Appeal Decision

No site visit

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 JUNE 2025

Appeal Ref: APP/Y5420/X/23/3330081
245 St. Ann's Road, Tottenham, London N15 5RG

- 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 Acorn Solutions against the decision of the Council of the London Borough of Haringey.
- The application ref HGY/2023/0333, dated 31 January 2023, was refused by notice dated 29 March 2023.
- 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 of the site as two self-contained flats.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the use of the site as two self-contained flats, which is found to be lawful.

Preliminary Matters

2. Due to the nature of this case, it was determined that it was not necessary for me to conduct a site visit. The main parties were made aware of this fact, and no further comments or objections were received.

3. The appeal concerns the lawfulness or otherwise of the use of a two storey terraced property as two self-contained flats. The description on the Decision Notice is more concise than the use described on the original Application form. As the description on the Decision Notice matches the Appeal Form, I am satisfied that no prejudice would occur from me determining the appeal based on this description and this is reflected in the banner heading above.

4. As a matter of clarification, the wording of section 171B (1) (a) of the Town & Country Planning Act 1990 (1990 Act) has been changed. Section 171B (1) (a) states that the time limit for taking enforcement action on all development in England is 10 years, beginning with the date on which the use commenced. However, the ten-year limit only applies where the date of an alleged material change of use to a dwellinghouse was on or after 25 April 2024. From the submissions it is understood the material change of use commenced prior to this date.

5. The relevant date in an LDC appeal is the date of the application, which is 31 January 2023. Accordingly, the use would had to have commenced no later than 31 January 2019. However, any 4-year period before the material date is relevant

provided the use was established before the date of the application and has not been abandoned or lost by a supervening event prior to the submission.

6. In cases such as this, the onus rests with the appellant to make their case. The evidence does not need to be corroborated by independent evidence to be accepted, provided the evidence alone is sufficiently precise and unambiguous on the balance of probability. Planning Practice Guidance (PPG) advises that where a Council has no evidence itself, nor any from others, to contradict or otherwise make an 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 in order to justify the grant of a certificate on the balance of probability[1].

7. Matters such as planning policies and the effect of the development on the character and appearance of the area and neighbour's living conditions are also not relevant to the determination of an LDC appeal. My determination is made solely on matters of fact, planning law, and application of judicial authority.

Main Issue

8. The main issue is, therefore, whether the Council's refusal to issue an LDC for the property being used as two self-contained flats was well-founded.

Reasons

Evidence

9. The LDC application included the Application Form; Floor Plans and a Site Location Plan. The detailed floor plans submitted with the appeal are annotated as Ground Floor Flat (Flat A) and First Floor Flat (Flat B). For the purposes of this decision, I will hereafter refer to the ground floor flat as Flat A and the first floor flat as Flat B. The following supporting documents were also provided: -

    - Energy Performance Certificates- 26 November 2015 (Flat A) and 15 January 2016 (Flat B);
    - Electrical Installation Condition Reports Flat A and Flat B- 6 June 2019;
    - Assured Shorthold Tenancy Agreements x 2- Flat A- 2013 and 2020;
    - Assured Shorthold Tenancy Agreements x 2- Flat B- 2015 and 2022;
    - Council Tax details for Flat A and Flat B Dated 15 January 2022;
    - Google Street Image showing property in street from Front- Dated 2022.

10. Further evidence has been submitted as part of the appeal that was not provided with the LDC application. It is open to me to consider any such evidence because section 195 of the 1990 Act refers to the 'refusal' being well-founded, which means the Local Planning Authority's decision, not the reasons for the decision. I have, therefore, taken account of the further evidence submitted when determining the appeal. The additional information and documents that have been submitted with the appeal to address the matters raised by the Council included an Appeal Statement as well as the evidence that I have listed and summarised below: -

    - Confirmation of Council Tax banding, property reference and address from London Borough of Barnet Council Tax Team- Flat A;

[1] Paragraph: 006 Reference ID: 17c-006-20140306.

- Confirmation of Council Tax banding, property reference and address from London Borough of Barnet Council Tax Team - Flat B
- Housing Benefit Claims for named tenant of Flat A- dates between 02 January 2017 and 25 December 2022;
- Housing Benefit Claims for named tenant of Flat B- dates between 02 January 2017 to 8 September 2019;
- HSBC Bank Statements and February Properties Ltd Bank Statements for rent payments for First Floor Flat (245B) from January 2020 to August 2023;
- Assured Shorthold Tenancy Agreements- 07 September 2009- Flat A;
- Assured Shorthold Tenancy Agreements- 11 January 2009- Flat B;
- Assured Shorthold Tenancy Agreements- 28 July 2012- Flat B;
- Housing Benefit payment Claims for named tenant of Flat B - dated between January 2009 and January 2011;
- Housing Benefit payment Claims for named tenant of Flat A - dated between 19 March 2009 to 3 March 2011;
- Domestic Electrical Installation Periodic Inspection Reports- Flat A and Flat B- dated 17 January 2009;
- National Grid Final Completion- Acknowledgement of Gas Supply for Flat A and Flat B- dated 14 October 2015;
- Correspondence with Historical Electoral Register- May 4 2023 to 10 May 2023;
- Details of Gas Supplier for Flat A and Flat B.

