



Appeal Decision

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 April 2024

Appeal Ref: APP/T5150/X/23/3319736

108 Salusbury Road, London NW6 6PB

- 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 Mr Ibrahim Al Khalil against the decision of the Council of the London Borough of Brent.
 - The application ref 22/2244, dated 1 July 2022, was refused by notice dated 14 October 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 described as *'the existing use is for the nine flats that have been in the same form/condition for over four years as the attached information shows. Hence we are applying for Certificate of Established Use.'*
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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. The appeal can be determined without the need for a site visit, as I have been able to reach a decision based on the information already available.
3. The description in the banner heading of the existing use for which an LDC is sought is taken from the application form. For the Certificate I have used an abbreviated version of the description on the appeal form, in the interests of precision. The Council used a similar description on their decision notice.

Main Issue

4. The main issue in this appeal is whether the Council's decision to refuse to grant an LDC was well-founded. This turns on whether it has been shown that, on the balance of probability, the use of the building as nine flats began more than four years prior to the date of the application and has been continuous thereafter.

Reasons

5. The appeal property contains a mid-terrace residential building, with living accommodation arranged over three floor levels. According to the submitted drawings, there are four self-contained flats on the ground floor, numbered 1-3A, with two self-contained flats numbered 4 and 5 on the first floor and a further three self-contained flats, numbered 6, 7 and 8, at second floor level. Five of the flats provide studio accommodation, flats 4 and 6 each have one

separate bedroom whilst flat 5 has two separate bedrooms. Access to the flats is via a communal hallway and stairs.

6. In 2000, an LDC was granted relating to use of the building as a hostel¹. An LDC is now sought on the basis that it is too late to take enforcement action in respect of the use of the building as nine flats. At s171B (2), the Act provides that where there has been a breach of planning control consisting in the change of use of any building (which includes part of a building) to use as a single dwelling, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Any four-year period is relevant, not just the four years immediately preceding the application date. The effect of s191(2) of the Act is that use of the building as nine flats would be lawful if no enforcement action can be taken because the time for taking such action has expired.
7. The onus is on the appellant to show that the use applied for is immune from enforcement action and consequently, lawful. This is qualified by the Planning Practice Guidance chapter 'Lawful Development Certificates', which advises that where a Council has no evidence itself, nor any from others, to contradict or otherwise make an 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 in order to justify the grant of a certificate on the balance of probability².
8. The appellant supplied a considerable quantity of evidence in support of their claim. This included Statutory Declarations (SDs) from the current tenants of flats 1, 2 and 6, who attested to having been in continuous residence of their flats since 8 June 2018, 25 August 2008 and 2 September 2008 respectively. The SDs were signed, dated and witnessed by a solicitor. Copies of Gov.uk webpages which show that flats 1 and 2 and flats 4 to 8 inclusive had been rated separately for Council Tax purposes since August 2008, with flats 3 and 3A rated separately for Council Tax since December 2013, were also supplied.
9. The above evidence was accompanied by copies of various contemporaneous documents. In relation to flat 1, this included a fixed-term Tenancy Agreement (TA) signed by a previous tenant, dated 17 January 2018, as well as a TA dated 8 June 2018 signed by the current tenant. Also included were Council records detailing monthly benefits payments made in the period 8 June 2018 to 16 August 2020, listing the current tenant's address as flat 1. In addition, extracts from bank statements were supplied showing monthly rental payments received from the current tenant between October 2020 and January 2022 and rent payments received in relation to flat 1 from February to May 2022.
10. For flat 2, the documents included TAs dated 25 August 2008 and 2 July 2020, both signed by the current tenant, along with details of rent payments made subsequent to making their SD. In relation to flat 3, TAs dated 13 March 2014, 17 October 2016 and 3 August 2020 were supplied, all signed by the current tenant. Also included were Council records detailing monthly benefits payments made in the period between 1 March 2017 and 17 May 2022, listing the current tenant's address as flat 3. Similarly, for flat 3A a signed TA dated 15 May 2017 was accompanied by Council records detailing monthly benefits payments made in the period 5 March 2018 to 8 November 2020, listing the

¹ Council Ref: 00/2702

² Paragraph: 006 Reference ID: 17c-006-20140306.

tenant's address as flat 3A. Along with this evidence were TAs dated 17 November 2020 and 17 November 2021, signed by the current tenant. TAs dated every year from 10 May 2016 to 20 August 2021 and signed by the previous and current tenants were supplied for flat 4. For flat 5, yearly TAs from 2 February 2018 to 2 February 2022, all signed by the same tenant, were supplied.

