



Appeal Decision

Site visit made on 1 November 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal Ref: APP/W5780/X/21/3278238

91 Mortlake Road, ILFORD, IG1 2SY

- 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 Iftexhar Ahmed against the decision of London Borough of Redbridge.
 - The application ref 1074/21, dated 5 March 2021, was refused by notice dated 30 April 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 2 self-contained C3 residential dwellings on ground and first floors.
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Decision

1. 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.

Main Issue

2. The main issue is whether the Council's decision to refuse the LDC application was well-founded. Under section 171B(2) of the 1990 Act, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach consisting in the change of use of any building to use as a single dwellinghouse. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force. No evidence was submitted regarding an enforcement notice relating to this property at the time of the application during the appeal.
3. It is therefore for the appellant to prove on the balance of probabilities that the appeal property has been used as 2 self-contained dwellings for a substantially uninterrupted period of 4 years prior to the date of the application. The continuous period of 4 years does not have to be the period immediately preceding the date of the application as it is assessed beginning with the date of the breach (so long as there has not been another subsequent relevant event such as a further material change of use or abandonment.) The Council's reason for refusal of the LDC was that insufficient evidence had been submitted to prove the continuous use as two self-contained flats.
4. The property has a shared external front door and internally is divided into two flats, one on the ground floor and one on the first floor. Each flat has all of the amenities needed for day to day living.

5. The appellant has provided many documents in support of the appeal, not all of which were submitted with the original application made to the Council. The appeal process does allow for the submission of additional evidence, and the 1990 Act provides that where the Council's **refusal** is not well-founded (rather than the Council's **reasons** for their decision) the LDC shall be granted. In any event, if an appeal was refused strictly on the basis of the evidence submitted with the application (without taking into account additional evidence submitted with the appeal) it would be open to the appellant to make a further LDC application with the additional evidence and no public purpose would be served.
6. I note that the Council took the decision that the enforcement case for an unauthorised flat conversion at the appeal property was immune from enforcement action on 21 November 2019. This does not have a direct effect on whether the Council's refusal in this case was well-founded, and the decision in this appeal is determined solely on the information before me. In any event, the Council say that decision was based on expediency in order to pursue higher priority cases, and that the evidence was not conclusive at that time.
7. The appellant states that the material change of use of the appeal property in to two separate flats took place in 2009, and that the property has been arranged and continuously occupied as two self-contained flats since that time. I have considered all of the documents submitted by the appellant and have referred to the most relevant below.

Flat 1 (Ground Floor)

8. The appellant says that he initially lived in the ground floor flat with his family following the conversion of the property and rented out the upstairs. His case is that the first tenants moved into the ground floor in 2011. The earliest evidence provided is a tenancy agreement dated 31 October 2011 (with a term of 6 months).
9. Whilst the appellant has provided many documents that relate to the period between 2011 and 2016, it is necessary only to consider the period from January 2017 (which is more than 4 years before the date of the application). The appellant's case is that the flat was rented out throughout that period with only several short gaps due to the changeover of tenants and maintenance works which are normal in the use of a rental property.
10. A tenancy agreement dated 1 November 2014 with named tenants is corroborated by the proof of payment of monthly rents (shown in bank statements received via the letting agent Reptons) between January 2017 and June 2019. Whilst there are not tenancy agreements provided for the entire period this is common when assured shorthold tenancies are allowed to carry over with existing tenants (and indeed the Deposit Protection Certificates for 2015 and 2017 show the same named tenants throughout those years).
11. A 12 month tenancy agreement dated July 2019 identifies new tenants and is corroborated by evidence of monthly rental payments from either the letting agent or the same individuals named on the tenancy agreements until June 2020.
12. A further 12 month tenancy agreement from 21 July 2020 is corroborated by monthly rental payments from the named tenant until May 2021.

