

Appeal Decision

Site visit made on 20 September 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 7 October 2016

Appeal Ref: APP/L5240/X/16/3149162

Flat 1 & 1a, 59 Haling Park Road, South Croydon, Croydon CR2 6ND

- 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 Ms A Pereira against the decision of the Council of the London Borough of Croydon.
 - The application Ref 15/05426/LE, dated 2 December 2015, was refused by notice dated 2 February 2106.
 - 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 two bedroom flat as one bedroom flat and studio flat.
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Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Main Issue

1. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of 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 shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is firmly on the appellant to show that, on the balance of probability, the proposed development would have been lawful at the time the application was made to the Council.

Reasons

2. The background to this appeal is that planning permission was granted in 2003 for two separate proposals to convert 59 Haling Park Road into different configurations of two bedroom, one bedroom and studio flats. I have not been advised which of these two permissions was implemented, but there is no dispute that Flat 1 was originally one of the two bedroom flats approved under one of them.
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3. The appellant explains that from July 2007 her mother, Mrs P Pereira, lived in Flat 1 as sole occupier but due to deteriorating health found the flat too large to manage on her own. The appellant goes on to explain that Mrs Pereira then divided the space into two parts, retaining part of the flat as a one bedroom unit for her own use but converted the remainder into a one bedroom studio flat (Flat 1a). This involved the installation of a small kitchen including a fridge, cooker, sink, kitchen units, work surfaces and a washing machine. The appellant contends that this took place in February 2010. This was the physical position at the time of my site inspection, including the presence of the small kitchen in the studio unit equipped as described above.
4. This sequence of events is supported by a letter dated 6 October 2015 from the builders that carried out the conversion work, confirming that they carried out the conversion in February 2010. I recognise that this letter is not dated contemporaneously with the date on which the works took place and is not a statutory declaration. I also recognise that the letter is not accompanied by invoices for the work or materials used in the conversion. However, the letter describes the installation of the kitchen and makes specific reference to the equipment and features described above. It is therefore consistent with the sequence of events described by the appellant and the position as existing at the time of my site visit. The letter is signed on behalf of the company, the latter being registered with the Federation of Master Builders and the NHBC.
5. Having regard to the accreditations held by the company and the consistency with the known position as existing, this letter deserves to be afforded considerable weight. Consequently, whilst this letter does not attract the weight of a statutory declaration, on the balance of probability I am nevertheless satisfied that it accurately describes works that were undertaken at the property in February 2010. I am therefore satisfied, again on the balance of probability, that in February 2010 the property comprised a one bedroom flat (now known as Flat 1) and a studio flat (now known as Flat 1a). My attention now turns to whether these had been occupied continuously as such for a period of at least four years on the date on which the application subject to the appeal was made.
6. The appellant explains that Mrs Pereira continued to live in Flat 1 until her death at the end of 2011. There then followed a gap in occupancy whilst the flat was redecorated but, after a period of advertising for new tenants, the flat was occupied by one Mr Shehzad Rafique in March 2012. I have been provided with a copy of the tenancy agreement between the appellant and Mr Rafique, which clearly refers to Flat 1 and shows details of rent, tenancy period and terms & conditions. This tenancy agreement is not signed or dated, but clearly refers to the start of the tenancy as being 1 March 2012 and ending on 28 February 2013. Although this tenancy was for a fixed period of one year only, the appellant explains that in the event Mr Rafique was allowed to remain in occupation until 2 September 2013, although I have been provided with no documentary evidence to support that.
7. According to the appellant, almost immediately after Mr Rafique vacated the property, Flat 1 was occupied by a Mr David Andrews. This was on the basis of a one year tenancy, expiring on 7 September 2014. I have also been provided with a copy of the tenancy agreement between the appellant and Mr Andrews, which again clearly refers to Flat 1 and shows details of rent, tenancy period and terms & conditions. This tenancy agreement is signed for and dated.