11. The appellant also included highlighted Council Officer Reports and an Appeal that support his claims of lawfulness, which included: -

- Appeal Decision ref: APP/Y5420/X/13/2207017- 219 Mount Pleasant Road;
- Council LDC Officer Report- 92 Ranelagh Road N17 6XT;
- Council LDC Officer Report- 212 Westbury Avenue N22 6RU;
- Council LDC Officer Report- 102 Rosebery Avenue N17 9SB;
- Council LDC Officer Report- 95 Willoughby Lane.

Self-Contained flats

12. Based on the detailed floor plans, Flat A includes two bedrooms, a shower/toilet room and a kitchen/living space. It has direct access to the rear garden space from the bedroom and living space. Access to Flat B is via the entrance to the front and internal stairs. It includes two bedrooms, a kitchen/living space and a bathroom. Flat B does not appear to have direct access from the flat to the rear garden space. Based on the plans provided, Flat A and Flat B contain a living and sleeping space, a kitchen area, a toilet and shower or bathroom. I am satisfied that the plans show that both flats contain all the facilities required for day-to-day private domestic existence and, as such, have the distinctive characteristics of a dwellinghouse.

13. The Council does not dispute the existence of the flats as self-contained units of accommodation. However, it is contended that insufficient evidence has been submitted to demonstrate, on a balance of probabilities, that the flats have been continuously used for the requisite period of time without significant interruption.

Continuous Use

14. The appellant has submitted information regarding the use of Flats A and B before 2013[2]. However, for simplicity, I have focussed my attention on the supporting evidence originally submitted with the LDC application, and any additional evidence submitted to support the claims of lawfulness for Flat A since 2013 and for Flat B since 2015.

15. The appellant's evidence includes Assured Shorthold Tenancy (AST) agreements for both flats. The AST submitted with the LDC application for Flat A is for a fixed term of six months, from 3 February 2013 to 2 August 2013. A second AST indicates another six-month fixed term for Flat A, running from 1 June 2020 to 30 September 2020. For Flat B, there is a six-month AST dated from 30 January 2015 to 29 July 2015, and a second AST covering a 24-month period from 7 September 2022 to 6 September 2024.

16. The Council has expressed concerns that the ASTs do not cover a continuous four-year period, noting a significant gap between the first and second ASTs. However, the appellant contends that these ASTs are rolling contracts and that there has been no significant gap in the use of the flats as self-contained units. The appellant cites the language in the agreements as supporting evidence, which states after the fixed term date that the contracts include any period of holding over or extension by statute or common law. Considering this, it is evident that the ASTs, signed in 2013 and 2015, under the terms agreed, remained valid contracts for a period in excess of 4 years, until the second agreements were signed. The appellant also indicates that the tenant for the AST associated with Flat A is the same in 2013 as in 2020.

17. Additionally, the appellant has provided corroboratory evidence in the form of housing benefit claims for Flat A from 2017 to 2022, covering a period in excess of four years and matching the address details and the tenant's name. There are also housing benefit claims for Flat B from January 2017 to September 2019, alongside bank statements showing regular rental payments until June 2022, which collectively cover a period in excess of four years. Furthermore, it has been confirmed via correspondence from the Council Tax Team that separate Council Tax for Flats A and B have been recorded since 11 January 2009.

18. In my judgment, the rolling contract ASTs, regular housing benefit claims and bank statements for the address as well as separate council tax records is sufficiently precise and unambiguous evidence. Collectively, the evidence demonstrates, on a balance of probability, that Flat A was occupied continuously without significant interruption from at least January 2017 and up to December 2022. It also demonstrates, on a balance of probability, that Flat B was used for a continuous period between January 2017 and up to June 2022 without significant interruption. The Council has not produced any contradictory evidence to indicate that the property was a single dwelling or was being occupied in an alternative way between these periods.

19. I have taken into account the Council's issues with verifying the council tax records, and the fact that housing benefit claims do not directly confirm occupancy. While I accept that there could be more robust corroboratory evidence, it is important to recognise that the legal test is one of balance of probability, rather than beyond reasonable doubt. In my judgement, the inability to verify council tax details and the

[2] ASTs and Housing Benefit Claims as well as additional documents dating from 2009

fact that housing benefit claims do not directly prove occupancy does not contradict the appellant's claims or make them less probable. Furthermore, I have not been informed of any active enforcement notice in place on the land, nor has there been any indication that following the use of the two flats being established, the use was abandoned or lost due to a supervening event before the date of the application on 31 January 2023.

20. Accordingly, in my judgement, the evidence submitted with the appeal is sufficiently precise and unambiguous, demonstrating, on the balance of probability, that the use of 245 St Ann's Road as two self-contained flats was lawful on the date of the application.

Conclusion

21. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use for the use of the site as two self-contained flats 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 (as amended).

M. P. Howell

INSPECTOR

Planning Inspectorate

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 31 January 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 use of the site as two self-contained flats commenced more than four years prior to the date of the application and continued thereafter without any significant material interruption.

Signed

M. P. Howell

Inspector

Date: **26 JUNE 2025**
Reference: APP/Y5420/X/23/3330081

First Schedule

The use of the site as two self-contained flats***.***

Second Schedule

245 St. Ann's Road, Tottenham, London N15 5RG

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.

Planning Inspectorate

Plan

This is the plan referred to in this decision dated: **26 JUNE 2025**

by M. P. Howell

Land at: 245 St. Ann's Road, LONDON, N15 5RG

Reference: APP/Y5420/X/23/3330081

Scale: Not to Scale