Appeal Decision

No site visit

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 07 January 2026

Appeal Ref: APP/A5270/X/23/3333586
101 Dudley Road, Ealing, SOUTHALL, UB2 5AT

- 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 Jaujar Law Ltd against the decision of the Council of the London Borough of Ealing.
- The application ref 233128CPE, dated 27 July 2023, was refused by notice dated 20 September 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 Continued use of existing property as 5 self contained flats.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to conduct a site visit in this case since all the information needed is included with the application and appeal documents and so a decision can be reached on the papers.

3. I have taken the description of development from the appeal form since this represents a more succinct description.

Main Issue

4. The main issue is whether the LPA's decision to refuse to grant a certificate of lawful use or development (LDC) was well-founded. This will turn on whether the use described in my banner heading above was lawful as at the date of the LDC application.

5. Planning merits are not relevant to the assessment and the onus is firmly on the appellant to make their case on the balance of probability. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the granting of a certificate on the balance of probability.

Reasons

Legal basis

6. Subsection 191(2) of the 1990 Act states that a use is lawful if: (a) no enforcement action can be taken in respect of it (whether because it did not involve

development, or require planning permission, because the time for enforcement action has expired, or for any other reason).

7. The appellant's case is that the time for enforcement action has expired. For a change of use to a single dwelling house (each of the five self-contained flats is classed as a dwelling house), the applicable time limit for enforcement action is four years. The use must have been affirmatively established by a continual use over a four-year period such that the LPA could have taken enforcement action against the use at any time. The LPA contends that the appellant has not demonstrated four years' continuous use.

The flats

8. The property is arranged as three ground floor flats and two first floor flats. I will refer to: the Ground Floor Front Flat as 101 Dudley; the First Floor Front Flat as 101A Dudley; the First Floor Rear Flat as 101 B Dudley; the Ground Floor Rear Left Flat as 101C Dudley; and the Ground Floor Rear Right Flat as 101D Dudley. This reflects how the flats are referenced on the appellant's plan number AH750 1.

Site history and Evidence

9. An application was previously made for a LDC for use as five flats[1] which was dismissed at appeal. A second LDC application[2] was apparently refused with reference to the fact that the Council's system tax records did not show five flats at the property for four years or more. The application which is the subject of this appeal therefore seeks to rely on a later four year period on the basis that public registers including related to Council tax banding and Energy Performance Certificate (EPC) records reference five flats.

10. The appellant's evidence essentially comprises (a) 'universal' evidence relating to all of the flats; and (b) evidence specific to each flat in question (albeit with some limited crossover with the 'universal' evidence). I address these in turn.

(a) <u>'Universal' evidence</u>

11. A statutory declaration dated 27 July 2023 is given by a tenant of 101B Dudley (101B SD). This states that they originally took occupation of 101A Dudley on 2 February 2017 but on 26 July 2017 entered into a tenancy agreement in respect of 101B Dudley and then remained in occupation.

12. As to the use of the other four flats, some detail is given in the 101B SD as regards 101 Dudley in terms of the known occupants of that flat, with the tenant stating that they visited this flat 'a few times' between 2017 and 2021. Otherwise, it is stated only in very general terms that all five flats have to their 'knowledge' been 'occupied' and that they could 'see tenants walking back and forth on the ground floor'. However, there is a lack of specificity as to the extent to which occupation of the other four units was continuous over a four year period and how likely this tenant would have been aware of any periods of vacancy that might result in a break in continuity.

13. A statutory declaration is also given by a director of the appellant company (and managing agent of the appeal property) dated 27 July 2023. It is explained in the

[1] Reference 194467CPE
[2] Ref: 201910CPE

appellant's representations that the manager 'collect rents, allows access, instructs building works, liaising with tenants and has full power and authority relating to issues at the Property'. This SD states that the five flats have had separate Council tax banding and EPCs for over four years and therefore they have not been the subject of any 'investigation/action' by the Council. However, Council tax banding and separate EPCs are not clear evidence of continuous occupation as five separate flats of themselves since it would be perfectly possible for separate banding and EPCs to exist in respect of flats that experience significant periods of vacancy.

14. This statutory declaration lists evidence provided with the LDC application and asserts that this is sufficient to provide evidence of four years' continuous use but provides no detail of continuous use of itself. While it is declared that the tenancy agreements submitted are 'a true and accurate account of the tenancies', it is not clear what this statement means in terms of continuous occupation i.e. whether it attests to the fact that the tenancy agreements submitted are true copies/reflect the legal tenancies then in place, or whether it seeks to demonstrate continuous occupation. If the latter, this statement lacks any detailed information or specificity such as to clearly evidence continuous occupation on the balance of probability.