8. Despite the tenancy agreement being for a period of only one year, I am advised that Mr Andrews continued to occupy Flat 1 until at least the date on which the LDC application was made. I have, however, been provided with no documentary evidence in support of that.
9. The occupation of Flat 1a is more involved. The appellant explains that Flat 1a was first occupied in July 2010 by a Miss Simona Karablikovaite, who remained in occupation until May 2013. This is confirmed in a letter dated 28 August 2015 from the letting agents, Martin & Co, which specifies the period of occupation as being from 10 July 2010 to 7 May 2013. Although this letter is also not contemporaneous with the period of occupation for Miss Simona Karablikovaite, I have no reason to doubt its authenticity or the accuracy of the information within it.
10. I am advised that, following a period for cleaning, the occupation of Flat 1a was taken over in July 2013 by a Miss Vanessa Miller. I have been provided with a copy of the tenancy agreement between the appellant and Miss Miller, which clearly identifies the property as 1a, 59 Haling Park Road, South Croydon, Croydon CR2 6ND. This tenancy agreement is signed by the tenant, with the signature being witnessed, and is dated 6 July 2013. Although the tenancy agreement specifies a term of one year, expiring on 5 July 2014, I am advised that Miss Miller was allowed to vacate the premises in April 2014.
11. Upon vacation by Miss Miller, the tenancy of Flat 1a was taken up by a Ms Julie Burke. I have again been provided with a copy of the tenancy agreement between the appellant and Ms Burke, which again clearly identifies the property as 1a, 59 Haling Park Road, South Croydon, Croydon CR2 6ND. This tenancy agreement is also signed by the tenant and is dated 11 April 2013. The tenancy agreement specifies a term of one year, expiring on 10 April 2015, but on this occasion I am advised that Ms Burke was allowed to extend the tenancy by one month.
12. Following a further period for advertising, I am advised that Flat 1a was occupied by a Miss Katrina Leith from July 2015 and who remained in occupation until the date on which the LDC application was made. The tenancy agreement, which is in a similar form to those signed by Miss Miller and Ms Burke previously, is signed under witness by the tenant and is dated 1 July 2015, with a term of one year.
13. The occupation of Flat 1a is therefore well documented as taking place continuously between July 2010 and the date on which the LDC application was made, a period in excess of four years. There are a number of short gaps in occupation, but these were for short periods and for understandable reasons such as cleaning of the premises prior to re-letting. These short gaps do not amount to a cessation in occupation. Consequently, on the balance of probability, I am satisfied that Flat 1a was occupied continuously for a period in excess of four years prior to the date on which the LDC application was made.
14. As set out above, the occupation of Flat 1 is less well documented. However, by a process of logical deduction, since Flat 1a has been shown to have been occupied continuously since 2010, then Flat 1 must have existed as a separate unit throughout that period. With that in mind, the evidence that is available is sufficient to persuade me that, on the balance of probability, Flat 1 has also been occupied continuously since at least February 2010, a period in excess of four years.

15. My conclusion in this respect is reinforced by the fact that the Council has provided little evidence to refute that provided by the appellant. The Council does point out that the Council Tax Valuation listing for Flat 1a only became effective from 11 April 2014. However, the payment of Council Tax is the responsibility of individual tenants and the fact that Council Tax was not paid prior to April 2014 does not necessarily indicate that the premises was not occupied. It simply indicates that any tenants of the premises during that period did not register for Council Tax purposes. Moreover, I note that the Council Tax Valuation records 59 Haling Park Road as being sub-divided into flats numbered 1, 1a and 2-8. The Council does not make a similar comment about the non-payment of Council Tax in relation to Flat 1 which, in my view, if anything tends to support the appellant's case that Flat 1 was occupied separately.
16. The Council has therefore provided no evidence to contradict the evidence provided by the appellant or make the appellant's version of events less than probable. I find the appellant's evidence, which provides sequentially consistent dates and facts, to be sufficiently precise and unambiguous to demonstrate on its own that the occupation of both Flat 1 and Flat 1a has been continuous for a period of at least four years prior to the date on which the LDC application was made.
17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of two bedroom flat as one bedroom flat and studio flat at Flat 1 & 1a, 59 Haling Park Road, South Croydon, Croydon CR2 6ND was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

18. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Paul Freer

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 2 December 2015 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

That, on the date on which the application was made, the use of the two bedroom flat as one bedroom flat and studio flat had been taking place continuously and without interruption for a period of at least four years.

Signed

Paul Freer

Inspector

Date: 7 October 2016

Reference: APP/L5240/X/16/3149162

First Schedule

Use of two bedroom flat as one bedroom flat and studio flat.

Second Schedule

Land at Flat 1 & 1a, 59 Haling Park Road, South Croydon, Croydon CR2 6ND.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 7 **October 2016**

by **Paul Freer BA (Hons) LLM MRTPI**

Land at: Flat 1 & 1a, 59 Haling Park Road, South Croydon, Croydon CR2 6ND

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Scale: Not to scale

