



Appeal Decision

Inquiry held on 17 October 2023

Site visit made on 17 October 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2023

Appeal Ref: APP/L5240/X/22/3304649

20 Langdale Road, Thornton Heath CR7 7PP

- 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 Homeconnection UK Limited against the decision of the London Borough of Croydon.
 - The application ref 22/02221/LE, dated 25 May 2022, was refused by notice dated 6 July 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 the use of the building as 4 self-contained flats.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for a full award of costs was made by the London Borough of Croydon against Homeconnection UK Limited. This application is the subject of a separate decision.

Preliminary Matters

3. The development for which the certificate is sought is described as 'continued use of building as 4 self contained flats' on the application form. As an LDC confirms the lawfulness of the use on the date that the application was made rather than on an ongoing basis, I have used the wording on the Council's decision notice in the banner heading above, and I have determined the appeal on this basis.
4. On the application form the appellant has stated that building works were substantially completed more than four years before the date of this application, but it is clear from the evidence that the certificate is being sought for a use rather than for operational development.

Main Issue

5. The appellant seeks to establish that the use of the building as four self-contained flats was lawful on the date of the application. 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 has expired.

6. Under Section 171B(2) of the 1990 Act, no enforcement action may be taken after the end of the four-year period beginning with the date of the breach, in this case the change of use to four self-contained flats. It is not necessary for the end of the four-year period to be the same as the date of the application, and therefore in some cases it is necessary to go back more than four years to determine when the change of use took place. The word 'building' in s171B(2) is defined in s336(1) as including any part of a building, and flats are dwellinghouses for the purposes of the 1990 Act.
7. Case law has established that the distinctive characteristics of a dwellinghouse are its ability to afford the facilities required for day-to-day private domestic existence. The dwellinghouse must be created and then used continuously for a four-year period, without significant interruption, in order to gain immunity from enforcement. Each flat is a separate planning unit that can therefore gain immunity following a four-year period of continuous use as a self-contained flat.
8. Accordingly, the appellant needs to demonstrate, on the balance of probabilities, that the change of use to four self-contained flats occurred at least four years prior to the date the application was made (25 May 2022), that is on or before 25 May 2018, and the use was sustained for a full four-year period.
9. 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 probability, that the development was lawful at the date of the application.
10. The Planning Practice Guidance¹ confirms that the applicant is responsible for providing sufficient information to support an application. If the local planning authority has no evidence itself, or from any 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

Reasons

11. The appellant bought the property in 1997 as two flats. This contradicts the statement on the application form that the use started more than 44 years before the date of the application and that there has been no break or change of use. The appellant conceded that the subdivision into flats did not occur in 2011, as stated in the appeal submissions.
12. The Council states that the Valuation Office Agency has three addresses at the site for council tax purposes, with ground floor flat, first floor rear flat and maisonette first floor front and second floor, which have all been recorded since 23 December 1997. This would indicate that between the appellant's purchase and registration for council tax, a third unit was formed at the property. The

¹ [Lawful development certificates - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/lawful-development-certificates) Paragraph: 006 Reference ID: 17c-006-20140306
Revision date: 06 03 2014

Council Officer visited on 15 September 2023 and confirmed that there are only three doorbells at the property.

13. Following the purchase, the Council advised that it be turned into a House in Multiple Occupation (HMO), and they ran it as such for a while. Mrs Ezeh had an HMO licence for the property (not provided), which was renewed every 5 years, and the property was inspected for each renewal. This use ended when the inspection resulted in a list of works that needed to be carried out. A copy of a letter from Croydon Council Environmental Health Officer dated 9 November 2017 has been provided which refers to the list, but the list itself has not been provided. It would be reasonable to conclude that prior to November 2017 the property was at least partially in use as an HMO.
14. Several drawings have been provided. Drawing number GM02-02, dated February 2018 shows the ground floor only and is stated to show the existing layout. As it shows a single storey extension that has now been removed, I take it to show the layout prior to a Building Control submission on 9 March 2018 for the approval of the replacement single storey rear extension. The drawing shows that on the ground floor there were two units of accommodation accessed from the entrance hall. The unit to the rear comprised a kitchen and bathroom accessed from 'room 1'. At the front, there was 'living room 2', with a bedroom and bathroom accessed from the living room.
15. Drawing number GM02-09, dated November 2020 and with the title 'Pre Works', appears to show a single dwelling house with three first floor bedrooms and three ground floor reception rooms, with a kitchen on the ground floor and a bathroom on the first floor. It is not clear what period this relates to, but it appears to predate the replacement single storey rear extension.
16. Drawing number GM02-10 is also dated November 2020 and it cannot therefore have formed part of the Building Regulations approval as suggested by the appellant. It is titled 'Proposed: ground, first and roof plans'. It indicates the layout that is said to exist at present, but in relation to the ground floor it does not accurately reflect the current layout as there is a kitchen in the living room for Flat 3, and the internal layout in relation to Flat 4 is not shown correctly as the bathroom is accessed through the kitchen.
17. Extracts from Private Rented Property Licences for Edith Ezeh for each of the four flats under Section 88(3) of the Housing Act 2004 have been provided for the period 1 October 2015 to 30 September 2020, issued in May and June 2017. The appellant was not able to confirm that the licences involved an inspection of the flat, or whether, as stated by the Council, the licences were issued to confirm that the landowner was a fit and proper person to manage the property.
18. The details set out above do not provide clear and unambiguous evidence of use as four self-contained flats. Rather, the evidence is contradictory in relation to the nature of the use, the length of time that the use has been taking place, and the accuracy of the floor plan drawings. Further evidence was provided for each flat, which I will consider in turn.

