



Appeal Decision

Site visit made on 21 September 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/G5750/X/21/3286569

20 Brydges Road, Stratford, London, E15 1NA

- 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 Mr Habib Bhatti against the decision of the Council of the London Borough of Newham.
 - The application ref: 21/00712/CLE, dated 10 March 2021, was refused by notice dated 20 May 2021.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is described as '20 Brydges Road is split into two flats. For more than five years has been used as two separate dwellings'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the development from the application form. The description differs from the description set out in the Council's decision notice and the appellant's appeal form, which both describe the proposal as an application for a LDC for the existing use of two self-contained flats. Since the Act sets out that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use in the building and each part of it which is so used, this does not change my consideration of the appeal and so I shall refer to the use of the property as two self-contained flats below.
3. An enforcement notice has been issued in respect of the appeal site. However, the notice was issued after the date of the LDC application. Since this appeal is concerned with the lawfulness at the date of the LDC application, the enforcement notice is not determinative in the appeal before me.

Reasons

4. Section 191(1) of the Act states that if a person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application to the local planning authority. Section 191(2) of the Act sets out that uses and operations are lawful at any time if 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 they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. Section 171(B) of the Act sets out the time limits for the taking of enforcement action against a breach of planning control, after which no such action may be taken in respect of that breach. Section 171(B)(2) states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
6. To succeed in this appeal, the appellant will therefore need to demonstrate that, on the balance of probabilities, the building had been used as two self-contained flats for at least 4 years on or before the date of the application without any significant break in occupation. It is the appellant's case that the relevant period for consideration is 10 March 2017 to 10 March 2021, namely the four years immediately predating the submission of the application.
7. In their application, the appellant sets out that the use of the property as two self-contained flats commenced in May 2013 and evidence and documentation dating from 2013 has been provided as part of this appeal. I shall therefore consider whether any other four-year period has been established beyond that of the period immediately predating the application.
8. In a LDC appeal, the onus of proof is firmly upon the appellant to make their case on the balance of probabilities and the applicant's own evidence does not need to be corroborated by independent evidence. As established in *Gabbittas v SSE & Newham LBC* [1985] JPL 630, if there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
9. The appellant's ownership of the appeal property is stated to have commenced in September 2020. Around that time, the property was banded as two separate flats for council tax purposes, namely as 'Flat 1' and 'Flat 2', 20 Brydges Road. Around the same time, similar address details were recorded with the Council's street naming team.
10. The appellant has provided a floor plan showing the property arranged as two flats, dated October 2020 and this is consistent with what I saw on site. At the visit, I observed that the property included a front door into a small communal hallway with two lockable doors. The first door provides access to the ground floor of the property. This comprised two bedrooms, a bathroom, a living room and a galley kitchen from where there is access into the rear garden. The second lockable doorway from the communal hallway provides access to a set of stairs and the upper floor of the property. It includes a small kitchen and bathroom together with two further rooms. These contained double beds and were set up as bedrooms at the time of my visit.
11. Licence Number 20/03245/HOSELE states that Flat 1, 20 Brydges Road is licenced for a maximum of 6 people living as 1 household(s) regardless of age. A copy of a similar licence, reference 20/03244/HOSELE, has not been produced, however, the Council advise that it was made at the same date, 11 February 2021, for Flat 2, Brydges Road. While these documents point towards the property having been subdivided, they were made shortly before the LDC application was submitted.
12. Tenancy Agreements (TAs) dated 13 October 2020 (20A Brydges Road) and 14 October 2020 (20 Brydges Road) have been provided. These TAs are

