
Appeal Decision

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Appeal Ref: APP/T5150/X/23/3328438

Flat 1A, 88 Brook Road, Brent, London NW2 7DU

- 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 J D Devine of KPD Realty Ltd against the decision of the Council of the London Borough of Brent.
 - The application ref 22/3716, dated 28 October 2022, was refused by notice dated 22 December 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 as a self contained flat within Use Class C3.
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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 J D Devine of KPD Realty Ltd against the Council of the London Borough of Brent. This application is the subject of a separate decision.

Preliminary Matters

3. Having considered the evidence submitted, the main considerations in this case, and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the parties were, however, sought on this matter before my determination of the appeal. No objections to this were raised.
4. Whilst the site plan submitted with the LDC application identifies in red outline the whole of 88 Brook Road, a more detailed layout plan of the ground floor of the property identifies, outlined in red, a unit to the rear of the property comprising a kitchen and lounge, a bedroom, and a w.c. and shower room. It is clear, therefore, that the unit shown on this plan is the target of the LDC application.
5. The LDC application form gives the address of the site as 'Flat 1' at 88 Brook Road, whereas the accompanying planning statement refers to the property as 'Flat 1A' at No 88. The same address is also given by the appellant in the appeal form and their appeal submissions. The Council also refer to 'Flat 1A' in the officer report and decision notice. I have, therefore, used this in the address of the appeal site in the header above and in the description of the land specified in the second schedule of the certificate at the end of this decision. I will, from hereon in,

refer to the part of the property that is the subject of this appeal, as identified on the ground floor layout plan referred to above, as 'Flat 1A'.

6. The description of development taken from the LDC application form suggests that the use falls within 'Use Class C3'. I have assumed that this is reference to Class C3 (dwellinghouses) of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order).

Main Issue

7. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. The main issue is whether or not the Council's refusal of the LDC application is well founded.
8. Having regard to the case made by both parties, I have identified the main issue in this case as being whether or not, on the date the LDC application was made, the use of Flat 1A as a self-contained flat, i.e. as a dwellinghouse falling within Class C3 of Part C, Schedule 1 of the 1987 Order, has been continuous for a period of four years or more beginning with the date of the breach, on the balance of probability.
9. The date of the breach is the date on which the use commenced. The time limits for taking enforcement action in respect of a breach of planning control consisting in the change of use of any building to a use as a single dwelling house are set out in section 171B(2) of the 1990 Act. Whilst some of these time limits have been amended recently, section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 informs that these amendments do not apply where the breach occurred before 25 April 2024. The Council does not dispute that the use of Flat 1A as a self contained flat (i.e. the breach of planning control) has not occurred. Neither does it suggest that it had not occurred before 25 April 2024. Accordingly, the relevant time period is 4 years, as referred to by the Council.
10. The test of the evidence is the balance of probability and the burden of proof is on the appellant. Paragraph 006 of the Planning Practice Guidance document on Lawful development certificates advises 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 probability.

Reasons

11. The appellant has provided a statutory declaration from Melita Nuez Buenaobra, which is dated 16 September 2022. Ms Buenaobra's description of the flat is consistent with the layout plan, referred to above. She says that Flat 1A is also known as 'the ground floor garden flat', which is a name used in some of the documents submitted. The submitted plan indicates that Flat 1A overlooks the rear garden.

