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# Appeal Decision

Site visit made on 11 July 2023

**by N Thomas MA MRTPI**

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

**Decision date: 2 August 2023**

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**Appeal Ref: APP/L5240/X/22/3307692**

**Flat 3, 169 Brigstock Road, Thornton Heath CR7 7JP**

- 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 Mrs Ruth Manuel against the decision of London Borough of Croydon.
  - The application ref 22/03154/LE, dated 27 July 2022, was refused by notice dated 23 September 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 as a self contained flat.
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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.

## Preliminary Matters

2. I have summarised the description of the use for which an LDC is sought from the description given on the application form. Although the Council referred to the use of the premises as two rather than one separate self-contained flats in its reason for refusal, it is clear that this was an error.
3. The 'Wheatcroft Principles'<sup>1</sup> have been raised by the Council in relation to the additional information provided by the appellant at appeal. However, the Wheatcroft Principles relate to appeals under Section 78 of the 1990 Act, when it must be considered whether accepting revised plans would deprive those who should have been consulted on the changed development of the opportunity of such consultation. Under Section 195 of the 1990 Act it is open to the appellant to submit additional evidence at appeal in order to make out their case, as the purpose of the LDC is to enable the making of an objective decision based on the best facts and evidence available when the decision is taken. The Council has had the opportunity to comment on the additional information in its Statement of Case.

## Main Issue

4. The main issue is whether the Council's refusal to grant an LDC was well-founded.

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<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

## Reasons

5. The application sought to establish whether the use of Flat 3 as a self-contained flat was lawful on the date of the application. The onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development was lawful at the date of the application.
6. Section 191(2) of the 1990 Act provides that uses are lawful at any time if no enforcement action may be taken in respect of them because the time for enforcement action, 4 years in this case, has expired. Accordingly, the appellant needs to demonstrate, on the balance of probabilities, that the change of use to a single self-contained flat occurred at least 4 years prior to the date the application was made (27 July 2022), that is on or before 27 July 2018, and was sustained for a full 4 year period.
7. The flat is described as having a kitchen, bathroom, toilet and studio area, with its own external door and two large windows. I have no reason to disagree with the appellant that it is self-contained and provides the facilities necessary for day to day living. The appellant states that it has its own gas supply, combi boiler central heating and hot water system.
8. The appellant states that the flat has been in existence since they purchased the property. He has provided evidence relating to the use of Flat 3 in the form of tenancy agreements, payment schedules, application forms and written accounts of the information available. Housing benefit payments have been paid directly to the landlord at the studio/one-bed rate every four weeks.
9. Mr J Green received housing benefit from July 2015 to December 2015 and a payment schedule has been provided showing payments made by J Green over the period, in respect of 169 Brigstock Road. The payment schedule does not specify that the payments relate to Flat 3, and the evidence in relation to Mr J Green's use of the property is therefore unclear. However, the required period commenced on 27 July 2018 and Mr Green's tenancy is not relied upon to establish the lawfulness of the use.
10. An Assured Shorthold Tenancy (AST) for Julie Crowder relating to Flat 3 169 Brigstock Road indicates occupation from 11 October 2016. An account statement has been provided which indicates monthly rental payments for Flat 3 from the period 29 June 2018 to 25 June 2021. A Universal Credit Alternative Payment Arrangements Landlord Request Form has been provided for Ms Julie Crowder, giving her address as Flat 3 169 Brigstock Road as a tenant. The form is dated 11 October 2016. A letter has been provided from Hanbury Homes' M Collinson which sets out that Ms Crowder moved into Flat 3 on 11 October 2016 as a self-contained flat and she vacated on 25 June 2021 and that the Universal Credit Claim was for self-contained housing. She registered a new gas account in October 2016 and a replacement Pay As You Go meter was installed on 29 October 2016. The information points towards Julie Crowder having occupied the premises as a self-contained flat from October 2016 until June 2021.

