



Appeal Decision

Inquiry held on 17 and 18 September 2024

Site visit made on 18 September 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal: APP/R5510/X/24/3343726

126A Green Lane, Northwood HA6 1AN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended by the Planning and Compensation Act 1991) against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr & Mrs D Khullar against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 69148/APP/2023/2680, dated 31 August 2023, was refused by 22 March 2024.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990, as amended.
 - The development for which a LDC is sought is described as '*the subdivision of 126A Green Lane into 7 self-contained flats*'.
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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 considered to be lawful.

Application for Costs

2. An application for an award of costs was made by Mr & Mrs D Khullar against the Council of the London Borough of Hillingdon. This application is the subject of a separate decision.

Preliminary matters

3. In defending its decision to refuse to issue the requested LDC the Council had cited two reasons; firstly, that the evidence was not conclusive that the use of the property as seven self-contained residential flats had commenced at least four years prior to the date of the application (ie on or before 31 August 2019; the material date) and; secondly, not accepting the claim that the said use had been continuous during this four year period.
4. However, following all the evidence having been heard the Council withdrew its objection on the first point, thereby accepting that the use had commenced on or before the material date. In fact, by the end of the Inquiry, the Council accepted that the use had commenced during 2018.
5. This concession has significantly reduced the amount of evidence that requires my assessment, and my conclusions will therefore be restricted as to whether or not the use of the property as seven self-contained flats has continued on an

uninterrupted basis throughout the requisite four year period leading up to 31 August 2023.

The Legal Background

6. In an appeal under s195 of the Act, against the refusal of a LDC, the burden of proof is upon the appellants who will need to demonstrate immunity from planning enforcement action on the balance of probability. Accordingly, the key is that the evidence should be precise and unambiguous to this end.
7. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on evidential fact, planning legislation and relevant case law.

Main Issue

8. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

9. S191(2) says that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
10. A 'self-contained flat' is defined within s254 of the Housing Act 2004 as a separate set of premises which forms part of a building, either the whole or a material part of the building and in which all three basic amenities – defined as a toilet, personal washing facilities and also cooking facilities - are available for the exclusive use of its occupants.
11. The judgement in *Gravesham BC v SSE & O'Brien* [1982] sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence.
12. Self-contained units are usually characterised by having exclusive use of all facilities within their own physical envelope. In this particular instance, from my site inspection, I can indeed confirm that this is the case for all seven flats.
13. In the judgement of *SoSE & Ors v Thurrock BC* [2002] EWCA Civ 226 the Court accepted that an enforcement notice can be issued if the unlawful activity has temporarily *ceased "because it is the weekend or the factory's summer holiday, for instance"*. However, once the activity has permanently ceased, no enforcement action can be taken and so the use cannot gain immunity. Accordingly, the landowner must demonstrate, on the balance of probabilities, that the use has continued throughout the relevant period so that enforcement action could have been taken at any time.
14. In this particular instance Ms Bhavani Kumar, a property development manager of KRSNA Property Investment Ltd, gave convincing evidence on oath demonstrating that the residential use of the flats/studios commenced at different points during the period March to December 2018, and have been occupied continuously since this time, save for a very short period of time in the period between one tenant leaving and the next arriving.

15. The above is confirmed by the Tenancy Spreadsheet and other documented evidence, which was examined during the Inquiry. Mr R Balkin, the maintenance manager of the appellants' company similarly, on oath, said that the property was subdivided to create 7 self-contained flats in mid 2018, and the content of Mr Aaron Issack's Statutory Declaration is consistent with this. Further, a Statutory Declaration was produced by Atiyeh Yehuda Nowogtodski, a director of Tehilax Maintenance & Contract cleaning services, claiming that his company cleaned the property's communal areas between June and December 2019. This would have transgressed the material date in August of that year.
16. It was put to the Inquiry that the longest gap between tenancy agreements being terminated and being subsequently taken up by a new tenant is 17 days. On the basis that flats would be subject to maintenance, as required, thoroughly cleaned, and as new tenants might not be able to take up their tenancies immediately, a period of 17 days cannot reasonably be considered as material interference to have affected continuity of use. In evidence, Mr Alan Corcoran, the Council's witness, appeared to accept that this could be the case but he did express concern as to the lack of evidence submitted for the final 3 to 6 month period in 2023.
17. I have some sympathy for the Council's case, in that Mr Corcoran, on the basis of the evidence submitted along with the application, was quite reasonably entitled to defend the Council's decision not to issue the LDC applied for. In my opinion, at the application stage, the supporting evidence was fragmented, somewhat less than cogent and, in the absence of clear written direction as to reference of the necessary details to support the claim of immunity, the evidence could easily be interpreted as being neither precise nor unambiguous. The evidence, though, was firmed up and much better structured for the benefit of the Inquiry.
18. To compound matters I note that the appellants ignored their responsibilities as to registering the flats for Council tax purposes at the outset, failing also to notify the Council's street naming and numbering team, and not changing the doorbell system as the use intensified during 2018. Indeed, when questioned, Mr Khuller, said that he realised planning permission was required for the conversion but, as the works carried out were not so substantial as to require approval under the building regulations, he did not make an attempt to apply for planning permission.
19. On the basis of the above the Council raised the issue of concealment having taken place, which would have increased the immunity bar from four to ten years. However, by way of case law, namely the judgement of *Jackson v SSCLG* [2015] EWHC 20 (Admin), to show concealment there has to be 'positive deception', such as misleading correspondence where false information is provided by the contravener. No evidence of such was drawn to my attention.
20. In the circumstances, I must conclude that the appellants' approach in this case, although irresponsible and irregular in relation to his obligations under planning legislation, did not amount to concealment.
21. Moreover, I find that the evidence adduced to the Inquiry in an attempt to show continuity of use is sufficiently detailed so that the three month period unaccounted for in 2023 can be set aside. On the balance of probabilities,

although this omission is unfortunate, I find the appellants' evidence put to the Inquiry as compelling. I therefore conclude that it was open for the Council to have issued an enforcement notice throughout the relevant four year period.

22. I find that the appellants have discharged the burden of proof and, for the reasons given above, on the evidence available, the use of the property as seven self-contained flats built up immunity over a period in excess of the requisite four years.
23. For the reasons given above I conclude, on the evidence available, that, on the balance of probability, the use was lawful on 31 August 2023, within the meaning of section 191(2) of the Town and Country Planning Act 1990.
24. Accordingly, I will exercise my powers under section 195(2) of the Act.

Timothy C King

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Charles Forrest of counsel

Instructed by Ian Coward of Collins & Coward

He called:

Deepak Khullar (appellant)

Ian Coward

M.Arif

Bhavani Kumar

Rob Balkin

FOR THE LOCAL PLANNING AUTHORITY

Edward-Arash Abedian of counsel

Instructed by LB Hillingdon

He called:

Alan Corcoran

Deputy Team Leader, LB Hillingdon



Lawful Development Certificate

APPEAL REF. APP/R5510/X/24/3343726

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)
(ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 31 August 2023 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and shown 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:

The time period for enforcement had expired and the use did not contravene any of the requirements of any enforcement notice or breach of condition notice then in force.

Date: 31 October 2024

First Schedule

'the subdivision of 126A Green Lane into 7 self-contained flats'.

Second Schedule

126A Green Lane, Northwood HA6 1AN

Plan

This is the plan attached to the Lawful Development Certificate dated: 31 October 2024

by Timothy C King BA (Hons) MRTPI

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Scale: Do not scale

