



Appeal Decision

Site visit made on 6 August 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2019

Appeal Ref: APP/Y5420/X/18/3210029

Flat B, 6 Burgoyne Road, London N4 1AD

- 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 Michelle Ballantyne against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2018/1861, dated 11 May 2018, was refused by notice dated 10 July 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 is described on the application form as: *"The flat roof with access doors from the main bedroom. This has been in use since I purchased the property in April 2006. In my plans it shows the access doors to the flat roof and refers to it as a balcony and the airspace above belonging to flat B, hence one of the reasons I bought the flat. I have been using it as an outdoor space to sunbathe, chill, relax, putting plants on and generally enjoying the outdoor space and weather".*

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. The description in the banner heading above is taken from the application form. It is clear from the description that an LDC was sought in respect of existing use of the flat roof at the appeal property as a roof terrace. The Council determined the application on that basis and I shall deal with the appeal accordingly.

Application for costs

2. An application for costs was made by the Council of the London Borough of Haringey against Ms Michelle Ballantyne. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is whether at the time the application was made there was an existing lawful use of the flat roof as a roof terrace.

Reasons

4. The onus is on the appellant to show that the use for which an LDC is sought is lawful, the relevant test being on the balance of probability.

5. The property is a first floor flat. A door at the rear of the property opens onto an area of flat roof above a single storey extension to a ground floor flat.
6. On 4 November 2016, the Council issued an enforcement notice alleging the unauthorised formation of a first floor rear roof terrace at the property. Paragraph 5 of the notice required the rear access door to be disabled, removal of railings facilitating the use as a roof terrace, cessation of use of the roof terrace and removal of resulting debris. In a subsequent appeal decision, the notice was varied to delete the requirement to the disable the access door. Otherwise, the appeal was dismissed and the notice upheld¹.
7. The appellant claimed that there had been a continuing use of the flat roof as a roof terrace for a period of more than ten years prior to the application date. However, this echoed her ground (d) arguments in the enforcement appeal. In upholding the notice, the Inspector in that appeal found that it was installation of the railings in September 2016 which had facilitated the use of the entire roof as a terrace. Consequently, he concluded that there was no immunity from enforcement action.
8. For a use or operations to be lawful s191(2) (b) of the Act² provides that they do not constitute a contravention of any of the requirements of an enforcement notice then in force. The notice was in effect on the date of the LDC application. In the absence of any definition within the Act, the terms "in effect" and "in force" should be given their ordinary meaning and, as a matter of simple language, there is no distinction to be made. Use of the flat roof as a roof terrace contravenes the requirements of the notice at paragraph 5. Consequently, the use cannot be lawful and no LDC can be issued.
9. Therefore, I find that on the balance of probability, the available evidence does not show that there was an existing, lawful use of the flat roof as a roof terrace on the application date.

Conclusion

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 the existing use of a flat roof as a roof terrace at Flat B, 6 Burgoyne Road, London N4 1AD was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195 (3) of the 1990 Act as amended.

Formal Decision

11. The appeal is dismissed.

Stephen Hawkins

INSPECTOR

¹ Ref: APP/Y5420/C/16/3166893.

² The Town and Country Planning Act 1990 (as amended).