
Appeal Decision

Site visit made on 9 January 2018

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 January 2018

Appeal Ref: APP/X5210/X/17/3172201
3 Wildwood Grove, London, NW3 7HU

- 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 (LDC).
 - The appeal is made by Mr Warren Evans against the decision of the Council of the London Borough of Camden.
 - The application Ref 2016/5621/P, dated 14 October 2016, was refused by notice dated 11 February 2017.
 - 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 2 and 3 Wildwood Grove as one single dwellinghouse.
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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.

Reasons

2. The appellant states that in 2009 works were completed to amalgamate Nos 2 and 3 Wildwood Grove into a single dwelling. The agent's application was concerned solely with the legal question of whether the amalgamation of 2 dwellings into 1 was development or not. I do not need to rehearse most of the arguments here as the Council accept that in this case there is no policy impediment to the amalgamation. However they say it would still be a material change of use due to the under occupation of the dwelling which would materially alter the character of the way it is occupied. Regardless of the outcome of this argument the actual reason for the refusal of the application was that there was no evidence the use had been undertaken continuously for 4 years or more.
3. I accept the Council's argument that a reduction in levels of occupation could lead to the finding that there had been a material change of use, regardless of whether such a change was harmful or not, as planning merits play no part in the determination of an application for a lawful development certificate. However the changes associated with the amalgamation of the two dwellings into one would have to be such that there was a material difference in the way the property was occupied, and given that the nature of the use remains residential, such a change would have to be quite significant.

4. The Council argue that in 2001, 47% of households occupying a house with 5 or more bedrooms were one or two person households. This percentage rose to 54% if the households were owner occupiers. They say it is likely therefore the house would have been occupied by a household of one or two persons and so was under occupied. This would be perceptible and significant enough to alter the character of the way in which it was occupied.
5. I have a number of problems with this approach. Rather than being "likely", the statistics suggest it is almost 50/50 whether or not the house was or would be occupied by a one or two person family. Even if it were, without figures for the likely occupation of smaller dwellings it is difficult to make any meaningful comparisons with the before amalgamation situation. Two one-person households in the original two dwellings would be the same as one two-person household in the amalgamated dwelling. In any event, I find it highly unlikely that the level of occupation would be so different as to alter the character of occupation to such an extent that it would be reasonable to conclude there had been a material change of use. The Council have not explained what significant changes are likely to be perceptible due to under-occupation and there is no evidence such changes have come about. In my view the amalgamation of Nos 2 and 3 Wildwood Grove has not led to a material change of use. As such it is not development.
6. On my site visit it was evident there had been a further change, as the downstairs of No 2 was being used by the appellant's mother and the downstairs interconnecting doorway had been blocked up. The upstairs was still open between the two houses and clearly used as a single dwelling; it was from here that access to the mother's downstairs bedroom was made. However, as I do not consider the amalgamation of two into one was development in the first place, and these changes seemed to have taken place after the date of the application, I can ignore them. At the date of the application there had been no material change of use.
7. Having found the amalgamation of the dwellings is not development there is no need to consider whether or not the resultant single dwelling has been occupied continuously for 4 years or more. I shall allow the appeal and issue a certificate explaining that the use of the property as a single dwellinghouse was lawful at the date of the application.

Simon Hand

Inspector

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 14 October 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched 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 amalgamation of Nos 2 and 3 Wildwood Grove into a single dwellinghouse did not amount to a material change of use and so was not development that required planning permission.

Signed

Simon Hand
Inspector

Date: 15 January 2018

Reference: APP/X5210/X/17/3172201

First Schedule

Use of 2 and 3 Wildwood Grove as one single dwellinghouse

Second Schedule

Land at 3 Wildwood Grove, London, NW3 7HU

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.

This is the plan referred to in the Lawful Development Certificate dated: 15 January 2018

Land at: 3 Wildwood Grove, London, NW3 7HU

Reference: APP/X5210/X/17/3172201

Scale: not to scale

Location Plan near NW3 7HU