- produced in full and each TA grants a two year fixed term of occupation to the tenant which would cover the period to the date of the LDC application.
13. Further TAs which pre-date the appellant's ownership of the property have also been provided. These cover a period of occupation from March 2015 to September 2020. With the exception of the TAs dated 7 August 2018 and 17 April 2019 which are for a fixed two-year term, the other TAs are all for a fixed term of 12 months. All TAs are produced in full and each is signed by the named tenant. They include different spellings for the address of the property that is being rented out including 'GFF 20 Brydges Road', '20A Brydges Road' and '20 Brydges Road'. Nevertheless, they all appear to relate to the appeal site.
 14. It is the appellant's case that, when combined with the period of occupation set out in paragraph 12 above, the TAs demonstrate continuous occupation of the property as two self-contained units of accommodation for the requisite four year period. However, a tenancy agreement simply shows that a tenant had the right to occupy the premises, not that they did. Nor do they show how the property has been occupied or whether there was a break in occupation.
 15. A number of the tenancy agreements provided by the appellant include a break clause, which would have enabled either the Landlord or the Tenant to bring the tenancy to an end after six months, subject to two months written notice. A tenant signed a 12 month tenancy on 26 November 2017, for the ground floor flat but another tenant signed a tenancy agreement for the ground floor flat on 7 August 2018, more than 3 months prior to the end of the previous tenant's agreement.
 16. The Council has provided me with the initial page of a tenancy agreement, dated 28 February 2018. Although the premises within the February 2018 TA is identified as '20 Bridges Road' which differs from the spelling of 'Brydges Road', the postcode is the same and I am therefore satisfied that it relates to the appeal property. The TA refers to '20 Bridges Road', rather than 'GFF' or '20A' which points towards the property having been let out as a whole rather than as flats.
 17. Furthermore, the names detailed on the TAs provided by the appellant, dated 26 November 2017 (GFF) and 27 March 2017 (20A) do not tally with the name detailed on the TA provided by the Council. Whilst I am mindful that a TA does not provide definitive evidence of occupation, no explanation has been provided by the appellant to explain the inconsistency between the tenancy agreement dated 28 February 2018 and the other tenancy agreements covering this period.
 18. The Council has provided evidence which purports to undermine the appellant's TAs. The Council states that its Council Tax department have a record of a couple in occupation of the entire property between January 2011 until May 2017. However, I have not been provided with a copy of the email from the council tax team or other documentary evidence to show who was responsible for paying Council Tax on the property during this period.
 19. The Council also suggests housing benefit records show a claim for benefit being made by a couple during that period. However, I have only been provided with an extract of the benefit claim, which fails to include relevant details such as the property address, names of applicant or date of the

application. As such, on the limited details provided, it is difficult to assess whether the appellant's evidence is undermined.

20. Nevertheless, the appellant has not provided any council tax evidence to show that the Council's assertions are incorrect. As such, the appellant's claim that the property was used as two self-contained units of accommodation for part of the relevant period between March 2017 and May 2017 has not been adequately demonstrated in this instance.
21. The Council has provided evidence which shows the appeal property was listed for sale on Zoopla in November 2017 and July 2018. Council Tax Inspection Notes, provide detail of a visit to the appeal site, dated 12 October 2018, which confirm there was a 'For Sale' sign at the property.
22. Sale listings with accompanying photographs have been provided. The 2017 listing also includes a floor plan which shows the property laid out as a single property, with reception rooms, kitchen and bathroom on the ground floor and bedrooms on the first floor. Both the photographs provided for the 2017 listing and the 2018 listing appear to show the property laid out as a single dwelling house and are not consistent with what I saw on site.
23. The appellant suggests that the listings appear to have been produced with the intention of testing the market. However, I consider it unlikely that an owner would, on two separate occasions, advertise a property for sale as a 3 bedroom house simply to test the market, particularly given that two flats are, in my experience, likely to attract a higher sale price than a single dwelling.
24. Furthermore, to my mind, a floorplan and photographs taken for the purpose of advertising a property for sale are likely to be taken prior to, and at a point in time that is reasonably close to the property being listed for sale. Indeed, the photographs used in the 2018 listing are not the same as the 2017 listing, suggesting the vendor visited the site prior to advertising the property.
25. There is no suggestion within either listing, that the property was laid out as flats, which I would expect if the intention was simply to test the market. While I appreciate this was prior to the appellant's ownership of the property, in my view the listings point towards the property being used as a single dwelling house.
26. Council Tax Inspection Notes dated 5 December 2018, provide details of a visit carried out on 4 December 2018, during which the officer advises they spoke to an individual who identified themselves as the son of the owner. It is stated that they explained that they occupy the property with their father. Whilst there is nothing to preclude family members from occupying the property as two self-contained flats I consider it is more likely a father and son would choose to occupy a property as single dwelling. Furthermore, this contradicts the appellant's assertion that the tenants identified in TAs dated 5 April 2018 and 7 August 2018 occupied the property at that time.
27. Evidence purporting to be a statutory declaration is given by a person who is named as the tenant of the TA dated 5 March 2015. It sets out the property was arranged and operated as two independent flats albeit there is limited explanation of what this entailed save for separate bins and gas supply. The former tenant explains that she occupied the '*first floor bedroom flat (Flat 2)*'

