



Appeal Decision

Site visit made on 6 November 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2024

Appeal Ref: APP/Q5300/X/22/3312923

353 Lincoln Road, Enfield EN3 4AD

- 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 Joe Das against the decision of the Council of the London Borough of Enfield.
 - The application Ref 22/03052/CEU, dated 01 September 2022, was refused by notice dated 27 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 the "Use of Property at 353 Lincoln Road, Enfield, Middlesex, EN3 4AD as Two Self Contained 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 found to be lawful.

Application for costs

2. An application for costs was made by Mr Joe Das against the London Borough of Enfield. This application will be the subject of a separate Decision.

Procedural Matters

3. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance in the context of an appeal made under section 195 of the 1990 Act as amended. The appellant must show, on the balance of probability, that the development at the date of application is lawful.

Main Issue

4. The main issue is whether the Council's refusal of an LDC was well founded. It is necessary to consider whether the appellant has proved on the balance of probability that the use of any part of the appeal building changed to use as a self-contained flat on or before 1 September 2018 (that being 4 years prior to the date of the LDC application) and that the use of that part as a self-contained flat then continued for at least 4 years after the date of the change, without any substantial interruption.

Reasons

5. The Planning Practice Guidance states that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, it states that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the 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 to justify the grant of a certificate on the balance of probability¹.
6. The site relates to an end of terrace building, which has been converted into two self-contained flats, one flat on the ground floor and one flat on the first and second floor.
7. The appellant's case is that the change of use to two self-contained flats comprising Nos 353 (the ground floor flat) and 353A (the first floor flat) took place in late 2015, and that the property was subsequently rented as two self-contained flats from January 2016 continuously to the present day. However, the Council maintains its reason for refusing the application, which essentially is that insufficient evidence has been provided to support this claim.
8. I shall focus first on the appellant's evidence, the starting point being the Mr. Das's statutory declaration dated 26 August 2022 (the declaration). This states that from April 2015 to August 2022 Nos 353 and 353A have existed as two self-contained flats and have been continuously occupied by tenants during this time save for minor non-occupation between tenancies.
9. To corroborate this, utility bills (gas and electricity) and gas safety records certificates have been submitted for the existing flats which together cover a period from 2015 to 2022. There is also a domestic electrical installation condition report (for a single dwelling) for No 353A dated 24 March 2015 and a gas installation/safety Record for 353A dated 14 September 2019. I note that the latter is dated after the pertinent date of 1 September 2018. Nevertheless, there is correspondence from Southern Electric dated 13 January 2016 which relates to a gas bill for the flat at 353A.
10. Furthermore, an email from The Account Executive at A.I.F Ltd dated 15 August 2022 states that they have insured 353 and 353A as two converted flats since December 2015, before the pertinent date of 1 September 2018.
11. Further evidence submitted of two separate self-contained flats includes Inventories prepared by Apex Property Inventories dated 16 October 2020, which clearly show that the property as two self-contained flats, with each flat containing the facilities required for day-to-day private domestic existence. In addition, copies of the tenancy protection scheme for both flats dated 16 November 2020 and 8 December 2020 have been submitted. I appreciate these two pieces of information do not demonstrate that the property was changed to self-contained flats from 1 September 2018, nevertheless, they demonstrate that the use as two self-contained flats was continuing at this time in 2020, during the relevant 4-year period.

¹ Paragraph: 006 Reference ID: 17c-006-20140306

12. The appellant has not sought to provide evidence of council tax or rent payments for two separate flats over a 4-year period. Nevertheless, looking at all of the evidence in the round, clear evidence has been submitted, comprising the appellant's statutory declaration, utility bills, gas safety records, an electrical installation report, correspondence from utility companies and email from an insurance company, to demonstrate, on the balance of probability, that the building was converted into two self-contained flats since 2015. The inventories and tenancy protection schemes from 2020 add further weight to the appellant's claim, and indeed, there is no evidence before me to contradict or make the appellant's version of events less than probable.
13. Therefore, on the balance of probability, I am satisfied the appellant's evidence, is sufficiently precise and unambiguous, and demonstrates that two self-contained flats have been continuously used as self-contained flats for at least 4 years prior to the date of the LDC application.

Conclusion

14. 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 established use of the property as two self-contained 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.

R Satheesan

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 01 September 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:

The building has been used as 2 self-contained flats continuously for 4 years prior to the date of the application.

Signed

R Satheesan

INSPECTOR

Date: 19 November 2024

Reference: APP/Q5300/X/22/3312923

First Schedule

Use of Property at 353 Lincoln Road, Enfield, Middlesex, EN3 4AD as Two Self Contained Flats

Second Schedule

Land at 353 Lincoln Road, Enfield EN3 4AD

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: 19 November 2024

by **R Satheesan BSc PGCert MSc MSc MRTPI**

Land at: 353 Lincoln Road, Enfield EN3 4AD

Reference: APP/Q5300/X/22/3312923

Scale: Not to scale

