins*  
INSPECTOR

Date: 31 October 2022

Reference: APP/C5690/X/21/3281117

### **First Schedule**

Existing Use: Use of the entire property as a single dwellinghouse.

### **Second Schedule**

Land at Unit 5, Ashby Mews, London SE4 1TB

## 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: 31 October 2022

by **L Perkins BSc (Hons) DipTP MRTPI**

**Land at: Unit 5, Ashby Mews, London SE4 1TB**

**Reference: APP/C5690/X/21/3281117**

Scale: Not to scale

