
Appeal Decision

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 28 November 2023

Appeal Ref: APP/U5360/X/22/3312188

65 Blackstock Road, Hackney, London N4 2JW

- 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.
 - The appeal is made by Acorn Properties Solutions against the decision of London Borough of Hackney.
 - The application ref 2022/2079, dated 20 August 2022, was refused by notice dated 31 October 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 described as: use of the former single dwelling house as three self-contained flats each being a separate dwelling within use class C3. The three self-contained flats have been in continuance [sic] use for over 4 years.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the existing use which is found to be lawful.

Preliminary Matters

2. It has not been necessary to visit the site because all the required information is included with the application and appeal documents, and a decision can be reached on the papers. No objections were received on this approach.
3. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision is based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

Main Issue

4. This is whether the Council's refusal was well-founded. This turns on whether the appellant can show that the lawful use sought has continued for 4 years prior to the date of the application, that is 20 August 2022, without any other intervening uses, so as to be immune from enforcement action in accordance with s171B(2) of the Act.

Reasons

5. An application under s191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land is lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may 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 ii) they do not constitute a contravention of any enforcement notice then in force.
6. The council considered that insufficient evidence had been submitted with the application to establish that the property had been in continuous use as three separate flats for the requisite period. I note that additional evidence, which was not before the Council, has been submitted to support the appeal.
 7. The appeal relates to a three-storey property situated in a row of terraced houses. The appellant has submitted documentary evidence to support their claim that the property is subdivided into three separate flats over three floors. The submissions include the following.
 8. Plans for the appeal property which show the layout of each floor. The ground floor (Flat A) has a gross internal area (GIA) of 46sqm providing a bedroom, living room, kitchen and bathroom. The first floor flat (Flat B) has a GIA of 39sqm providing a bedroom, living room, kitchen and shower room. The second floor flat has a GIA of 52sqm providing two bedrooms, living room, kitchen and shower room. The property is shown as having one external front door and each flat is accessed from within the property.
 9. Property information from Gov.uk shows the appeal property to be registered as Flat Gnd Flr with effect from September 2005 and as Flat 1st Flr and Flat 2nd Flr with effect from 11 November 2007.
 10. This is supported by copies of letters from the Council's Revenues and Benefits Service regarding housing benefit for the tenants. These show that claims were made by the tenants on the dates as detailed below:

Flat A - A Ibrahim dated: October 2007; August 2008; July 2008; September 2008 and September 2009.

Flat A - N Kiaku dated: July, August and September 2008; September 2009 and November 2009; March 2010; March 2012; March 2013; March 2014; February 2015; March 2016; March 2017; February 2018; March 2019; February 2020; and 26 February 2022.

Flat B - Y Coquelet dated: August 2009; March 2010; May 2011; June 2012; April 2014 and August 2014; August 2015; March 2016; March 2017; November 2018; January 2019 and March 2019; February 2020; and January 2022.

Flat C - J Da Conceicao dated: June 2014; February 2015; March 2016; March 2017; February 2018; March 2019; and February 2020.
 11. Copies of printouts detailing housing benefit payments made by the Council for the named tenants covering similar time periods have also been provided. These commence in August 2007 with printouts for each consecutive year, with some multiple entries per year, up to December 2011. They recommence in March 2017 and copies are supplied for each consecutive year, with some multiple entries per year up to November 2022. The names attached to the claims are the those listed above as tenants for Flats A, B and C.
 12. A certificate of tenancy deposit protection for D Offia for a tenancy start date 7 March 2021 for Flat C has been supplied. And there is also an application for direct rent payments noting missing payments between April 2021 and

September 2021 together with a letter concerning the payment of rent arrears for Flat C dated November 2022.

13. A notarised statutory declaration signed by N Kiaku and dated 25 November 2022 has been provided. They declare that they are the tenant of Flat A and have been for over 5 years. They also declare that there are two other self-contained flats at 65 Blackstock Road, London.
14. There are signed copies of shorthold tenancy agreements for: Y Coquelet (Flat B) commencing 11 November 2007 and 11 January 2011; I Nzuzi (Flat B) commencing 25 September 2021; N Kiaku (Flat A) commencing 1 April 2010; F Zakrzewski (Flat C) commencing 4 January 2010; J Da Conceicao (Flat C) commencing 27 March 2014; and D Offia (Flat C) commencing 7 March 2021.
15. Copies of utility bills from Scottish Power to Flat A and Flat B dated October 2011 have been provided and copies of utility bills from Npower to Flat C dated December 2010 and April 2011. Also a copy of an EPC assessment for each flat between June 2015 and October 2015 forms part of the submissions.
16. Section 191(4) of the Act indicates that if, on an application under that section, the local planning authority is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. Otherwise, they shall refuse the application.
17. The burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probabilities. The appellant's own evidence does not have to be corroborated by independent evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, their evidence alone may be sufficient to justify the grant of a certificate. This is on the basis that it is sufficiently precise and unambiguous.
18. From the quantum of appeal submissions, I have no reason to dispute that there has been a material change of use of the property from a single dwellinghouse to 3 self-contained flats. The evidence before me, as set out above, points to a possible subdivision of the property around 2005, which is the earliest date that is recorded on the papers provided. The information relating to housing benefit for named tenants shows a consistency of occupation of the flats through the years with no significant gaps or otherwise to indicate a different use.
19. Overall, and in the absence of any evidence to the contrary I am satisfied, on the balance of probabilities, that the appellant has demonstrated that on the date of the application the appeal property had been in use as three separate flats and had operated as such on a consistent basis without any intervening uses for more than 4 years before the date of the LDC application.

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 in respect of the use of the dwelling as three separate 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.

S A Hanson 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 20 August 2022 the development 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the appeal property as three separate self-contained flats has operated as such on a continual basis, without any other intervening uses, up to and including the LDC application date, which was 20 August 2022.

Signed

S A Hanson
INSPECTOR

Date **28 November 2023**

Reference: APP/U5360/X/22/3312188

First Schedule

Use of the former single dwelling house as three self-contained flats each being a separate dwelling within use class C3.

Second Schedule

Land at: 65 Blackstock Road, Hackney, London N4 2JW

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 would have been lawful, on the certified date and, thus, 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 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 **28 November 2023**

by S A Hanson BA(Hons) BTP MRTPI

Land at: 65 Blackstock Road, Hackney, London N4 2JW

Reference: APP/U5360/X/22/3312188

Scale: Not to scale

