



Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 17 January 2025

Appeal Ref: APP/T5150/X/24/3344858

299B Harrow Road, Wembley HA9 6BD

- 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 Adrian Welch against the decision of the Council of the London Borough of Brent.
 - The application ref 24/0322, dated 7 February 2024, was refused by notice dated 25 April 2024.
 - 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 existing use of 2nd and 3rd floors as 2 X self-contained flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

1. The outcome of the appeal turns on considering relevant aspects of planning legislation and not on assessing matters of planning merit that would normally require a visual site inspection of the premises. I have therefore been able to determine the appeal without a site visit. Neither side has been prejudiced by this course of action.
2. The burden of proof, based on the balance of probability, rests firmly with the appellant.

Main Issue

3. The main issue is whether the Council's decision was well founded.

Reasons

4. S181(1) of the 1990 Act states that compliance with an enforcement notice, whether in respect of (a) the completion, removal or alteration of any building or works; (b) the discontinuance of any use of land; or (c) any other requirements contained in the notice, shall not discharge the notice. Furthermore, without prejudice to s181(1), s181(2) states that any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently. Accordingly, the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.
5. In October 1998 the Council issued an enforcement notice (Ref: E98/0384) alleging the unauthorised change of use of the premises (Second Floor, 299B Harrow Road) from a flat to 2 bedsits, with a requirement to cease the use of the premises as 2 bedsits. In the subsequent appeal decision, the Inspector clearly

stated that works of converting the former flat had resulted in the creation of 2 housing units. The appeal (Ref: APP/T5150/C/98/1013708/P6) was dismissed and the enforcement notice upheld.

6. It is claimed that when the current owner purchased the property in 2004 it was then in one flat, which may indicate compliance with the enforcement notice. Nevertheless, that act did not discharge the enforcement notice and the subsequent conversion of the flat in 2013 into 2 self-contained units, even though the layout may have been different, is clearly a resumption of the use and is thus in contravention of the notice.
7. Under s191(1)(a), if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use, operation or other matter. Under s191(2) of the 1990 Act, uses and operations are lawful if (a) 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 (b) they do not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force. I make the point here that for development to be lawful, both parts (a) and (b) of s191(2) need to be met.
8. Having regard to the above, even if the appellant considers they can show four years of use of the premises as two flats, s191(2)(b) means that the use applied for cannot be lawful.
9. Claims that there was no record of the enforcement notice on the title register or land registry and it has only recently been added to the Council's database, are matters of no bearing when considering the lawfulness of the development.

Conclusion

10. For the reasons given above I conclude that the Council's decision to refuse to grant a certificate of lawful use or development in respect of the existing use of 2nd and 3rd floors as 2 X 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 1990 Act (as amended).

Gareth Symons

INSPECTOR