13. In addition, other documents dated between 2016 and 2021 (including gas safety records, a domestic installation certificate, EPC and Council Tax records) refer to a property as Ground Floor Flat, 91 Mortlake Road. Whilst these documents taken alone do not prove the use of the ground floor of the appeal property as a separate dwelling, they do corroborate the appellant's version of events.
14. Taken together the periods covered by the tenancy agreements and rental payments set out above span a period longer than 4 years prior to the date of the application, and show that rent was paid for the majority of that time, with only short gaps which are de minimis when considering whether there has been a continuous use as a separate flat. The Council has not submitted or relied on any evidence to cast doubt on this version of events. The appellant has therefore proven on the balance of probabilities that the ground floor was configured and occupied as a separate flat between January 2017 and March 2021.

Flat 2 (First Floor)

15. The appellant's case is that the first floor flat was rented out from 2009 following the conversion of the appeal property into two separate units, and has been continuously let as self-contained accommodation since at least 2011. In order to succeed in the appeal in relation to this flat it is only necessary for the appellant to prove a four year continuous use as a separate dwelling prior to 5 March 2021 although not necessarily immediately preceding that date.
16. The tenancy agreements provided are with the same named tenant in February 2012, August 2014, August 2015, August 2016 and August 2017. The start date of the letting to this tenant is corroborated by a letter from the agency with a payment to the landlord and Deposit Protection Certificate in his name dated February 2012. The initial tenancy agreement is for an assured shorthold tenancy for 6 months and it is often the case that the tenancy will carry on past the expiry date of the initial term. It seems likely on balance that this happened here as the same tenant is then named in subsequent agreements.
17. There are documents from the letting agency confirming receipt of rental payments from this tenant between April 2016 and April 2017, July 2017 and January 2018, and April 2018. The bank statements provided show the monthly rent received from the agency between January 2017 and August 2018. Whilst this evidence is incomplete it does cover a substantial period of time and tally with the dates in the tenancy agreements.
18. Correspondence regarding the electricity account in the name of the same tenant have also been provided dated July 2015, August 2016, July and August 2017, January 2018 and with a Final Bill from October 2018. In addition. gas safety records referring to First Floor Flat are dated 24 January 2012, 12 April 2013, 12 April 2014 (which refers to the same tenant), 13 July 2015, (which refers to the same tenant) and 29 March 2018. These records also corroborate the tenancy agreements and the case that the flat was used as a separate dwelling.
19. Whilst it would be preferable to have sworn evidence setting out the actual occupation of the flat, the Council has not submitted any evidence of its own to contradict the appellant's clear case. As such, the tenancy agreements with

the corroborating evidence including proof of rental payments and the various correspondence referring to both the tenant and the First Floor Flat is sufficient to prove that on balance the First Floor Flat has been used as a separate dwelling for a period in excess of 4 years prior to the date of the LDC application (starting in February 2012 until August 2018).

20. I note that there was a period of around 4 months between August 2018 and January 2019 when it appears that the First Floor Flat may have been unoccupied. Whilst this may not have been de minimis for the purposes of accruing the lawful use (through a substantially uninterrupted use), it is not of a long enough period to cause the existing lawful use as a separate dwelling to be abandoned. There is also no other evidence in front of me to show that something else had happened to cause that use to be lost.

Conclusion

21. 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 2 self-contained C3 residential dwellings on the ground and first floors 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.

Zoë Frank's

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 5 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 use of each of the two self-contained dwellings began more than four years before the date of the application and continued thereafter.

The use does not contravene the requirements of any enforcement notice in force.

Signed

Zoë Franks

Inspector

Date: [17 November 2022]

Reference: APP/W5780/X/21/3278238

First Schedule

2 self-contained C3 residential dwellings on ground and first floors.

Second Schedule

Land at 91 Mortlake Road, ILFORD, IG1 2SY

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 /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: [17 November 2022]

by Zoë Franks Solicitor

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Scale: Not to Scale