- between March 2015 and March 2016. However, there is little information contained within the declaration to explain how the property was actually used.
28. Furthermore, although the document is stated to be a statutory declaration, in accordance with the provisions of the Statutory Declarations Act 1835 (the "1835 Act"), the document is not shown to have been witnessed by and signed in the presence of a solicitor, commissioner for oaths or notary public. Nor does it include the standard form of words as set out in the Schedule to the 1835 Act. I have therefore treated this document as a signed statement to which no sanctions would apply if it were found to be untrue, and thus this limits the weight to be given to it.
29. A number of Gas Safe Certificates have been provided in support of the appeal. These refer to a ground floor flat and a first floor flat. As both are noted to include a kitchen and bathroom, this points towards the property being divided in some way. However, while the assessor identifies the property as 'First Floor Flat' and 'Ground Floor Flat', the certificates do not show how the property was laid out, or where the bathroom/s and kitchen/s were located within the building.
30. A number of Npower utility bills have been supplied, including one dated 16 May 2013 which is addressed to No 20A Brydges Road. The date is not visible on a second utility bill, which is also addressed to No 20A, however reference is made to Covid-19, suggesting it post-dates 23 March 2020. Whilst this also points towards the property having been subdivided in some way, the bills do not show that the premises was used as two flats. Furthermore, the bill dated 5 March 2020 is addressed to '20 Brydges Road', which suggests the charges, at that time, applied to the property as a whole.
31. The same can be said for the presence of two utility meter boxes on the exterior of the property since 2011. Whilst it provides evidence of more than one gas supply, it does not show the property was occupied and in continuous use as two self-contained flats. Indeed, the appellant states within their application form that the use began in May 2013.
32. A number of EPC certificates have been produced. However, an assessment made for the purposes of an EPC is to determine the energy efficiency of a property, rather than assessing whether a property is a self-contained flat for the purposes of the planning regime and as such they are not determinative evidence in this instance. In any event, the EPCs are dated 27 September 2020, which is towards the end of the relevant period.
33. A written statement of a neighbouring occupier provides an account of the '*property being split and rented out as two flats*'. However, it provides little explanation to describe how the author of the statement was able to reach that view and the reference to the use occurring over four years is vague and without any reference to any specific dates.
34. I have been provided with an extract of an application for a selective licence (13/06953/HOSELE) dated 25 January 2013 by the Council. The application states that 20 Brydges Road is one house rented to a single household consisting of two persons with exclusive use of the kitchen, bathrooms, living/dining rooms and three bedrooms. However, the application for the licence was prior to May 2013, which is the date the appellant suggests the use

began on their application form and does not, therefore undermine the appellant's case.

35. I find that the Council has provided evidence which contradicts and casts ambiguity upon the appellant's submitted evidence such that it makes the appellant's version of events less than probable. The appellant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the material change of use of the building to two self-contained flats began on or before 10 March 2017 and continued without significant interruption for at least 4 years thereafter.

Conclusion

36. 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 property as two 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 Act.

E Brownless

INSPECTOR