12. Whilst the appellant does not suggest when the use of Flat 1A first commenced, Ms Buenaobra says that she has lived in the flat for seven years, from 15 June 2015 onwards. A 12 month tenancy agreement provided by the appellant is dated 15 June 2015 and refers to Ms Buenaobra as the tenant. The property subject of the agreement is referred to as Flat 1A. Ms Buenaobra refers to the renewal of the tenancy agreement on only one occasion, on 1 July 2020. The appellant has provided a copy of a 12 month tenancy agreement with this date. Again, this refers to the tenant as Ms Buenaobra and the property as Flat 1A.
13. The appellant says that the expiry of the 12 month period in each agreement gave rise to 'an automatic Statutory Periodic Tenancy' in accordance with the provisions of section 5 of the Housing Act 1988. Whilst I note that there are some limitations to these provisions, I have been given no reason to find that Ms Buenaobra did not benefit from these provisions in this case. Nevertheless, the two tenancy agreements provided corroborate the statement of Ms Buenaobra and I find the reasons given for the lack of a tenancy agreement for each year of her occupation of Flat 1A to be plausible.
14. Ms Buenaobra describes how rent has been paid in the past and how it is paid at present. She also says that she is in receipt of housing benefit. Whilst no documentary records of the rental payments have been provided, the appellant has included correspondence from the Council's assessment officer, regarding the records of housing benefit payments. This shows payments for Ms Buenaobra between 19 September 2011 and 14 June 2015 for the second floor Flat 3 at No 88, referred to in Ms Buenaobra's statutory declaration as her previous place of residence. The correspondence also refers to housing benefit payments between 15 June 2015 to the current date for the ground floor garden flat. Although the date of the change of housing benefit payment from one flat within No 88 to another is not entirely consistent with the date Ms Buenaobra says she moved, I am satisfied that this correspondence corroborates the statements made by Ms Buenaobra.
15. Ms Buenaobra describes having her own metered supply of gas and electricity, although she does not say whether or not this was from her first occupation of the flat. Nevertheless, this element of her statement is corroborated by the gas safety certificates, most of which refer to Flat 1A. Those relevant to Flat 1A are dated December 2017, December 2019, December 2020 and December 2021. The appellant has provided email correspondence that they say refers to a gas meter for the flat. This is between the appellant's agent and OVO, which I understand are a gas and electricity supplier. Whilst this refers only to meters, rather than gas meters specifically, it informs that a meter was initially installed in December 2017 and then replaced in April 2019.
16. Email correspondence from UK Power Networks relating to Flat 1A has also been provided, which the appellant says relates to the electricity meters for the flat. This refers to a meter (rather than an electricity meter) installed in January 2018 and then in November 2018. This correspondence provides a series of meter readings between January 2018 and May 2022.
17. The correspondence from Royal Mail indicates that flat numbering at No 88 was amended in October 2018. A screen shot of the Royal Mail record for No 88 refers to Flat 1A.

18. Whilst I acknowledge that the meters referred to above, any associated readings, and the Royal Mail correspondence does not date back to when Ms Buenaobra says she first occupied Flat 1A, this evidence does nothing but corroborate her statement, particularly with regard to her occupation of the flat in more recent years.
19. I note the record showing the Council tax band of the 'garden flat' on the ground floor of No 88, which states that this is with effect from 15 January 2007. There is no explanation for why this date is a substantial number of years prior to any of the dates given in the appellant's other evidence. There is also nothing to confirm whether the property was recorded for the purpose of Council tax in January 2007 or some time after, as a retrospective registration. For this reason, the weight I can attribute to this evidence is limited. Nevertheless, it does not contradict the appellant's claims.
20. Having regard to all of the above, I find the evidence of Ms Buenaobra to be precise and unambiguous with regard to her occupation and use of Flat 1A as a self-contained flat since at least 15 June 2015. I am mindful of the significant weight that is carried by evidence provided in a statutory declaration, in view of the sanctions that could be imposed should these contain false or misleading evidence. Whilst the Council point to a lack of certain types of evidence to demonstrate the lawfulness of the use, I find the documentary evidence provided by the appellant to only corroborate the statement of Ms Buenaobra. Indeed, the Council have provided no evidence sufficient to contradict or make the appellant's version of events less than probable.
21. I note the Council's concerns, were I to find the use of Flat 1A lawful. These include the implications of this for the use of the whole of No 88 previously found to be lawful in 2010 and the implications of the sub division of existing units within No 88. Earlier in my decision I have made clear that my determination of this appeal is limited to the part of No 88 shown outlined in red on the submitted ground floor plan and referred to as Flat 1A. Accordingly, I have made no determination with regard to the lawfulness of any part of No 88, save for Flat 1A, and any certificate granted in this case does not relate to any part of No 88, other than Flat 1A.
22. All things considered, I am satisfied that the appellant has discharged the burden of proof that is upon them in this case. I find it more likely than not that on the date the LDC application was made, the use of Flat 1A as a self-contained flat, i.e. as a dwellinghouse falling within Class C3 of Part C, Schedule 1 of the 1987 Order, had continued substantially uninterrupted since 15 June 2015 and had, therefore, been continuous for a period of four years or more beginning with the date of the breach. Accordingly, on the balance of probability, the use was lawful on the date the LDC application was made.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the use as a self contained flat within Use Class C3 is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.

