



Appeal Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 01 August 2024

Appeal Ref: APP/L5240/X/23/3321787

44 Dagnall Park, South Norwood, Croydon, London SE25 6NS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Shane O'Donovan against the decision of the Council of the London Borough of Croydon.
 - The application Ref 22/01112/LE, dated 15 March 2022, was refused by a notice dated 12 May 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 for use as 6 self-contained one bedroom flats.
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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 considered to be lawful.

Procedural Matters

2. Considering the matters at appeal it was not necessary to visit the appeal premises. I have therefore made my decision based on the representations and supporting information submitted by the main parties as a matter of course as part of the application and appeal process.
3. Section 194(4) of the Town and Country Planning Act 1990, as amended (1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a certificate of existing lawful use or development (LDC) was well founded. That turns on whether the appellant can demonstrate, on the balance of probabilities, that the change of use to self-contained flats took place more than four years before the date of the application and continued without significant interruption thereafter so as to be immune from enforcement action. The relevant date in this instance being 15 March 2018 and the test applies to each of the six flats.

5. Having regard to case law, a consideration is whether this property has been used as six self-contained flats throughout the whole of the four years, so that the planning authority could at any time during that period have taken enforcement action.
6. Furthermore, the change of use does not need to have been in the four year period immediately preceding the date of the LDC application, provided that there has been no subsequent change of use since that use became lawful.

Summary of cases

7. The appellant maintains in a Statutory Declaration (SD) that he purchased the property in 2001 and it was in use as a licenced 10 bed House in Multiple Occupation (HMO) from 2011 to 2016. He states that during 2016 he converted the property into six self-contained flats and the first tenants moved in during March 2017. Photographs of the kitchens installed have been provided, however, they are undated as is the photo of the electric meters installed. There is a quotation for new kitchens and for electrics for 6 studio flats dated 2016. However, as this is a quote rather than an invoice, it does not demonstrate when the works were undertaken. A list of tenants and Assured Shorthold Tenancy Agreements (AST) have been provided, including, where taken, Deposit Protection Certificates (DPC) and identification documents of tenants. In addition, evidence includes Energy Performance Certificates (EPC) and utility bills. However, the EPC and energy bills do not necessarily provide proof of occupancy.
8. The Council do not consider that the appellant's evidence demonstrates a continuous use of the flats for at least four years. The Council's HMO records show that a licence for a 6 bed HMO was issued in November 2016 when they last inspected the property and were advised in November 2021 by the appellant that the property had ceased use as an HMO and would not be reverting to use as an HMO. Council Tax records show the property as a single unit in Band F. The Council has not provided any substantive evidence that would contradict or otherwise make the appellant's version of events less than probable.

Assessment of the evidence

9. The appellant has provided a SD setting out when he undertook the conversion of the HMO into six self-contained flats, which includes details of the occupation of each flat since March 2017, AST for each occupant and the DPC and identification documents for each tenant. In addition, SD have also been provided from each of the tenants residing in each of the flats at the time of the LDC appeal and confirming their current occupation of that flat and date of first occupation. EPC certificates have been provided for each flat. Whilst those certificates do not demonstrate occupation, the date they were undertaken for each flat is consistent with the appellant's version of events, i.e. that the conversion took place in 2016 and occupation in 2017.
10. There are no utility bills, however the tenancy agreements make it clear that the tenant is responsible for payment of utilities. I appreciate that in isolation the AST do not provide proof of occupancy. However, where there is corroborating evidence such as SD, DPC and identification details of the tenant, it is in my view appropriate to attach significant weight to them. In particular, when the Council has not provided any evidence to the contrary.

Flat 1

11. There is an AST for a single occupier/tenant commencing on 16 September 2017. The term of the tenancy is six months, however, the AST states that once this period of time has ended, if the tenant continues to reside in the property, the tenancy will continue as a contractual periodic tenancy from month to month, starting immediately after the fixed term ends until the tenant gives notice that they wish it to end. The tenant and landlord have provided SD confirming occupation of Flat 1 since September 2017 and the tenant continues to do so. This evidence demonstrates continuous occupancy from the relevant four year period on the balance of probability.

Flat 2

12. There is a SD from the landlord confirming the details of the tenants and the dates on which they have each occupied Flat 2, commencing on 3 March 2017 through to December 2022. There is a corroborating AST for each of the tenants as well as DPC and passport/ID details. A SD has also been provided by the tenant occupying Flat 2 at the time of the appeal confirming the date their tenancy started and current occupation. This evidence demonstrates continuous occupancy for a four year period on the balance of probability.

Flat 3

13. There is a SD from the landlord confirming the details of the tenants and the dates on which they have each occupied Flat 3, commencing on 16 March 2017 through to June 2022. There is a corroborating AST for each of the tenants as well as DPC and passport/ID details. A SD has also been provided by the tenant occupying Flat 3 at the time of the appeal confirming the date their tenancy started and current occupation. This evidence demonstrates continuous occupancy for a four year period on the balance of probability.

Flat 4

14. There is a SD from the landlord confirming the details of the tenants and the dates on which they have each occupied Flat 4, commencing on 25 March 2017 through to the appeal date. There is a corroborating AST for each of the tenants as well as DPC and passport/ID details. A SD has also been provided by the tenant occupying Flat 4 at the time of the appeal confirming the date their tenancy started and current occupation on 29 November 2022. This evidence demonstrates continuous occupancy for a four year period on the balance of probability.

Flat 5

15. There is a SD from the landlord confirming the details of the tenants and the dates on which they have each occupied Flat 5, commencing on 20 March 2017 through to December 2022. There is a corroborating AST for each of the tenants as well as DPC and passport/ID details. A SD has also been provided by the tenant occupying Flat 5 at the time of the appeal confirming the date their tenancy started and current occupation on 15 December 2022. This evidence demonstrates continuous occupancy for a four year period on the balance of probability.

Flat 6

16. There is a SD from the landlord confirming the details of the tenants and the dates on which they have each occupied Flat 6, commencing on 3 March 2017 through to December 2022. There is a corroborating AST for each of the tenants as well as DPC and passport/ID details. A SD has also been provided by the tenant occupying Flat 6 at the time of the appeal confirming the date their tenancy started and current occupation on 1 December 2022. This evidence demonstrates continuous occupancy for a four year period on the balance of probability.

Conclusions

17. I am satisfied that the evidence when taken in the round, is sufficiently precise and unambiguous. Bearing in mind the relevant test of the evidence is on the balance of probability, with no evidence from the Council that would contradict or otherwise make the appellant's version of events less than probable, I consider that the appellant has made his case.
18. Thus, for the reasons given above, I conclude, on the evidence now available, that the Council's reason for refusal to grant a lawful development certificate in respect of the use of 44 Dagnall Park, South Norwood, Croydon, London SE25 6NS 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.

Elizabeth Pleasant

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 the 15 March 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the use commenced more than four years prior to the date of the application for the Lawful Development Certificate and continued substantially uninterrupted thereafter throughout the relevant period.

Signed

Elizabeth Pleasant

INSPECTOR

Date 01 August 2024

Reference: APP/L5240/X/23/3321787

First Schedule

Use of property as six self-contained one bedroom flats (Use Class C3)

Second Schedule

Land at 44 Dagnall Park, South Norwood, Croydon, London SE25 6NS

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated 01 August 2024

by E Pleasant DipTP MRTPI

Land at 44 Dagnall Park, South Norwood, Croydon, London SE25 6NS

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Scale: Not to Scale