11. Documents supplied in respect of flat 6 included TAs dated 2 September 2008, 25 April 2021 and 25 April 2022, all signed by the same tenant. In relation to flat 7, a TA dated 29 July 2013 signed by a previous tenant was supplied alongside Council records with details of monthly benefits payments made in the period between 5 February 2018 and 19 July 2020, listing this tenant's address as flat 7. Also supplied were TAs dated 17 August 2020 and 17 August 2021, signed by the current tenant. Finally, for flat 8 a TA dated 20 November 2008, signed by the current tenant, was supplied along with Council records detailing monthly benefits payments made in the period from 26 June 2017 to 22 May 2022, listing the tenant's address as flat 8. Also supplied was Council correspondence dating at intervals from October 2008 to March 2021 concerning this tenant's entitlement to benefits.
12. The appellant's evidence is clearly supportive of the building having been in continuous use as nine flats for a period of more than four years prior to the application date. The Gov.uk webpages, which show that nine flats have been rated individually for Council Tax purposes since December 2013 at the latest, point towards the continuous existence of nine flats for the required period. The TAs are tangible evidence of each of the flats having been tenanted over a period of more than four years. It is not unusual for a tenancy to continue on a rolling basis once the fixed term in a TA has expired. Moreover, the financial information supplied, including Council records of benefits payments made to tenants, provides further clarification of the continuity in occupation of flats where the tenancies had expired. First-hand witness testimony in the SDs is supplemented by contemporaneous documentary evidence concerning the continuous use of three of the flats for the required period. Therefore, unless there are clear and compelling reasons not to do so, the appellant's evidence should be afforded considerable weight.
13. The Council referred to information it possessed concerning the subdivision of flat 3 to form an additional flat and a consequent failure to corroborate the appellant's evidence. Since no further details were forthcoming however, I am not persuaded that any information in the Council's possession accurately reflects the use of the building during the required period. Besides, this matter has a limited bearing on whether an LDC should be granted in respect of the use applied for. The weight of the evidence points towards the use of the building as nine flats being lawful. Even if there were to be an unauthorised additional flat present, that would not necessarily adversely affect the subsisting lawful use of the building. Nor would granting an LDC in respect of the use as nine flats mean that an additional flat is immune from enforcement action. The appellant's evidence does not need to be corroborated in order to be accepted. Therefore, I shall afford this matter little weight when set against the sum of the other evidence before me.
14. As a result, on the balance of probability the appellant's evidence is sufficiently precise and unambiguous when taken as a whole in respect of the continuity in the use of the building as nine flats for a period of more than four years before

the date of the application. The Council advanced little by way of clear and compelling evidence to contradict the appellant's claim or to make their version of events less than probable. It follows that on the date of the application it was too late for the Council to take enforcement action in respect of the use of the building as nine flats.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the existing use as nine flats at 108 Salusbury Road, London NW6 6PB 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).

Stephen Hawkins

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 1 July 2022 the use 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 available evidence demonstrates that, on the balance of probability, the use of the building as nine flats began more than four years before the date of the application and has been continuous thereafter.

Signed

Stephen Hawkins

Inspector

Date: 5 April 2024

Reference: APP/T5150/X/23/3319736

First Schedule

Existing use as nine flats

Second Schedule

Land at 108 Salusbury Road, London NW6 6PB

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations 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, was /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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 5 April 2024

by Stephen Hawkins MA, MRTPI

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Scale: Not to Scale