15. Other 'universal' evidence relied on are letters to and from the Council dating from August and September 2018 with content related to an intended Housing Act 2004 inspection, detailing the outcome of an inspection and outlining action taken following the inspection. A pest control invoice dated 9 September 2018 is also submitted. I acknowledge that these documents indicate the existence of five flats but since they relate only to particular points in time, they do not provide clear evidence of continuous use over a four year period.

16. The appellant contends that the Council will have records that the appellant cannot access confirming continual payment of Council tax, in relation to housing benefit paid to specific tenants and related to the appellant's 2017 licence application. I can only though determine the appeal based upon the evidence before me.

(b) Flat-specific evidence

101B Dudley

17. As regards 101B Dudley, the 101B SD states that this tenant's lease of this flat commenced on 26 July 2017 and that they remained in occupation since that date. It is confirmed that appended tenancy agreements covering the period 26 July 2018 up to and including the declaration date are 'a true and accurate account' of their 'tenancy'. A tenancy agreement though indicates a legal agreement to let a property and so is not of itself indicative of continuous occupation over the period covered by the tenancy.

18. While the tenant states in the 101B SD that they have 'been in continuous occupation without interruption', it is unclear without further detail what the tenant has taken these terms to mean and whether their actual occupation has literally been continuous or whether they might have disregarded relatively short periods of absence which might potentially have resulted in a break in occupation.

19. Reference is made in the declaration to Council tax bills having been paid 'continuously' but again this does not indicate continuous occupation in the absence of supportive utility billing/bank statement evidence; Council tax

billing/payment, even with notations of adjustment/support, does not reflect actual occupation in the same way that a utility bill would show occupation by illustrating actual usage of gas/electricity over a particular period.

Other flat-specific evidence

20. Other evidence provided specifically in relation to each of the flats essentially comprises: Council tax banding and EPC certificates dated August 2017 and tenancy agreements for all of the flats along with an assortment of documentation dating from various points over the relevant four-year period including: Council tax bills (including reference to tenant-specific adjustments), a housing benefit letter; Council tax support Statement of Reason/decision notices; Council tax reminder and summons; benefit decision notice; and electoral register letter.

21. This evidence amounts to indication of the existence of five flats as at August 2017 and that tenancy agreements were entered into in respect of these covering a four year period[3]. The additional documentary evidence offers some limited support that the tenants referenced were in situ as at the specific points in time that are relevant to that documentation. In the absence though of supporting information such as utility bills and bank statements the evidence provided is not sufficiently precise and unambiguous to demonstrate continuous use on the balance of probability.

101D Dudley periodic tenancy

22. The LPA identifies that the tenancy agreement evidence provided by the appellant for 101D Dudley does not cover the period 17/12/2019 - 26/05/2020. The appellant contends that the relevant tenancy rolled forward as a periodic tenancy until the tenant vacated on 26 May 2020.

23. While I appreciate that by its nature, a periodic tenancy will not be evidenced by a tenancy agreement, there is very little evidence provided such as to evidence occupation over the period claimed as a periodic tenancy. In this regard, the appellant relies upon: (i) a Council tax bill dated 9 August 2018 issued by reason of a benefit adjustment and providing calculations for June 2018 up to March 2019; (ii) a Council tax bill dated 11 June 2020 again issued as a benefit adjustment and providing calculations for charges for 1 April 2020 to 31 March 21 and as regards a tenant-specific pensioner support scheme for 1 April 2020 to 26 May 2020; (iii) statement in paragraph 7 of the 101B SD; and (iv) statement in paragraph 3.7.1 of the appellant director's statutory declaration.

24. I accept that the Council tax billing documents indicate that the Council was offering support to the particular tenant in respect of Council tax payments (with the 26 May 2020 adjusted date referenced on the 11 June 2020 bill indicative of the Council having been notified of this tenant vacating 101D Dudley). However, this does not provide clear evidence of continuous occupation of itself; it could well be that the tenant was absent from the flat for a sufficient period to trigger a break in the occupation even during a time when support was being provided. The statements in the statutory declarations are general in nature and do not represent clear evidence of occupation of 101D Dudley over the months claimed as a periodic tenancy.

[3] Though see below in relation to 101D Dudley

Overall analysis

25. Drawing together all of the evidence submitted, the appellant has not made their case on the balance of probability that the use of the property as five flats has been affirmatively established by a continual use over a four-year period such that the LPA could have taken enforcement action against the use at any time. The appellant's evidence is not sufficiently precise and unambiguous to justify the grant of a LDC for the reasons explained.

Other Matters

26. I acknowledge that the appellant is attempting to regularise the planning situation at the appeal property and has experienced frustrations with the process. However, concerns as to the handling of the LDC application process are not for me in dealing with this appeal.

Conclusion

27. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for Continued use of existing property as 5 self contained flats is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

V Bond

INSPECTOR