J Moss

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 28 October 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 labelled 'Plan 1' 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 is sufficient to demonstrate, on the balance of probability, that on 28 October 2022, the use of Flat 1A as a self-contained flat falling within Class C3 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended, had continued substantially uninterrupted since 15 June 2015 and had, therefore, been continuous for a period of four years or more beginning with the date of the breach.

Signed

J Moss

Inspector

Date: 24 January 2025

Reference: APP/T5150/X/23/3328438

First Schedule

The use as a self-contained flat falling within Class C3 of Part C, Schedule 1 of the The Town and Country Planning (Use Classes) Order 1987 as amended.

Second Schedule

Flat 1A, 88 Brook Road, Brent, London NW2 7DU, outlined in red on the plan attached to this certificate and labelled 'Plan 1'.

For the avoidance of doubt, 88 Brook Road is outlined in red on the plan attached to this certificate and labelled 'Plan 2'.

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 labelled 'Plan 1'. 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.



Plans

These are the plans referred to in the Lawful Development Certificate dated: 24 January 2025

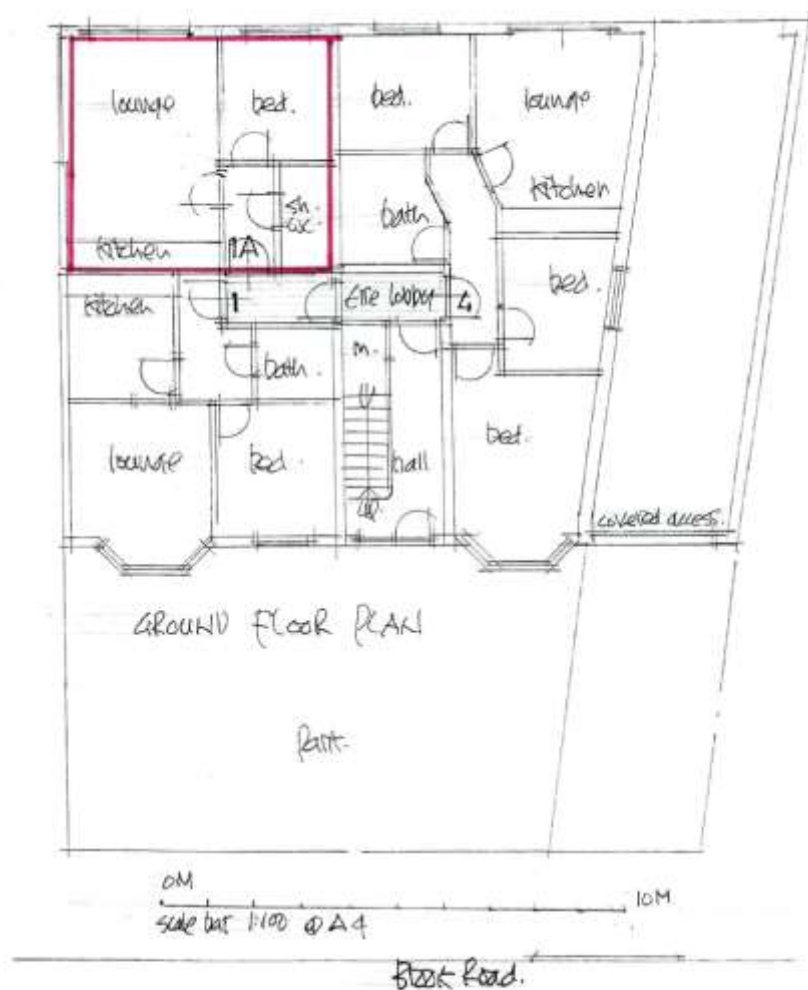
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Land at: Flat 1A, 88 Brook Road, Brent, London NW2 7DU

Reference: APP/T5150/X/23/3328438

Scale: Not to scale

Plan 1



Free Plans
FLAT 1A
88 Brook Road NW2 7DU

existing ground
floor plan
dwg. no. 212/20

Plan 2

