



Appeal Decisions

Site visit made on 1 September 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2020

Appeal A Ref: APP/U5360/C/20/3252513

42 Lampard Grove, Hackney, London N16 6XQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Hersh Schreiber against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 3 April 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the ground floor two bedroom flat of the property to use as three self-contained flats.
 - The requirements of the notice are:
 - (1) Cease the use of the ground floor of the property as more than one self-contained unit.
 - (2) Removal all but one kitchen from the ground floor of the property.
 - (3) Removal all but one bathroom with toilet from the ground floor of the property
 - (4) Make good all damage to the Property resulting from the removal of the unauthorised works.
 - (5) Removal from the Property all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/U5360/X/20/3246177

Flat 1a – 1c, 42 Lampard Grove, Hackney, London N16 6XQ

- 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 Hersh Schreiber against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2019/3816, dated 25 October 2019, was refused by notice dated 19 December 2019.
 - 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 as: The retention and formal regularisation of the three (3) self-contained units at the ground floor of building 42 Lampard Grove.
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Decisions

1. Appeal A is allowed and the enforcement notice is quashed.
2. Appeal B is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is found to be lawful.

Preliminary Matter

3. The description of development in the LDC application includes wording that is not a description of development. So in the certificate attached to this decision I have used the description of development used by the Council on their decision notice. This describes the development more succinctly and omits superfluous wording.

Reasons

4. For ground (d) in Appeal A, I must consider whether, prior to the issue of the notice, there had been continuous use of the appeal building for the use as 3 self-contained flats for 4 years beginning with the date of the breach.
5. The main issue in Appeal B is whether the Council's decision to refuse the LDC was well-founded or not. I must consider whether any part of the appeal building changed use to a self-contained flat 4 years before the date of the application and whether the use of that part as a self-contained flat then continued for at least 4 years after the date of the change.
6. In an enforcement appeal on ground (d) and an LDC appeal, the burden of proof is on the appellant, the decision must be made on the evidence provided, that evidence must be precise and unambiguous and the standard of proof is the balance of probabilities.
7. A statutory declaration dated 16 January 2020, provided by a previous owner, Mr Solomon Reiner, states that works to convert the ground floor of the appeal premises were completed at the end of July 2015 by Motek Builders.
8. In his response to a planning contravention notice, the appellant declared that the conversion of the ground floor of the building occurred on 10 August 2015. Either way, the evidence indicates the appeal premises were fitted out for residential use more than 4 years before the date of the LDC application and more than 4 years before the date the enforcement notice was issued.
9. Though a building (or part of a building) might be fitted out for residential use, the question is whether it had been actually used as a dwellinghouse for a continuous period, apart from de minimis breaks. The correct approach, established in case law, is to consider whether there was any period during the 4 years when the dwellinghouse was not physically occupied, even though available for occupation, when the Council could not have taken enforcement action against the use.
10. The appellant has provided a statutory declaration dated 29 June 2020 by Gabriel Ost, Director of Citywall Properties Ltd. It declares this company were the managing agents for Flat 1a, 1b and 1c at the appeal property from August 2015 to February 2018 and that it let the 3 flats to London Online Ltd who in turn sublet them to local housing departments to accommodate tenants, with letting having started on 15 October 2015. This is more than 4 years before the date of the LDC application and more than 4 years before the date the enforcement notice was issued and is consistent with Citywall Properties statements showing when rent began to be collected for the flats.
11. For Flat 1a, Citywall Properties statements indicate they continued to collect rent until 5 January 2018. A statutory declaration dated 30 June 2020 by Morris Grosz, Company Director of YEC Estates Ltd, states Flat 1a has been

sublet since 20 February 2018 on a 3 year lease. This indicates a gap of 45 days. This coincides with when Lampard Estates, whom Citywall Properties collected the rent for, was sold to new owners. In this context, I consider this is a de minimis gap.

12. For Flat 1b, Citywall Properties statements indicate they continued to collect rent until 14 January 2018. Then the Council refers to a break of 7 months but the appellant states Flat 1b continued to be leased to London Online until 20 July 2018, which is supported by a deed of annulment of that date. Morris Grosz's declaration states Flat 1b has been sublet on a 3 year lease since 3 August 2018. This indicates a gap of 13 days which in my judgement is de minimis.
13. For Flat 1c, Citywall Properties statements indicate they continued to collect rent until 14 August 2017. The appellant states Flat 1c continued to be leased to London Online until 28 May 2018, which is supported by a deed of annulment of that date. Morris Grosz's declaration states Flat 1c was sublet on a 2 year assured shorthold tenancy from 10 August 2018 to Steven Muldoon, who moved out in September 2019, after which Flat 1c was sublet to Making Moves Ltd on a 3 year lease from 26 September 2019. This indicates a gap of about 2 and a half months between London Online and Steven Muldoon. However, the appellant says as the tenant left, the flat was found damaged and that subsequent refurbishment works were completed in late July 2018. Evidence to this effect has been provided which I have no reason not to believe.
14. Each of the aforementioned statutory declarations appear to be witnessed and signed by a solicitor and I have no reason not to give significant weight to each of them as a solemn declaration made under The Statutory Declarations Act 1835.
15. On the basis of the appellant's evidence, that is sufficiently precise and unambiguous, the 3 flats which are the subject of these appeals have been continuously used as self-contained flats for 4 years prior to the issue of the enforcement notice and for 4 years before the date of the LDC application, apart from de minimis breaks.

Appeal A Conclusion

16. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.

Appeal B Conclusion

17. 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 of the ground floor of the appeal premises as 3 self-contained flats, 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.

L Perkins

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 25 October 2019 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:

The 3 flats have been continuously used as self-contained flats for 4 years before the date of the LDC application, apart from de minimis breaks.

Signed:

L Perkins
Inspector

Date: 09 September 2020

Reference: APP/U5360/X/20/3246177

First Schedule

Existing use as three self-contained dwellings.

Second Schedule

Land at: Flat 1a – 1c, 42 Lampard Grove, Hackney, London N16 6XQ

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: 09 September 2020

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Land at: Flat 1a – 1c, 42 Lampard Grove, Hackney, London N16 6XQ

Reference: APP/U5360/X/20/3246177

Scale: Not to scale

