



Appeal Decision

Site visit made on 1 May 2018

by Roy Merrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2018

Appeal Ref: APP/U5930/X/17/3181925

68 Ruckholt Road, Leyton, London E10 5NP

- 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 Haroon Munir against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 170978, dated 15 March 2017, was refused by notice dated 27 June 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 two self-contained flats C3 Use Class.
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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 costs was made by Mr Haroon Munir against the Council of the London Borough of Waltham Forest. This application is the subject of a separate Decision.

Reasons

3. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force (s191(2)). I have not been told that there was any extant enforcement notice relating to the property at the time of this application. Accordingly it is necessary to consider whether, on the balance of probability, the use of the building for 2 flats has continued for a period of four years or more prior to the date of the application, that being 15 March 2017, so as to be immune from enforcement.
4. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued for the aforementioned four year period. The appellant has provided various items of evidence in support of the application. Signed and dated affidavits are provided by the respective tenants of each flat, ground floor and first floor, confirming that each has been occupied since 2011. Whilst these declarations are dated August 2016, around seven months before the

date of the lawful use application, they are supported by tenancy agreements relating to each flat covering the period June / July 2011 – 2017, with the exception that the agreement for the period July 2013 – 2014 relating to the ground floor flat is not provided.

5. Gas safety check records which refer to the individual flats, dating from 2012, are provided. Quotations are also provided for the replacement of boilers in each of the flats referring to the existing equipment as at least 9 years old. In addition a request from the Council dated July 2010 for the occupiers of “both flats” to contact the Revenues and Benefits Service has been submitted. The Council has not sought to challenge the veracity of this information. In addition various PayPoint receipts, dating from 2012, relating to credit for the supply of electricity to the respective flats have been provided.
6. In response, the Council has raised the concerns that its Council tax records identify the appeal site as a single property only, No 68; that the provision by the appellant of Council tax bills, utility bills, bank statements and landlord insurance to corroborate evidence of continuous use is lacking; that PayPoint receipts are not linked to a specific address and do not demonstrate evidence of continuous use. It also states that only the tenancy agreements show continuous periods of use of the flats, however they, together with the affidavits provided, are not corroborated.
7. The statutory declarations appear to me to be precise and unambiguous. Given that any person who lies about the information contained in an affidavit could be prosecuted for the crime of perjury, and if convicted may have to pay significant fines or be sentenced to time in prison, I give these significant weight. Furthermore the comprehensive tenancy agreement and gas safety check records serve to add further to this weight.
8. It was evident from my site visit that there are separate gas and electricity meters serving each flat. In addition, in terms of the PayPoint receipts, the appellant has provided evidence linking the serial number of one of the electricity meters to a payment receipt dating from 2012. It was also apparent from my visit that an EDF energy record of a quality assurance check dating from 2010 was displayed on the second electricity meter. These considerations further support the appellant’s claim. My visit also revealed signs of wear and tear, notably in the first floor flat in terms of the condition of kitchen cupboards and the bathroom flooring suggesting that the conversion had not been undertaken recently.
9. The appellant’s explanation that the property was never registered as two flats for Council tax purposes appears to be a plausible reason for the address continuing to be registered as a single property on the Council’s records, especially in the context of the Council’s Revenues and Benefits Service records from 2010 acknowledging the existence of “both flats”. I also noted during my visit the lack of separate doorbells and numbering on the front elevation of the building relating to the individual flats. However, drawing the above considerations together, and despite the absence of some items of information sought by the Council, I am firmly of the view, on the balance of probability, that the use has continued for the aforementioned 4 year period.

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of two self-contained flats C3 Use Class was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Roy Merrett

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 15 March 2017 the use 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the land has been used as two self-contained flats C3 Use Class for a continuous period of 4 years or more.

Signed

Roy Merrett

Inspector

Date: 16 May 2018

Reference: APP/U5930/X/17/3181925

First Schedule

Two self-contained flats C3 Use Class

Second Schedule

Land at 68 Ruckholt Road, Leyton, London E10 5NP

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 16 May 2018

by **Roy Merrett BSc(Hons) DipTP MRTPI**

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Scale: Not to scale

