



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 03 July 2023

Appeal Ref: APP/L5240/X/22/3300587

2A Oakhill Road, Norbury, LONDON, SW16 5RG

- 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 Ms Althea Johnson (Known as T Johnson) against the decision of London Borough of Croydon.
 - The application ref 22/00219/LE, dated 3 February 2022/20 January 2022 CHECK, was refused by notice dated 17 March 2022.
 - The application was made under section 192(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 use as self-contained flat.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue an LDC for the existing use of part of the ground floor of 2 Oakhill Road as a self-contained flat was well-founded.
3. In order to be successful in this appeal the appellant needs to prove on the balance of probability that the part of the property known as 2a has been used as a separate residential unit continuously for a period of 4 years prior to the date of the LDC application (i.e. 20 January 2022). This time period does not need to immediately pre-date the application date but the use must have been substantially uninterrupted for at least 4 years.
4. Caselaw and Planning Practice Guidance tell us that in the case of an application for an existing use 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 is sufficiently precise and unambiguous to justify the grant of a LDC on the balance of probability.
5. The appellant states that the use began in 2007 and has provided some documents in support including: a Croydon Private Rented Property Licence between 22 March 2017 and 30 September 2020; Council Tax bills for the periods March to April 2007, February to March 2012, March 2014 to March 2015 and June to July 2020; and tenancy agreements referring to Flat 2a Oakhill Road dated 14 April 2007, 31 March 2015 and 28 June 2019.
6. Whilst I accept that it is commonplace to allow tenancies to roll over with an existing tenant without formal documentation, the documents provided by the appellant do not clearly and precisely confirm the actual periods of occupation

or use as a separate dwelling. The Council refers to plans submitted as part of a previous application which contradict the appellant's case but these are not before me and I have therefore given them no weight.

7. In any event, the case put by the appellant is not sufficiently precise and ambiguous to demonstrate on balance a continuous four year period of substantially uninterrupted use as a separate flat. Indeed the periods of time covered by the Council Tax bills which are in the appellant's name as landlord could indicate that the flat was not occupied at those points (as the appellant has stated that the tenants were generally responsible for registering and paying Council Tax). It is not clear from the evidence submitted whether there have been any period of interruptions in the use as a separate residential unit and further details regarding the extent and type of use, and the relationship with the host property, are required in order to properly assess the planning history. It may be that such further details, for example including sworn evidence regarding the use and time periods from the landlord and tenants, can be provide to discharge this burden of proof but this has not been done on the evidence before me in this appeal.

Conclusion

8. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use as a self-contained flat was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Zoë Franks

INSPECTOR