



Appeal Decisions

Inquiry held on 11 February 2025

Site visit made on 11 February 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 March 2025

Appeal A Ref: APP/K1935/X/24/3354037

40A Vinters Avenue, Stevenage, Hertfordshire SG1 1QU

- 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 A Shamsi against the decision of Stevenage Borough Council.
 - The application ref 23/00824/CLEU, dated 9 November 2023, was refused by notice dated 9 July 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 use of the existing property as 4no. self-contained studio flats.
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Appeal B Ref: APP/K1935/C/24/3349697

40A Vinters Avenue, Stevenage, Herts SG1 1QU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr A Shamsi against an enforcement notice issued by Stevenage Borough Council.
 - The notice was issued on 10 July 2024.
 - The breach of planning control as alleged in the notice is the change of use of the land to use as four self-contained flats.
 - The requirements of the notice are to:
 - (i) Cease the use of the land as four self-contained flats;
 - (ii) Remove all internal partitions, kitchen areas, bedrooms and bathrooms associated with the use as flats;
 - (iii) Clear all resultant debris to a licensed refuse facility;
 - (iv) Bring the land into use as a two-bedroom dwellinghouse, in accordance with planning permission reference 15/00125/FP.
 - The period for compliance with the requirements is 24 weeks.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and(g) of the Town and Country Planning Act 1990 (as amended).
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The Notice

1. The enforcement notice (the notice) alleges the change of use of the land to use as four self-contained flats. Paragraph 1 of the notice states there has been a breach of planning control falling within section 171A(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act), which is the carrying out of development without the required planning permission. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'.

2. Whilst the notice refers to 'the change use of the land' it does not allege that a material change in the use of the land has occurred. It therefore follows that the allegation in the notice would not constitute development for the purposes of section 55(1) of the 1990 Act.
3. Section 57 of the 1990 Act provides that planning permission is required for the carrying out of any development of land. Because the breach of planning control as alleged in the notice does not constitute the development of land, it follows that planning permission would not be required for it. The notice is defective in that respect.
4. However, having regard to the appellant's case and their appeal under ground (d), they have clearly understood that the allegation was intended to refer to a material change of use. As such, I am satisfied that a correction of the notice to include reference to a 'material change of use' would not cause injustice in this case.
5. Requirement (iii) under section 5 of the notice states 'Clear all resultant debris to a licensed refuse facility.' To remedy the alleged breach of planning control, it is irrelevant where the resultant debris is disposed of. Therefore, this part of the requirement is not necessary to remedy the breach of planning control. I shall correct it accordingly.
6. Requirement (iv) under section 5 of the notice states 'Bring the land into use as a two-bedroom dwellinghouse, in accordance with planning permission reference 15/00125/FP.' A notice cannot require a building to be brought into an alternative use. As agreed by the Council, I shall correct the notice to omit this requirement.
7. I am satisfied that the above corrections would not cause injustice to any party.

Applications for costs

8. An application for an award of costs has been made by Stevenage Borough Council against Mr A Shamsi. That is the subject of a separate decision.

Appeal A and Appeal B – The LDC appeal and the ground (d) appeal

9. The onus is on the appellant to demonstrate that at the time the notice was issued it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (ie that it is more probable than not). 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 their evidence alone is sufficiently precise and unambiguous.
10. Section 171B(2) of the 1990 Act states that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Whilst s171B(2) has been amended recently, these amendments do not apply where the breach occurred before 25 April 2024. It is not disputed that the alleged breach took place before 25 April 2024.
11. The crux of the argument is whether the relevant period of immunity from enforcement action in respect of Appeal A is a 4 or 10 year period prior to the date

of the LDC application; and, in respect of Appeal B a 4 or 10 year period prior to the date of the notice being issued.

