



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2023

Appeal Ref: APP/A5270/X/23/3316128

319 Ruislip Road East, Greenford, London UB6 9BG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Newvale Greenford Ltd against the decision of London Borough of Ealing.
 - The application ref 224144CPE, dated 28 September 2022, was refused by notice dated 22 November 2022.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which an LDC is sought is 'use of part of the first floor as a self-contained flat (Flat 319)'.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing use which is found to be lawful.

Procedural matter

2. The appeal will be determined with regard to documentary evidence. A site visit has been deemed to be unnecessary.

Reasons

3. 319 Ruislip Road East is a three storey building with a retail unit and one flat at ground floor level, three flats at first floor level and two flats at second floor level. In June 2020 an application for an LDC was made to establish the use of the property as six self-contained flats. This application was refused principally because one of the flats, Flat 319 at first floor level, was not, at that time, on the Council's council tax records. A further application was made to establish the use of the property as five self-contained flats; Flat 319 being omitted from the application. The Council granted the application, on 15 October 2020, and issued an LDC which established the lawful use of the property as five self-contained flats.
4. On 9 September 2020 an application was submitted to the Council seeking an LDC for the continued use of part of the first floor as a self-contained flat, Flat 319. The application was refused because there was insufficient evidence to demonstrate that the flat had been in continuous use for more than four years prior to the date of the application. A subsequent appeal was dismissed for the same reason, there were gaps in tenancy agreement evidence, though the Inspector did indicate that "The lack of council tax records is not in itself determinative in cases of this kind".
5. The main issue in the appeal application, which was a repeat of that submitted in September 2020, is whether there is sufficient precise and

unambiguous evidence to demonstrate, on the balance of probabilities, that Flat 319 has been occupied continuously for the four year period prior to the date of the application. Occupation must therefore have commenced before 28 September 2018 and the onus of proof is on the Appellant.

6. A letter from the Letting Agents states that the "...property has been let from 08/08/2015 up until now without any interruption" and sets out the occupants of the flat from that date. These were Ms P Szmidt and Mr K Lesniak from 08/08/2015 to 01/03/2019, Ms N Cristina and Mrs M Henrique from 06/03/2019 to 05/03/2021 and Ms G Anton and Mr A Abalasi from 21/03/2021 to 20/03/2022. Five Assured Shorthold Tenancy (AST) agreements have been submitted in evidence. Four of these relate to occupation by Ms Olga Maria Henrique Von-Hafe and Ms Nadia Cristina Von-Hafe Rocas. These names differ from the names given in the aforementioned letter but there is no reason to suppose that the persons referred to are not the same two people.

7. Three certificates of tenancy deposit protection (TDP) have been submitted in evidence. These are for Mr K Lesniak, Ms Von-Hafe and Ms Von-Hafe Rocas, and Ms Anton and Mr Abalasi. Whereas the letter claims that Ms Anton and Mr Abalasi commenced their tenancy on 21/03/2021 the TDP certificate indicates the tenancy start date to be 21/03/2022. One of the AST agreements is for the occupancy by Ms Anton and Mr Abalasi and does indicate that their tenancy commenced on 21/03/2022 and not a year before that as claimed in the letter.

8. The four AST agreements for Ms Von-Hafe and Ms Von-Hafe Rocas confirm that they occupied the flat from 06/03/2019 to 05/03/2022. Again, there is an error in the letter because it is claimed that Ms Von-Hafe and Ms Von-Hafe Rocas terminated their occupancy on 05/03/2021. The two errors in the letter can be regarded to be simple mistakes by the author of the letter because the AST agreements and the TDP certificates indicate precisely when Ms Von-Hafe and Ms Von-Hafe Rocas terminated their occupancy and when Ms Anton and Mr Abalasi commenced their occupancy.

9. None of the AST agreements are for occupation of the flat by Ms P Szmidt and Mr K Lesniak. The TDP certificate for Mr Lesniak does corroborate the claim made in the letter that his tenancy started on 08/08/2015. But there is nothing in evidence to corroborate the claim made in the letter that his and Ms Szmidt's occupation continued until 01/03/2019 or that Mr Lesniak's deposit was released on 05/03/2019. However, if the Council has no evidence of its own to contradict or otherwise make the Appellant's version of events less than probable, there shall be no good reason to dismiss the appeal.

10. The application was accompanied by a properly made and sworn Statutory Declaration by a Director of the Appellant Company, Mr E Karimi. He states that the works to create Flat 319 were complete on 22 July 2015, that the flat was first occupied on 8 August 2015, and that attached tenancy agreements "...show that the flat was first occupied in excess of four years ago and have continued to be occupied without interruption to the present time". Substantial weight is given to the Statutory Declaration and it is unlikely, if Mr Lesniak ceased to occupy the flat before the date claimed that the Appellant company would not have let the flat to someone else. In this regard the absence of AST agreements for Mr Lesniak's occupation of the flat is not a significant factor.

11. The lack of council tax records for occupation of Flat 319 is, as the previous Inspector indicated, not a determinative factor. There is sufficient precise and

unambiguous evidence to justify a conclusion, on the balance of probability, that Flat 319 was occupied continuously for in excess of four years prior to the date of the application. For the reasons given the Council's refusal to grant an LDC for 'use of part of the first floor as a self-contained flat (Flat 319)' at 319 Ruislip Road East, Greenford, London was not well-founded and the appeal thus succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

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 28 September 2022 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched 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:

Flat 319 has been in permanent occupation for in excess of four years.

Signed

John Braithwaite

Inspector

Date: 20 December 2023

Reference: APP/A5270/X/23/3316128

First Schedule

Use of part of the first floor as a self-contained flat (Flat 319)

Second Schedule

Land at 319 Ruislip Road East, Greenford, London UB6 9BG

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: 20 December 2023

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Land at 319 Ruislip Road East, Greenford, London UB6 9BG

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Scale: not to Scale

