



Appeal Decision

Site visit made on 30 July 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2019

Appeal Ref: APP/A5270/X/18/3209962

15B, Boston Parade, Boston Road, Hanwell W7 2DG

- 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 Zafar Chohan against the decision of the Council of the London Borough of Ealing.
- The application Ref 182824CPE, dated 12 June 2018, was refused by notice dated 15 August 2018.
- 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 was described on the application form as *"The ground floor rear section of the premises at the site known as 15B Boston Parade, Boston Road, Ealing, London, W7 2DG has been in use as a self-contained flat and has been fully occupied on a continuous basis since November 2006"*.

Summary of 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. The effect of s191(2) of the Act is that the use applied for would be lawful if no enforcement action can be taken because the time for taking such action has expired. At s171B (2), the Act provides that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. Therefore, the main issue in this appeal is whether the available evidence demonstrates that the use applied for began more than four years before the date of the application and has been continuous thereafter.

Reasons

2. The site contains a single storey outbuilding. During my site visit, I observed that the interior of the outbuilding consisted of self-contained living accommodation, with a lounge/kitchen area, two bedrooms and a bathroom. The outbuilding is located at the rear of premises in mixed commercial and residential use, mid-way along a row of similar buildings.
3. The onus is on the appellant to show that the use applied for is lawful. The PPG advises that where a Council has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable there is no good reason to refuse the application, provided the

applicant's evidence alone is sufficiently precise and unambiguous in order to justify the grant of a certificate on the balance of probability¹.

4. The appellant supplied a Statutory Declaration (SD), in which he stated that the self-contained flat at the site had been formed in November 2006 and that it had been occupied on a continuous basis since that date, having been registered for Council Tax since 18 October 2011. A second witness clearly identified the flat in her SD. She attested to occupying the flat continuously on an Assured Shorthold Tenancy (AST) renewed every year, from 1 July 2011 until 17 July 2017. The evidence of both witnesses is consistent and it is sufficiently precise and unambiguous. It should therefore be given considerable weight in the absence of evidence to indicate otherwise.
5. The appellant also supplied copies of Council Tax bills for the years 2012/13, 2013/14, 2015/16, 2016/17 and 2017/18. A Council Tax rating is not conclusive proof that the flat was occupied or that such occupation was continuous. Nevertheless, the bills were all addressed to the flat. They were all addressed to the second witness. Consequently, the bills suggest that this witness was residing in the flat continuously during the period covered by the bills. The absence of a copy of the Council Tax bill for 2014/15 does not affect this conclusion; as the second witness is named on the bills for both the previous and subsequent years it is hardly likely she vacated the flat during that year only. Consequently, the Council Tax bills lend weight to the appellant's claim insofar as it verifies occupation of the flat between the above dates.
6. An AST for the flat dated 1 July 2011 identifying the second witness as the tenant and an AST dated 18 November 2017 were also supplied. Although her AST was initially for a term of twelve months, the second witness explained that she did not enter into other ASTs as her agreement was renewed every year until she vacated the flat. As a new AST might be made if the terms of the tenancy changed or there were new tenants, I do not find this explanation unreasonable. Consequently, the absence of other ASTs does not cast any significant doubt on the appellant's claim.
7. I note that the flat was unoccupied between the second witness vacating on 17 July 2017 and 18 November 2017 when new tenants completed an AST, a period of around four months. On behalf of the appellant it was stated that during this time the flat was extensively refurbished, including damp proofing, new ceilings, re-plastering the walls, installing a new kitchen, new flooring, refurbishing the bathroom and general decoration. To my mind, such works were clearly carried out with the intention of re-letting the flat (as indeed subsequently occurred) and therefore facilitated a continuation of its use. It is not unreasonable to expect that such works might take four months to complete, given their comprehensive nature. There was no evidence of any intervening material change of the flat to another use. Given the above factors, it would still have been open to the Council to have taken enforcement action as the use of the flat had not ceased. It follows that as a matter of fact and degree and having regard to relevant case law², I find that the temporary break in occupation of the flat during this period was *de minimis* and did not amount to a material interruption in the continuity of the breach of planning control.

¹ Lawful development certificates. Paragraph: 006 Reference ID: 17c-006-20140306.

² *Swale BC v FSS & Lee* [2005] EWCA Civ 1568.

8. Moreover, when assessing the continuity of the use as a flat, any four-year period prior to the date of the application is relevant, not just the preceding four years. Given the evidence of continuity of the use of the flat between 1 July 2011 and 17 July 2017, unchallenged by the Council, it is more likely than not that the time for taking enforcement action had expired by the later date as the four-year period in s171B (2) had already elapsed. Therefore, it is probable that the flat use would have already become lawful before 17 July 2017. According to established case law³, a lawful use which was dormant or inactive could still be regarded as existing, provided it had not been lost, either by abandonment, the formation of a new planning unit or a further change of use. There is no evidence of any of those occurrences at this site. Therefore, whilst there was a break in occupation less than four years before the date of the application, it did not have any effect on the lawfulness of the use as a flat in any event.
9. I acknowledge that providing copies of utility bills might have assisted the appellant's claim. However, the appellant explained that the flat did not have its own electricity, gas or water meters, as all the utilities were linked to those of the premises in front. This is not an unreasonable explanation as to why such bills are unavailable. Moreover, given my findings on the appellant's evidence set out above, such further documentation would have been unnecessary as in my view, the appellant has proved his case to the required standard.
10. For the reasons set out above, taken together the SDs and contemporaneous documents provide sufficiently precise and unambiguous evidence of continuity in the use as a flat at the site for a period of more than four years. There is no evidence to contradict or make the appellant's version of events less than probable. Established case law makes it clear that an appellant's evidence should not be rejected simply because it is not corroborated by independent evidence⁴. Consequently, the available evidence enables me to conclude that the flat has, on the balance of probability, been in continuous use for more than four years prior to the date of the application.

Conclusion

11. 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 the use as a self-contained flat was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195 (2) of the Act.

Formal Decision

12. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Stephen Hawkins

INSPECTOR

³ *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461.

⁴ *Gabbitts v SSE & Newham LBC* [1985] JPL630.



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 12 June 2018, the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 available evidence demonstrates that, on the balance of probability, the use as a self-contained flat began more than four years before the date of the application and has been continuous thereafter.

Signed

Stephen Hawkins

Inspector

Date: 7 August 2019

Reference: APP/A5270/X/18/3209962

First Schedule

Use as a self-contained flat

Second Schedule

Land at 15B, Boston Parade, Boston Road, Hanwell W7 2DG

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 7 August 2019

by Stephen Hawkins MA MRTPI

Land at: 15B, Boston Parade, Boston Road, Hanwell W7 2DG

Reference: APP/A5270/X/18/3209962

Scale: Not to scale