12. Planning permission was granted in 2015 for the erection of a two-bedroom dwelling on the appeal site¹. There is no dispute the permission was commenced in November 2015 and the works were completed in accordance the approved drawing by 8 February 2017, as confirmed in the Protek Inspection Report. The Protek Inspection Report confirmed that 'Works are completed internally, with 2nd fix and decoration finished. The property is ready for habitation internally'. A Certificate of Completion of Work for the dwelling was issued by Hertfordshire Building Control on 16 March 2017.
13. The matter in dispute is whether, upon its completion, the building was brought into use as a dwelling before it was first occupied as 4 self-contained flats. The Council's argument is that if it was never used as a dwelling then the building never experienced a material change of use because its first use was that as 4 flats. Thus, they argue the applicable period of immunity is 10 years, not 4.
14. Both parties rely on the case of *Welwyn*². The case concerned the granting of planning permission for a hay barn. What was actually constructed was a dwelling disguised as a hay barn. In the Supreme Court judgment, Lord Mance considered the question of whether a change of use was required to come within section 171B(2) and stated "The words "change of" use cannot however be ignored". , Lord Mance also expressed that a material change of use may take place when physical works are carried out for the proposed use in advance of the activity which constitutes the proposed use occurring. Therefore, a change of use could take place as a result of the physical works, but as Lord Mance expressed it is necessary "to look at the matter in the round and to ask what use the building has or of what use it is". Also, "The physical state of these premises is very important, but it is not decisive. Actual or intended or attempted use is important but not decisive³." It is a matter of fact and degree as to when the change of use occurs.
15. The 2015 planning permission was not simply for operational development comprising the erection of a two-storey building; it was for the erection of a two-storey building and its use as a two-bedroom dwelling. The Council's case is not that the operational component of the development was not implemented, or indeed completed. Their case concerns the use component of the permission and that the permitted use of the building as a dwelling was never implemented. However, it would be artificial to sever one component of the permission - the operational development, from the other component – the use. The operational development and the use must be considered as a single development.
16. If the operational development has been completed to the extent the building is capable of habitation as a single dwelling, which in this case there is no dispute it was, then notwithstanding whether it was actually used as such, its lawful use at the time it was substantially completed was a single dwelling. The Council argues that the first use of the building was for four flats and at the time it was completed as a two-bedroom single dwelling it was simply a building in the process of being turned into its final form as a building with four self-contained flats.

¹ Council reference 15/00125/FP

² *SSCLG v Welwyn Hatfield Borough Council* [2011] UKSC 15

³ *Impey v SSE & Lake District SPB* [1981] JPL 363; [1984] P&CR 157

17. There was a relatively short period of time between the building being completed as a single dwelling and the works necessary to create four flats being carried out. Nevertheless, the works necessary to change it into four flats required considerable alterations to the internal layout of the building, including the removal and construction of numerous walls and the reconfiguration and installation of shower rooms and kitchens. Had it been the appellant's intention to create the four flats from the outset or during the construction of the building, before it was completed as a single dwelling, the internal layout of the building would likely have been more similar to that of the four flats when planning permission was sought. This would have prevented much waste and expense through the conversion works.
18. I note that the bi-fold doors as depicted on the approved drawings were not installed and the existing double door feature that is currently in situ was installed instead. Whilst it is unusual for such a door to be installed on a single dwelling, were it the appellant's intention to create four flats at that time, it is likely that further works would have been carried out that would not have needed to be replaced later on, eg installation of internal walls, kitchen and bathroom.
19. I find therefore, the building was completed as a single dwelling. At the point that works converting it into flats were substantially completed, a separate development had been carried out and a new chapter in the planning history of the site commenced.
20. Given the building was completed as a two-bedroom single dwelling, in accordance with the 2015 planning permission, and its lawful use was that of a single dwelling, the question then arises as to what use it was in at the time of its completion.
21. Lord Manse stated "I consider it artificial to say that a building has or is of no use at all, or that its use is as anything other than a dwelling house, when its owner has just built it to live in and is about to move in within a few days' time (having, one might speculate, probably also spent a good deal of that time planning the move)." Even if I took the view that this is not the situation in this case and the appellant never actually moved into or intended to move into the dwelling house, that would not assist the Council's case as this would suggest that the building was in fact in a nil use. If it was a nil use then the conversion of the building into four flats would have been a material change of use from a nil use to four flats and the four year period of immunity would be applicable.
22. Whilst I have had due regard to *Welwyn*, it must be noted that the circumstances of that case were materially different to those of the appeal before me. In *Welwyn*, the building was constructed unlawfully and used as a single dwellinghouse from the outset, meaning that there was no change of use. In the appeal before me, the building was constructed with the benefit of planning permission for use as a dwelling, regardless of what subsequently occurred after the building was constructed.
23. Based on the building being completed in accordance with the 2015 planning permission and was clearly capable for habitation, I consider that it had the use of, or was in use as, a single dwelling at the time of its completion in February 2017, regardless of whether the appellant moved in. At the point the building was completed as a single dwelling and before works commenced on converting it into

