
Appeal Decision

Site visit made on 9 June 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 June 2025

Appeal Ref: APP/Q4245/X/24/3349137

84 Seymour Grove, Old Trafford, Manchester, Greater Manchester, M16 0LW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Farzana Tahir against Trafford Metropolitan Borough Council.
 - The application ref 91644/CPE/17 is dated 7 June 2017.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is extension to existing house to form four flats.
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Decision

1. The appeal is dismissed.

Main Issue

2. The appeal is made against the Council's failure to give notice within the prescribed period of a decision on the application for an LDC. The Council confirm that had they determined the LDC application, they would have refused to grant a certificate. The main issue is therefore whether the Council's decision to refuse to grant an LDC would have been well-founded.

Reasons

3. The onus is on the appellant to demonstrate that, on the balance of probabilities, the use was lawful at the time of the LDC application. A development is lawful under the provisions of section 191(2)(a) and (b) of the Town and Country Planning Act 1990 (the Act) if no enforcement action may be taken because it did not involve development requiring planning permission, or because the time for enforcement action against the use has expired; and, providing it does not constitute contravention of any requirement of any enforcement notice then in force. 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 his evidence alone is sufficiently precise and unambiguous.
4. Section 191(4) of the Act states "If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application." Accordingly, I have determined

the appeal on the basis of whether the 4 flats were lawful at the time of the application. The LDC application was made 7 June 2017. The application sought an LDC for the use of the extensions to the existing house for four flats. For the use to be lawful through the passage of time, the appellant must show that the use of the extensions materially changed to flats at least 4 years prior to the date of the LDC application, and their use then continued for at least 4 years thereafter, without significant interruption.

5. Evidence has been submitted pertaining the use of the flats after 7 June 2017. However, this has had no bearing on the consideration of the appeal, as the appeal is only concerned with whether the use was lawful on 7 June 2017.
6. A number of sworn statements and affidavits have been submitted. The statement of Mr Asjad Ahmed confirms the appellant has flats on the side and rear of the property. Notwithstanding the lack of any identification that he is referring to the appeal site, he does not confirm which flat he is referring to, how many flats there are or how long they have been there.
7. The affidavits of Tahira Jabeen Malik and Asjad Ahmed identifies the appeal site, but only state there is 'a flat' and do not identify in which part of the extension. There is no reference to multiple flats.
8. The Tenancy Agreement of Tahira Jabeen Malik dated 1 June 2000 is for the tenancy of 'First floor granny flat and flat on the rear extension of 84...' This raises some ambiguity as his affidavit only refers to him occupying 'a flat', not two flats. The Tenancy Agreements of Asjad Ahmed refers to 'Ground floor flat on the front extension'. Nevertheless, the tenancy agreements and affidavits only relate to three flats, not four.
9. The 2010 affidavits of Fehmida Itawalia and Manzoora Jabbar state that there were only three flats. To add further ambiguity, the LDC application made in 2010¹ only depicts three flats, not 4.
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11. Notwithstanding the above, the 2005 planning application for the change of use of existing two storey side extension from domestic to office accommodation² included drawings showing the ground floor part of the extension, now referred to as flat 1, and the first floor extension, now flat 2, formed part of the accommodation associated with the dwelling. This clearly contradicts the statements and affidavits, which suggests that there had been at least three flats since 2000.
12. There are a number of Council Tax Bills submitted which relate to '84 Seymour Grove, Old Trafford' and therefore do not support the use of the flats. Nevertheless, there are Council Tax Bills relating to the four flats, which were banded in 2010. Flat 1 has bills for 2010/2011, 2011/2012, 2013/2014. There is also a 2015/16 bill but that states the property was 'Empty and unfurnished'. Therefore, these bills do not indicate flat 1 was in continuous use for a period of four years. The same applies to the other three flats. There is not a period of four years of Council Tax Bills that suggest any of the flats have been in continuous

¹ Council ref 76181/CLEUD/2010

² Council ref H/62815

use for four years. Moreover, many of these bills have not been paid, which could be a result of the flats not being occupied at the time.

13. The tenancy agreement for flat 3 is dated 1 April 2010, but it is only for 12 months. There are no other tenancy agreements relating to this flat. There are no tenancy agreements relating to flat 4.
14. The evidence suggests that the four flats have been in residential use since around 2010 and that three flats have been in use since before that. However, it is not clear what the layout of the flats has been over this time.
15. Overall, the evidence before me fails to demonstrate, on the balance of probabilities, that the flats have been in continuous use for a period of four years, without significant interruption, prior to 7 June 2017. As there is no evidence before me that planning permission has been granted for the four flats, the development is unlawful.

Conclusion

16. For the reasons given above, on the evidence now available, the Council's deemed refusal to grant a certificate of lawful use or development was well-founded and the appeal should fail. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

A Walker

INSPECTOR