11. For the period 1 July 2021 to 31 October 2021, details of a tenant named Roy Patience have been provided, including an AST agreement from 1 July 2021 which specifies that it is for Flat 3. A copy of Landlord Payment Schedule has been provided, but this refers to 169 Brigstock Road and does not specify Flat 3. The covering letter from Hanbury Homes explains that Housing Benefit was paid at the room rate as Mr Patience had moved from a room to self-contained accommodation, but then a back payment was made and the self-contained rate was paid thereafter until he passed away a few months later. The information indicates that it is likely that Mr Patience occupied the premises as a self-contained flat from July 2021 until October 2021.
12. The Flat was then occupied by Mr Ainsley Fernandez from 6 November 2021. An AST is dated 6 November 2021 specifying Flat 3, with a Landlord Payment Schedule from Croydon Council for the period from November 2021 until 25 September 2022. The payment schedule does not specify that the payment is for Flat 3, as it gives the payment reference as 169 Brigstock Road. However, an Account Statement for Mr Fernandez lists rent paid for the period from 21 November 2021 until 4 October 2022 for Flat 3 169 Brigstock Road, addressed to Mr Fernandez at the same property. A 'BECS' claim form indicates Mr Fernandez with the address as Flat 3 169 Brigstock Road noted as being his permanent main home from 6 November 2021 and that he does not live in shared accommodation. His previous address is noted as Room 8 169 Brigstock Road. The information indicates that it is likely that Mr Ainsley Fernandez occupied the premises as a self-contained flat from November 2021 until at least October 2022.
13. The Council states that the flat has not been registered separately for Council Tax, and there is only one entry which is for No. 169. This is not conclusive evidence that the property was not being used as self-contained flat for the required period.
14. A House in Multiple Occupation (HMO) Licence was obtained in 2017, which indicated that the whole property was an HMO at that time. A room at the rear was labelled Room 3 on the accompanying plan and is shown to be accessed from the main hallway with no separate access from outside. This is during the period when Ms Julie Crowder was said to be occupying it as a separate and self-contained flat. However, the Council has not provided any evidence to indicate whether the property was inspected at that time nor whether the plan was an accurate reflection of the layout in 2017. I do not therefore find that the 2017 HMO licence is sufficient to contradict the appellant's version of events.
15. The renewal of the HMO licence in May 2022 indicated that at that time Room 3 had been separated from the rest of the house and was labelled as Flat 3 with its own access. I accept that there would have been a period when Room 3 was adapted to become a separate flat, and that this period is not accounted for in the information provided by the appellant. However, the works involved would have been limited and are unlikely to have involved a significant interruption in the use of the flat. I also note that it is unlikely that it was being used as separate flat in 2015 as claimed by the appellant on the application form, nor that the use has carried on for more than 10 years. However, it is not necessary for the use to have been carried on since 2015 or for 10 years. These matters do not cast doubt on the appellant's case in relation to the use during the required period.

16. The Council has very limited contemporaneous evidence to contradict the appellant's version of events or to make it less than probable. I consider that the appellant's information is sufficiently precise and unambiguous to justify the grant of a certificate, on the balance of probability.

**Conclusion**

17. 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 as a self contained flat was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

*N Thomas*

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 27 July 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 probabilities, the change of use to a single self-contained flat occurred at least 4 years prior to the date the application was made and was sustained for a full 4 year period.

Signed

*N Thomas*

Inspector

Date: 2 August 2023

Reference: APP/L5240/X/22/3307692

## **First Schedule**

## **Second Schedule**

Land at Flat 3, 169 Brigstock Road, Thornton Heath CR7 7JP

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 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: 2 August 2023

**by N Thomas MA MRTPI**

**Land at: Flat 3, 169 Brigstock Road, Thornton Heath CR7 7JP**

**Reference: APP/L5240/X/22/3307692**

Scale: Not to Scale

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The OS Map shows the location of the property within the surrounding area.  
The demise of the leased property is shown on the main, larger plan.



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