the flats, it is reasonable to conclude that anyone visiting the property would have not questioned that the use of the building was that of a single dwelling. Similarly, had the works been completed on creating the four flats but they had yet to be occupied, it is reasonable to conclude that anyone visiting the property would have not questioned that the use of the building was that of four flats.

24. I therefore find, on the balance of probabilities, the building was completed as a two-bedroom dwelling and had the use of a dwelling at the time of its completion in February 2017. The subsequent material change of use of the dwelling to four flats occurred more than four years prior to the issuing of the notice and the LDC application and has been in continuous use as such since. It follows that on the date of the issuing of the notice and the date the LDC application was made it was too late for the Council to take enforcement action in respect of the use of the property as four self-contained flats.

Conclusion

25. From the evidence before me, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the existing property as 4no. self-contained studio flats was not well-founded and that Appeal A should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act.
26. I also conclude that the ground (d) appeal on Appeal B succeeds. The enforcement notice will be corrected and quashed. In these circumstances, the appeal on ground (g) does not need to be considered.

Formal Decision - Appeal A

27. 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.

Formal Decision - Appeal B

28. It is directed that the enforcement notice is corrected by:
- The insertion of the word 'material' immediately before the word 'change' under section 3 of the notice;
 - The deletion of the words 'to a licensed refuse facility' from requirement (iii) under section 5 of the notice; and
 - The deletion of requirement (iv) under section 5 of the notice.
29. Subject to the corrections, the appeal is allowed and the enforcement notice is quashed.

A Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jonathon Wright of Planning Solutions (London) Ltd., advocate for the appellant

They called:

Mr Asif Shamsi, the appellant

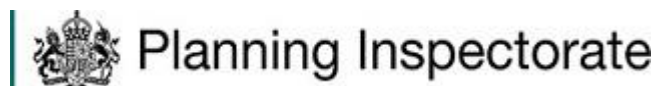
Himself

FOR THE LOCAL PLANNING AUTHORITY:

Clare Parry of Cornerstone Barristers, counsel for the Council

They called:

Thomas Frankland, Principal Planner for Stevenage Borough Council



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 9 November 2023 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:

On the balance of probabilities, the material change of use of the existing dwelling to 4no. self-contained studio flats took place in excess of four years prior to the date of the certificate of lawful use or development application. The use then continued up to the date of the certificate of lawful use or development application.

Signed

A Walker

Inspector

Date: 7 March 2025

Reference: APP/K1935/X/24/3354037

First Schedule

Use of the existing property as 4no. self-contained studio flats.

Second Schedule

40A Vinters Avenue, Stevenage, Hertfordshire SG1 1QU

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: 7 March 2025

by A Walker

Land at: 40A Vinters Avenue, Stevenage, Hertfordshire SG1 1QU

Reference: APP/K1935/X/24/3354037

Scale: Not to Scale

