



Appeal Decision

Site visit made on 15 June 2023

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2023

Appeal Ref: APP/W2465/X/22/3302408

13A St Albans Road, Leicester LE2 1GF

- 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 Kamlesh Patel against the decision of Leicester City Council.
- The application ref 20220099, dated 19 January 2022, was refused by notice dated 13 June 2022.
- 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 described as a 'self-contained dwelling flat (C3)'.

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.

Procedural Matter

2. The use is referred to as a 'dwelling flat'. However, the accommodation takes up the entire building over 2 floors and there is no other dwelling located above or below it. Consequently, I do not regard it as a 'flat' in the strictest sense. I have therefore approached the appeal on the basis that a certificate is sought for use as a self-contained dwellinghouse, which appears to me to be a proper reflection of what the appellant seeks and is consistent with the C3 planning use class referred to.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether, on the balance of probability, use of the appeal building as a self-contained dwellinghouse was lawful on the day the application was made.

Reasons

The requirements to establish lawfulness

4. Section 191(2) of the Act states that:

For the purposes of this Act uses and operations 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.

5. I have not been referred to any enforcement notice, so my decision hinges solely on s191(2)(a). The appellant argues that the time for taking enforcement action had expired by the time the application for an LDC was made.
6. The time limits for taking enforcement action are set out in section 171B of the Act. In accordance with s171B(2), the relevant period for a change of use to use as a single dwellinghouse is 4 years. Thus, the appellant needs to show, on the balance of probability that, prior to the LDC application, the building had been used as a dwellinghouse for a continuous period of not less than 4 years, and that the use had not subsequently been abandoned or changed.

The building

7. No 13A St Albans Road is a terraced house. There is a gated archway leading to a separate building to the rear of the house. The building is variously referred to as 'Flat A, 13A St Albans Road', '13B St Albans Road' or 'The Coach House'. It is a 2-storey building and has clearly been converted to residential use. When I visited the building there was a kitchen/living area and shower room on the ground floor, with a bedroom above. It was obvious that the conversion had taken place some time ago. A meter box was fitted to an outside wall. Nobody was living in the building at the time of my visit.

Assessment

8. The appellant states that this outbuilding was converted into a dwelling in 2005. A statutory declaration made by the appellant states 'The Property was originally an outbuilding in the grounds of 13A St Albans Road but since 15 January 2005 the Property has been used as a separate dwelling independent from 13A St Albans Road.' In support of this the appellant has provided numerous documents such as tenancy agreements, details of rent payments and insurance documents. Some of the documents provided relate to the house at No 13A, but these are clearly distinguished from those relating to the appeal building.
9. There is no doubt that the appeal building has all the facilities require for day-to-day private domestic existence. In physical terms, therefore, it has the characteristics of a dwellinghouse established in *Gravesham*¹.
10. A dwellinghouse is generally regarded as an individual planning unit. Here the building is physically detached from No 13A, albeit close to it. The building is reached via a passageway. There is a small yard between the house and the appeal building, split by a gate and fencing. The plan submitted with the LDC application suggest that the only outside area associated with the appeal building is the accessway.
11. Overall, there is nothing in the characteristics or situation of the building to contradict the claim that it is a separate dwellinghouse. Whether such use is lawful depends on how it has actually been used and occupied.

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

12. The application form indicates that the appellant owns and occupies No 13A and owns the appeal building as well. The appeal building was not occupied at the time of my visit, but it is clear from the evidence before me that the building has been occupied by a range of tenants over the years.
13. There is clear evidence that the building has been rented out as accommodation for substantial periods prior to the LDC application. There are some gaps in the information provided and some inconsistency in the way the appeal building is identified. However, tenancy agreements which clearly relate to the appeal building cover the period July 2010 to June 2015 without interruption. This exceeds the 4 years specified in s171B(2) of the Act. Other tenancy agreements and evidence such as rent statement documents provide further, albeit more intermittent, evidence that the property was rented out over a substantial period from 2005.
14. The appellant's statutory declaration is unequivocal that the property was let as a separate dwellinghouse. The rent receipts and tenancy agreements are generally consistent with that.
15. The outbuilding is specifically excluded from some tenancy agreements for the house (13A) but not from others. However, there are numerous differences in the way the various agreements are drafted, and this particular difference does not show that the outbuilding was ever included as part of the property available to those renting 13A.
16. The Council refers to a lack of evidence other than the tenancy agreements and the rent receipts. However, while further evidence such as additional utility bills could have bolstered the appellant's case, the evidence provided is significant and relevant in its own right.
17. While some of the insurance documents provided by the appellant deal jointly with the house and the appeal building, it seems to me that that simply reflects the fact that they were both in the same ownership, and does not show that they were not separate entities for planning purposes.
18. There has been a lack of consistency regarding the numbering of the property, but the information before me is sufficiently clear to distinguish between the appeal building and the dwelling at 13A. The Council cites a lack of records for Council Tax and property numbering purposes. While this creates a degree of uncertainty, it is not necessarily inconsistent with the appellant's case regarding how the building has actually been used. As the Council points out, the evidence for more recent years (the 4 year period before the Council considered the application) is limited. However, there is sufficient evidence to indicate that the use was already lawful by that time. Since there is nothing to show that the use was subsequently abandoned or changed, the lack of more recent evidence does not undermine the appellant's case.
19. Considering the evidence before me as a whole, the statutory declaration provided by the appellant, together with those tenancy agreements that clearly relate to the appeal building, give a clear indication that the property was used as a self-contained dwellinghouse, independent of the dwelling at 13A, for a period exceeding 4 years. While some of the points raised by the Council, as discussed above, create some small room for doubt, it is insufficient to alter my view that, on the balance of probability, the appellant's version of events is correct. While the property was vacant when I viewed it, there is no evidence

to show that use as a self-contained dwellinghouse was changed or abandoned prior to the LDC application being made. Accordingly, I find that such use was lawful at that point in time.

Conclusion

20. 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 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 and grant a certificate for use as a self-contained dwellinghouse.

Peter Willows

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 19 January 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:

On the balance of probability, use as a self-contained dwellinghouse took place for a continuous period in excess of 4 years prior to the application and the use was not subsequently abandoned or changed.

Signed

Peter Willows

Inspector

Date: 17 July 2023

Reference: APP/W2465/X/22/3302408

First Schedule

A self-contained dwellinghouse (C3)

Second Schedule

Land at 13A St. Albans Road, Leicester LE2 1GF

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 /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 July 2023

by **Peter Willows BA MRTPI**

Land at: 13A St. Albans Road, Leicester LE2 1GF

Reference: APP/W2465/X/22/3302408

Scale: Not to Scale

