



Appeal Decision

Site visit made on 26 August 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Appeal Ref: APP/Y5420/W/19/3229969

20 Clifton Gardens, Tottenham, London N15 6AP

- 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 Erlich against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2019/0628, dated 23 January 2019, was refused by notice dated 19 March 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is 'retain the first floor rear terrace'.
-

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the use which is found to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

3. The property at 20 Clifton Gardens is a two-storey terraced building. From the kitchen at the back of the first-floor flat, a doorway leads out onto a rear roof terrace which is also at first floor level. In association, railings and fencing have been built to enclose the terrace, and a canopy extension has been provided. Additionally, a timber staircase has been constructed that leads from the roof terrace down to the back garden.
4. The operational developments comprising the railings, fencing, canopy and stairs are attacked by an enforcement notice which was issued on 29 October 2018. No appeal has been brought against the enforcement notice and so it remains effective.
5. An LDC cannot be granted where it contravenes the requirements of an enforcement notice in force. For the purposes of this appeal, this means that I cannot issue an LDC for any of the operational developments listed above. However, from my reading of the notice, it does not specifically attack the use of the flat roof itself. Although requirement 4 states that all means of access to

- the flat roof should be permanently disabled, this is a somewhat imprecise instruction, as it is not clear exactly how the appellant should achieve this.
6. In any case, it would not reasonably apply to a scenario whereby a resident of the building could climb a ladder to the flat roof to use it. Whether or not this is a likely scenario, it seems to me that the use of the flat roof, in and of itself, still falls to be considered within the remit of this appeal. This is in line with the *Panton and Farmer v SSETR and Vale of White Horse DC [1999] JPL 461* judgment, which indicates that an Inspector is obliged to issue an LDC for any use of the planning unit which the evidence shows is lawful.
 7. According to the relevant history in the planning officer's report, permission was granted in 1978 for the conversion of 20 Clifton Gardens to two self-contained flats¹. All as result, there can be little doubt that the residential use of the building as a whole is lawful.
 8. The LDC application form, at section 4, indicates that a lawful development certificate is being sought for an existing use. I note that this is apparently contradicted in that section 6 of the form states that the certificate is sought on the grounds that building works were substantially completed more than four years before the date of the application. However, as explained, I cannot take the physical works into consideration in this case.
 9. A flat is regarded as a dwellinghouse for the purposes of section 55(2)(d) of the 1990 Act. The same principles, therefore, apply to the use of flat roofed areas on buildings divided into residential flats as to those relating to single dwellinghouses. That being the case, the use of a flat roof by residents for domestic activities would be considered as part of the residential use, or at least incidental or ancillary to that use, and so could occur without requiring planning permission.
 10. Here, the occupants of the first floor flat appear to be using the flat roof of the dwelling below as a terrace for residential purposes. In the absence of evidence to the contrary, I am satisfied that the main use of No 20 as a whole remains residential. It follows that the use of the flat roof in question for residential purposes, or purposes ancillary or incidental to residential use, does not involve a material change of use requiring planning permission.

Conclusion

11. For the reasons above, I conclude on the evidence available that the Council's refusal to grant an LDC for the use of the terrace was not well founded and that the appeal should succeed. I shall exercise the powers transferred to me under s195(2) of the Act.
12. Crucially however, as discussed above, the LDC does not and cannot extend to the operational developments that include the railings, fencing, canopy and the wooden stair, due to the extant enforcement notice.

Elaine Gray

INSPECTOR

¹ OLD/1978/0161



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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 23 January 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the first floor roof terrace for residential purposes forms part of the lawful residential use of the property, or is incidental or ancillary to that use, and does not represent a material change of use requiring planning permission.

Signed

Elaine Gray

Inspector

Date: 15 September 2020

Reference: APP/Y5420/W/19/3229969

First Schedule

Use of the first floor roof terrace for residential purposes.

Second Schedule

Land at 20 Clifton Gardens, Tottenham, London N15 6AP

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:15 September2020

by Elaine Gray MA(Hons) MSc IHBC

Land at: 20 Clifton Gardens, Tottenham, London N15 6AP

Reference: APP/Y5420/W/19/3229969

Scale: Not to scale

