

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 9th June 2023

Appeal Ref: APP/L5240/X/22/3301847

202-204 St James's Road, Croydon CR0 2BW

- 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 Hitesh Patel against the decision of the Council of the London Borough of Croydon.
 - The application, Ref 22/00535/LE dated 10 February 2022, was refused by notice dated 7 April 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is residential use - 8 self-contained flats.
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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 considered to be lawful.

Procedural Matter

2. It was not necessary for me to conduct a site inspection to determine the appeal, with a decision made based on the submitted evidence.

Main Issue

3. The main issue in the appeal is whether or not the Council's decision to refuse the LDC was well-founded.

Reasons

4. Section 191(2) of the Act provides that a use is lawful if no enforcement action may be taken in respect of it. Where there has been a breach of planning control consisting in the change of use of any building(s) to use as a single dwellinghouse (or indeed to use as 8 single dwellinghouses such as the flats in this appeal), no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach¹.
5. The LDC application was made on 10 February 2022. Accordingly, for success in the appeal, the burden of proof is upon the appellant to demonstrate that the use has occurred continuously since at least 10 February 2018 (the relevant date).
6. In line with well-established planning law², as the Council has not submitted any evidence of its own (or from others) to contradict or otherwise make the

¹ Section 171B(2) of the Act.

² Gabbittas v SSE and Newham LBC [1985] J.P.L. 630)

appellant's version of events less than probable, there shall be no good reason for me to dismiss the appeal provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

7. A statutory declaration has been made by the appellant, as joint owner of the appeal properties, which states unambiguously that the 8 flats were created in 2009 and they have been let continuously since 2010 (apart from short vacancies between tenancies while new tenants were sought and general decoration between tenancies). This statutory declaration represents sworn first-hand evidence made under the provisions of the Statutory Declarations Act 1835 and witnessed by and signed in the presence of a solicitor. Accordingly, I give its contents significant weight – particularly as what is said is supported by extensive evidence including a signed letter from a firm of chartered accountants as well as persuasive photographs indicating the said use over the chronology outlined. Substantial amounts of tenancy and council tax documentation has also been submitted in relation to the residential use of the 8 flats which in my view sufficiently demonstrates continuity of the said use with a commencement well before the relevant date.
8. The suggested gaps in continuity raised by the Council in relation to some council tax documents have been adequately explained by the appellant in the context of the short periods between tenancies dealt with in his statutory declaration - which I do not regard to be interruptions in the use for which the LDC is sought. Moreover, when the council tax documentation is considered together with associated tenancy documents it is clear that there has been, as a matter of fact, continuity of residential use for all 8 properties for a sufficient time to acquire immunity from enforcement.
9. The appellant's evidence is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

Conclusion

10. 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 residential use - 8 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.

Andrew Walker

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 10 February 2022 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:

No enforcement action may be taken in respect of it, as the time for action had expired under the provisions of section 171B(2) of the Act.

Signed

Andrew Walker
Inspector

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First Schedule

Residential use - 8 self-contained flats.

Second Schedule

Land at 202-204 St James's Road, Croydon CR0 2BW

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: 9th June 2023

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Scale: Do not scale

