



Appeal Decision

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 December 2024

Appeal Ref: APP/A5270/X/23/3316533

142 Hambrough Road, Southall UB1 1JE

- 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 Tom Baker against the decision of the Council of the London Borough of Ealing.
 - The application ref 224037CPE, dated 18 September 2022, was refused by notice dated 25 November 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: *'142 Hambrough Rd is an end of terraced house which has been divided into 2 flats. (Ground Floor Flat:142 and 1st Floor Flat:142a). The property was converted pre 2016 when the current owners brought the property. The same tenants have been in place with the same managing agents since 2016 and are willing to provide a solemn statement to confirm. The use of the house as 2 flats has been proved for over 4 years hence this application for a Lawful Development Certificate for the Existing 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 of the use for which an LDC is sought in the banner heading above is taken from the application form. For the Certificate however I have used the description on the Council's decision notice, in the interests of clarity and precision. The appellant used a similar description on the appeal form.
4. Following a change in the legislation which came into effect on 25 April 2024, the time for taking enforcement action in s171B(2) in respect of a breach of planning control consisting in the change of use of a building to use as a single dwelling has been extended to ten years. Even so, that has no bearing on the outcome of this appeal, as the relevant date for ascertaining whether the use applied for is lawful is the date of the application.

Main Issue

5. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the appellant has been able to show that, on the balance of probability, the use as two self-contained flats was lawful at the date of the application.

Reasons

6. The appeal concerns a terraced residential property with living accommodation arranged over three floor levels. Based on the drawings supplied, which the Council confirmed were accurate, the ground floor is laid out as a two-bedroom flat, with a living room, kitchen and bathroom. There is also a garden room in a freestanding outbuilding located towards the end of the rear garden. The first floor and loft space are laid out as a three-bedroom flat, also with a living room, kitchen and bathroom. Both flats are self-contained, each affording its occupiers the facilities required for day-to-day private domestic existence.
7. An LDC is sought on the basis that the use of the property as two self-contained flats began more than four years before the application date. At the time the application was made, s171B(2) of the Act provided that no enforcement action may be taken in respect of a breach of planning control consisting in the change of use of a building to use as a single dwelling after the end of the period of four years beginning with the date of the breach. Any four-year period is relevant in this respect, not just the four years immediately preceding the application date. The effect of s191(2) of the Act is that the use as two self-contained flats would be lawful if no enforcement action can be taken because the time for taking such action has expired.
8. 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, which advises that in the case of applications for existing use, if 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 probability¹.
9. The appellant supplied a Statutory Declaration (SD) with the appeal in which they stated that, at the time they purchased the property in September 2016, it was already subdivided into two flats, laid out as described above. Following minor repairs and painting, the property was let as two flats through a local estate agent, the ground floor flat (No 142) tenancy commencing on 20 December 2016 with the first-floor flat (No 142a) tenancy commencing on 23 December 2016. The appellant went on to assert that both flats have since been rented out to the same tenants.
10. Documentary evidence exhibited with the SD included a copy of a twelve-month Tenancy Agreement (TA) in respect of No 142, signed by a person named as a tenant of that flat in the SD, dated 20 December 2016, along with copies of TAs in respect of No 142 dated on the same day in December 2017, 2018, 2019, 2020 and 2021, all signed by the same persons named as tenants of that flat in the SD. Further evidence exhibited included a copy of a TA dated 23 December 2016, along with copies of TAs dated on the same day in 2017, 2018, 2019, 2020 and 2021, all in respect of No 142a and signed by the persons named as the tenants of that flat in the SD. Apart from one instance in 2016, the TAs were all completed in the presence of the same firm of estate agents named in the SD.

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

11. Other evidence exhibited with the SD included copies of two letters dated 28 January 2023, each signed by one of the tenants of Nos 142 and 142a, in which they referred to continually residing in the ground floor flat and at the first floor flat, since 20 and 23 December 2016, respectively. Also, in a letter dated 1 February 2023 a representative of the estate agents named in the SD stated that their firm had managed two flats at the property since September 2016. The letter went on to provide details of the tenants and of the dates they commenced residence of the respective flats, which corresponded with those set out above. Additional documentary evidence was supplied, including copies of annual gas safety inspection records for two separate units of residential accommodation at the property, dated between 15 December 2016 and 26 November 2022.
12. The SD is signed and dated and was made in the presence of a firm of solicitors. The appellant provided a sufficiently detailed, precise and unambiguous account of events at the property. Their account is supported by contemporaneous documentary evidence, in the form of the TAs and gas safety certificates, as well as in the correspondence from the tenants of Nos 142 and 142a and the managing estate agents. When read together with the SD, the parts of the property that the respective TAs each relate to is sufficiently clear. There is little doubt that the TAs for No 142 relate to the ground floor flat, with those for No 142a relating to the first floor flat. The evidence before me contains no incidences of tenants signing TAs for both flats around the same time. In this or any other respect, there is no sound reason which would lead me to believe that the appellant's documentary evidence is not authentic. Therefore, in the absence of any sound reasons which might suggest otherwise, the appellant's evidence should be afforded considerable weight.
13. It is not in dispute that the property has been rated as a single dwelling for Council Tax purposes, along with a separate rating applying in respect of the freestanding outbuilding. However, a rating for Council Tax is by no means conclusive of how the property has been used in practice. There may be a number of reasons why the Council Tax record does not accurately reflect the actual use in planning terms. Therefore, the Council Tax rating does not create any significant doubt concerning which parts of the property are in use as two separate self-contained units, nor over their use as such for a continuous period of more than four years prior to the application date.
14. Copies of utility bills showing that the flats were each supplied with separate services might have provided additional assistance in verifying the appellant's claim. However, having regard to the evidence already made available, the absence of details concerning utilities and services does not create any significant uncertainty over the use of the property as two self-contained flats for the relevant period. There is no requirement for copies of utility bills or other records to be provided to support an LDC application. Moreover, it is well-established that an appellant's evidence should not be rejected simply because it is not corroborated by independent evidence.
15. Consequently, the sum of the appellant's evidence is sufficiently precise and unambiguous to show that, on the balance of probability, the property has been in continuous use as two self-contained flats for a period of more than four years prior to the application date. Matters referred to by the Council do not materially affect the weight that should be given to the appellant's evidence, taken as a whole; those matters do not contradict the appellant's

account or 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 property as two self-contained flats.

Conclusion

16. 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 continued use of the existing house 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.

Stephen Hawkins

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 18 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 available evidence shows that, on the balance of probability, the use as two self-contained flats has been continuous for a period of more than four years prior to the date of the application, so that the time for taking enforcement action in s171B(2) of the Act has expired.

Signed

Stephen Hawkins

Inspector

Date: **6 December 2024**

Reference: APP/A5270/X/23/3316533

First Schedule

Continued use of the existing house as two self-contained flats

Second Schedule

Land at 142 Hambrough Road, Southall UB1 1JE

IMPORTANT NOTES – SEE OVER

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: **6 December 2024**

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Scale: Not to Scale