Flat 1/maisonette

19. The flat has its entrance door on the first floor from a communal landing. It comprises all the facilities for day to day living and the layout broadly

corresponds with the layout shown on drawing number GM02-10. I am satisfied that, on the balance of probability, it provided those facilities on the date of the application.

20. Two pages from an assured shorthold tenancy agreement (AST) have been provided for the period 28 November 2012 until 27 May 2013 with an opening statement indicating rent collected for the period 10 December 2012 until 27 January 2013. A council tax bill covers the period from 28 November 2012 to 31 March 2013. Neither the opening statement nor the council tax bill gives the name of a tenant.
21. The appellant was of the view that the same tenant whose name appeared on the tenancy agreement is still in occupation, but this is contradicted by a copy of an undated letter from 'Juliet' giving notice of her intention to vacate flat 1 at the end of March 2014. Juliet is not the name given on the tenancy agreement and the appellant asserted that the flat number given on the letter must be incorrect. However, the letter forms part of the evidence provided by the appellant in relation to Flat 1 and it seems unlikely that a tenant would make such a mistake. In any event, it casts doubt on the appellant's assertion that the tenant who signed the AST is still in occupation. No evidence of a rolling tenancy has been provided. It is not clear whether the evidence above was in relation to use as an HMO or a flat, nor when the use as a self-contained flat commenced.
22. A four-year period of continuous use as a self-contained flat has not been established in relation to Flat 1.

Flat 2/first floor rear

23. The flat is accessed from the first-floor communal landing and comprises a living area with kitchen, a bathroom and a bedroom. I am satisfied that, at the time of the application, it is likely that it was a self-contained flat that provided the facilities required for day-to-day private existence.
24. The first and last page of an AST for the period 30 June 2009 to 29 December 2009 have been provided and an opening statement for the period 30 June 2009 to 29 July 2009.
25. A benefit decision notice has been provided which I was informed relates to Flat 2 and a 'D Brown' is dated 20 August 2013, for the period from 4 March 2013.
26. The appellant explained that the AST was not renewed but that there were rolling tenancies during the period since the first AST. However, this is not corroborated by any contemporaneous evidence nor was Mrs Ezech able to provide details of its occupation following the AST. It is not clear whether the unit was part of an HMO or a self-contained flat. A continuous four-year period of use as a self-contained flat has not been established for Flat 2.

Flat 3/ground floor front

27. The layout of the flat differs from that shown on drawing number GM02-10 as there is a kitchen within the living room. The flat includes a bathroom and a bedroom. It is accessed from the communal hall. I am satisfied that, at the time of the application, it is likely that it was a self-contained flat that provided the facilities required for day-to-day private existence. However, the omission of the kitchen from drawings GM02-09 and GM02-10 casts doubt on the claim

that it has been a flat since 1997. The discrepancies between the internal layout shown on the submitted drawings and the actual layout make it unclear as to when the flat first became self-contained.

28. The first and last pages of an AST have been provided for the period from 4 October 2006 to 3 April 2007. A copy of a Notice of Appointment with a bailiff dated 5 February 2018 has been provided. While this indicates that there was probably a tenant in the preceding period, it does not provide evidence of a continuous period of occupation. The appellant conceded that a Notice of Appointment would be required whether or not there was a tenant in occupation, in order to regain possession of the property. The appellant was not able to provide any details or supporting evidence to indicate that there was a rolling tenancy following the initial AST. It is not clear whether the unit was in use as part of an HMO or as a self-contained flat.
29. The evidence does not establish that there was a continuous four-year period of use as a self-contained flat for Flat 3.

Flat 4/ground floor rear

30. The flat is accessed from the communal hallway and has a living space, kitchen and bathroom. It has all the facilities required for a day-to-day private existence and it seems likely that it was a self-contained flat when the application was made.
31. The appellant states that on 13 November 2020 Flat 4 had not existed for four years as it was formed as an enlarged flat following the approval of Building Regulations on 9 May 2018.
32. Despite this, the appellant has provided evidence predating 2018. The first and last pages of an AST from 22 December 2011 to 21 June 2012 have been provided. A letter from Homeconnection is dated 3 March 2014 to a tenant acknowledging the appellant's wish to vacate Flat 4 on 21 March 2014. This is consistent with a Closing Statement dated 27 May 2014 returning a deposit to the tenant. A second AST is for a six-month period from 5 June 2014 to 4 December 2014. A letter dated 5 June 2014 from Ena Walker acknowledges receipt of a Section 21 Notice requiring possession, which was served on 5 June 2014 in relation to the ground floor rear of 20 Langdale Road. It is not clear how this relates to the AST which started on the same date and appears to be contradictory. An Opening Statement dated 14 July 2014 shows rent was collected for the period 5 June 2014 to 4 July 2014.
33. A handwritten letter dated 5 November 2017 from Ena Walker indicates an intention to vacate the bedsit at 20 Langdale Road in 30 days' time. In a different hand the letter is annotated that this relates to rear flat-ground floor Flat 4. It is not clear how this relates to the letter from Ena Walker dated 5 June 2014 acknowledging the Section 21 Notice. A closing statement to Ena Walker dated 23 January 2018 indicates that rent was paid until 9 January 2018. There are therefore ambiguities and contradictions within the evidence for the period from 22 December 2011 to 9 January 2018, with it being unclear whether Ena Walker vacated following the Section 21 Notice in June 2014, or whether she remained in occupation until January 2018. There are also significant gaps in the evidence, which could not be explained by the appellant. The evidence is not sufficiently precise and unambiguous for me to conclude that Flat 4 had been in continuous use as a self-contained flat by May 2018.

34. The appellant states that the conditional approval under Building Regulations dated 9 May 2018 indicates that the flat was practically complete by that date. However, the approval was subject to two conditions, both of which required actions to be completed prior to the commencement of works. There is no evidence that these actions were undertaken, nor that the construction works were then carried out and substantially completed, by the relevant date of 25 May 2018. The appellant has receipts for the building works but did not submit any paperwork relating to them. She recalls that the works were carried out but could not say with certainty that they had been commenced or finished when the Building Regulations conditional approval was received. It is therefore unlikely that the flat was being occupied as a self-contained unit of residential accommodation by the relevant date, given that the extension was to provide a kitchen and bathroom, which are essential facilities for private day-to-day existence.
35. Confirmation has been provided from British Gas that they installed two separate metres for the ground floor on 9 April 2018. While the installation of metres indicates an intention to have two separate units on the ground floor, it does not indicate that there were two separate units at that time, nor that they were occupied as such during the relevant period.
36. A business gas bill for the period 31 May 2018 to 17 September 2018 for Flat 4 was addressed to the appellant rather than a tenant. A further bill for the period 24 April 2022 to 21 July 2022 was also addressed to the appellant. Both bills appear to have been paid by the appellant. They do not therefore indicate that there was a tenant in the property at these times.
37. An AST has been provided for Mr Telmo from 26 February 2021 to 25 February 2022 and a further AST has been provided for the period 26 February 2022 to 25 August 2022. However, the later AST states on Page 4 that the property is operated as an HMO. The appellant states that this was the incorrect AST and that it did not indicate that the property was in use as an HMO. Nonetheless, it casts further doubt as to the nature of the use of Flat 4.
38. TV licence renewal letters are dated October 2019 and 30 June 2020, both for ground floor rear and addressed to Ms E Ezeh. They do not indicate that the premises were occupied at the time, as it would normally be expected that tenants would pay for their own TV licences. The appellant explained that these were related to short term tenants and that she wanted them to be able to have a TV, but she has no records or recollection of who they were or how long they were in the premises.
39. The evidence is not therefore precise and unambiguous in relation to Flat 4 and does not demonstrate that the use as a self-contained flat was sustained for a four-year period without significant interruption.

Conclusion

40. The Council does not have any substantive evidence to make the appellant's version of events less than probable, but there are significant shortcomings, contradictions and ambiguities within the appellant's evidence. It is not sufficiently precise and unambiguous and falls well short of discharging the burden of proof.

41. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the building as 4 self-contained flats 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.

N Thomas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Edith Ezeh of Homeconnection UK Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Henderson of Counsel

Instructed by the Director of Legal Services,
for London Borough of Croydon

He called:
Grace Hewett

Senior Planning Officer for the London
Borough of Croydon

INTERESTED PARTIES:

Mr Varu

Local resident

DOCUMENTS SUBMITTED TO THE INQUIRY

Appellant's opening statement
Appellant's closing submissions