



Appeal Decision

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd January 2025

Appeal Ref: APP/F5540/X/24/3351077

99 Inwood Road, Hounslow, TW3 1XH

- 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 (LDC).
 - The appeal is made by Vaibhav Johri against the decision of the Council of the London Borough of Hounslow.
 - The application ref 00639/99/LAW3, dated 13 December 2023, was refused by notice dated 5 March 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 is sought is use of 99 Inwood Road, Hounslow, TW3 1XH as four flats.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use describing the existing use which is found to be lawful.

Applications for costs

2. An application for costs was submitted by the London Borough of Hounslow. That application is the subject of a separate Decision.

Preliminary Matters

3. Under s191(2)(a) of the 1990 Act, uses are lawful at any time if no enforcement action may then be taken in respect of them because the time for enforcement action has expired.
4. The burden of proof in satisfying the requirement of s191(2)(a) falls to the appellant to establish that the use of 99 Inwood Road as 4 flats commenced at least 4 years before the date of the application and continued without any significant interruption thereafter. The appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not.
5. The Planning Practice Guidance¹ reflects prior Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
6. Two applications² for LDCs, submitted in 2023, established that there was no dispute between the main parties that three of four flats at 99 Inwood Road

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

² P/2023/0051 & P/2023/1871

have been installed and occupied for a period of four-years or more. Those are referred to by the parties as the Studio Flat (Unit 2), the Garden Flat (Unit 3), and Upstairs Flat (Unit 4). Only the occupation of the Front Flat (Unit 1) was contested.

7. For the appeal, the appellant submitted additional documents which were not before the Council when it considered and determined the application. The Encyclopaedia of Planning Law and Practice³ sets out that appeals under section 195 of the 1990 Act as amended 'are invariably treated as *de novo* appeals...the parties and interested persons may submit additional evidence to the Secretary of State which was not before the authority at the time of its decision'. Accordingly, I have had regard to the additional information.
8. In having had the opportunity to comment on the additional submissions, I am satisfied that the Council's interests have not been prejudiced by this approach. Moreover, on the basis of the new evidence, the Council has confirmed that, on a balance of probability, the use of Unit 1 as a self-contained flat has been continuous for a period of at least four years prior to the application and the appellant has overcome the Council's reason for refusal. Pursuant to that confirmation, the extent of evidence provided, and the submission of a site layout plan provided at my request, no site visit was deemed necessary in the case circumstances.

Main Issue

9. The main issue is whether or not the Council's decision to refuse the LDC was well founded.

Reasons

10. The Council acknowledge the occupation of the Front Flat from July 2017. However, it was the occupation by the appellant, as the owner of the site, for the period between June 2019 and October 2022 which was contested.
11. Evidence of assured short-hold tenancy agreements support the early occupation of the Front Flat in 2017, including one arranged by a letting agency. The appellant asserts that from June 2019, he moved into Unit 1 having previously lived in the Upstairs Flat.
12. The appellant claims that he was in residence in the Front Flat until the end of August 2022, when he moved to 15A Layton Road, Hounslow, which he had purchased earlier in that year. But, because he is the owner of no99, unlike the other units, there is more limited financial detail due to his landlord status and the absence of any necessity for agreements or rent payments.
13. However, his occupancy at no99 is reflected in a series of family photographs dated between July 2019 and June 2022. The majority of the pictures show identifiable parts of the flat documented in earlier promotion photos taken in July 2018.
14. Furthermore, the dates of occupation of the Front Flat claimed by the appellant are supported by a number of written statements from the other unit occupiers, a neighbour who assists in site maintenance, a friend, the letting agent, and the appellant's father. In addition to utility bills, driving licence,

³ P195.03

bank statements and a TV licence being addressed to the appellant at the appeal address, evidence of his purchase of 15A Layton Road was also directed to him at no99.

15. Pursuant to moving out in 2022, addresses for bank accounts, driving licence and credit cards are subsequently transferred to his new address, as might be expected. However, as landlord for the appeal property, combined utility bills for the flats, retain the address at no99.
16. Taking the documentary evidence and consistent observations stated by others together, I find it more likely than not that the appellant was in residence in the Front Flat during the contested period. Moreover, I find that the appellant's claim of continuous use of the building has 4 flats has probably occurred for a period of 4 years or more, and find no reason to disagree with the Council's revised position.
17. The appellant confirms that from early September 2022 to 15 October 2022 works were being undertaken when the flat was vacant. At that time investigation by the Council may not have concluded that the unit was in active use or capable of providing living accommodation. However, on the balance of evidence it is probable that by the start of those works, the use of Flat 1 was already established by the provisions of s171B. The subsequent limited period of works would not distinguish an established use right.

Conclusion

18. 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 use of the building as four 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 Hitchcock

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 13 December 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 evidence provided by the appellant demonstrates that the property has probably been in consistent use as 4 flats for a period of 4 years, or longer.

No enforcement action could have been taken in respect of the use because the time for enforcement action had expired and it did not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

R Hitchcock

Inspector

Date: 22 January 2025

Reference: APP/F5540/X/24/3351077

First Schedule

Use as four flats.

Second Schedule

Land at 99 Inwood Road, Hounslow, TW3 1XH.

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 described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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 Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 22 January 2025

by R Hitchcock

Land at: 99 Inwood Road, Hounslow, TW3 1XH

Reference: APP/F5540/X/24/3351077

Scale: Not to Scale

