
Appeal Decisions

Site Visit made on 7 September 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6th November 2020

Appeal A: APP/U5930/C/20/3251499

Appeal B: APP/U5930/C/20/3252906

Appeal C: APP/U5930/C/20/3252907

41 Bulwer Road, London, E11 1DE

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Varun Chadha (Tulip Hotels and Real Estate Limited)(Appeal A), Raheel Mirza (Appeal B) and Adeel Mirza (Appeal C) against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice, numbered 086406, was issued on 17 April 2020.
- The breach of planning control as alleged in the notice is: 1. Without planning permission, the material change of use of a dwellinghouse to four (4) x one (1) bedroom self-contained residential flats and one (1) studio flat; and 2. The operational development building works to convert the dwellinghouse.
- The requirements of the notice are: .
 1. Cease the use of the property as Four (4) x One (1) bedroom self-contained flats;
 2. Cease the use of the property as One (1) x studio flat;
 3. Remove from the property all internal partitions which facilitates the use of the property as four (4) x one (1) bedroom self-contained residential flats and one (1) studio flat;
 4. Remove from the property four of the five kitchens including all cooking facilities, kitchen units, kitchen sinks, and associated drainage connections, fridges, washing/drying machines which facilitates the use of the property as self-contained flats so that one remain;
 5. Remove from the property three of the five bathroom facilities including all shower units, hand wash basins and W/C toilets and associated drainage connections which facilitates the use of the property as self-contained flats so that two remain;
 6. Remove all additional energy meters from the property so that only one remains;
 7. Remove all additional boilers from the property so that only one remains; and
 8. Remove from the property all associated debris resulting from compliance with the above steps.
- The period for compliance with the requirements is 8 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 as amended, Appeal B is proceeding on grounds (a), (d), (f) and (g), and Appeal C is proceeding on grounds (d), (f) and (g). On Appeal B the application for the planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeals are allowed in relation to part of the property following variation of the enforcement notice in the terms set out below in the Decision.

Appeal D: APP/U5930/X/20/3244683

41 Bulwer Road, London, E11 1DE

- 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 Varun Chadha (Tulip Hotels Limited) against the decision of the Council of the London Borough of Waltham Forest.
- The application Ref 193626, dated 5 November 2019, was refused by notice dated 24 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 the use of property as five self-contained flats.

Summary of Decision: The appeal is allowed in relation to part of the property known as Flats 3 and 5 and attached to this decision is a certificate of lawful use describing the existing use which is considered to be lawful.

Application for costs

1. An application for costs was made by the appellants in Appeals B and C against the Council. This application is the subject of a separate Decision.

Preliminary Matters

2. It is necessary to have an additional plan attached to the notice to identify Flats 3 and 5 within the property. The notice has therefore been corrected to include the additional plan and to rename the original plan (as attached to this decision) so that it refers to Plan 1 and Plan 2.

Appeals A, B and C

Ground (d)

3. Appeals A, B and C are appealing on ground (d) and relying on the same evidence, that provided in Appeal A. To succeed on this ground the appellants must show that there has been a continuous period of 4 years prior to the service of the notice during which the property has been used as four one bedroomed self-contained residential flats and one studio flat. The notice was served on 17 April 2020 and the appellants case is that they have provided sufficient evidence on the balance of probability to show the use of the property as 5 self-contained flats between 17 April 2016 and 16 April 2020.
4. Tulip Hotels have submitted many documents to support the argument under ground (d). A useful starting point is the written evidence provided by Rui Armando Pina, who states that he has been managing the property on behalf of the Tulip Real Estate since 3 May 2015. The statement is signed, dated and witnessed by a solicitor but it is nevertheless not a statutory declaration or affidavit and is unsworn evidence. However, guidance states that provided the appellant's evidence is sufficiently precise and unambiguous then it should be accepted if there is no other evidence to contradict or otherwise make the applicant's version of events less than probable. The Council does not offer its

own evidence to contradict the appellants' case but argues that the evidence submitted is insufficient to cover the necessary continuous period of use.

5. Mr Pina's states that he has been managing the property since 30 May 2015 and that he has let the 5 flats out to individual tenants. Council tax has been paid separately for the five flats since April 2017 and it appears from the evidence that the flats have been rented separately for some years. During the site visit the property did appear to be used as the five units described by Mr Pina and shown on the submitted plans, i.e. two self-contained units on the ground floor, a one bedroomed flat and a bedsit on the first floor, and one unit on the second floor (attic). However, there were major renovation works taking place on the entirety of the second floor which was not habitable. And the front flat on the ground floor was also unoccupied although it was habitable on that date. The other three units were occupied on the date of the site visit.
6. Mr Pina provides details regarding the occupiers of each flat from his personal knowledge and the appellant states this is corroborated by evidence such as proof of payments into what appear to be two of the appellant's bank accounts (named Tulip Hotels and Real Estate Limited and Tricon Hotels (UK) Limited) signed licences, electricity bills and HMO licences. There is a different set of documents in relation to each unit which needs to be considered individually. A search from Find UK People dated 12 September 2019 has been submitted which provides details of residents at 41 Bulwer Road compiled from information held by credit agencies and the electoral roll. It does not distinguish between the various units in the property but does provided corroborative evidence that links named individuals to 41 Bulwer Road. Likewise, the bank payments do not generally link individuals to No. 41 or a specific part of it but are corroborative of Pina's statement.
7. The table below includes the dates of occupiers of each flat as provided in Mr Pina's statement dated 4 October 2019:

Flat	2015	2016	2017	2018	2019
1		Mr Mantondo Manangani 6 Feb 2016 to 15 July 2017	Sara Gizela Gomes Da Costa July 2017 to Feb 2018	Nazya Amorim Dos Santos 17 Feb 2018 to 31 Aug 2019	Empty from Aug 2019
2		Mr Zaino Emanuel 2 Dec 2015 – July 2017	Sara Gizela Gomes Da Costa 17 July 2017 to date		

3	Mr Ahmed Oct 2015 to Feb 2016	Mr Okba Khennourf 9 March 2016 to 20 July 2019			Ms Temitope Aminat Atoyebi 31 July 2019 to date
4	Mr Guha June to Oct 2015	Ms Susana Monteiro Nov 2015 – Oct 2016	Ms Adriana Patricia Alves Carvalho Silva Nov 2016 – date		
5	Pita Da Costa Mendes 1 July 2015 to date				

Flat 1, Front Ground Floor

8. Mr Pina states that Mr Montondo lived in Flat 1 between February 2016 and July 2017. This is corroborated by a six month licence relating to 41 Bulwer Road dated 6 February 2016, the Find UK People search which shows him as resident of 41 Bulwer Road between April 2016 and August 2017, Tulip Hotels Limited Bank Statements showing payments from Mr Mantondo¹ and a possession order dated 21 September 2017. None of this corroborative evidence relates specifically to Flat 1, or any other particular part of the property.
9. Mr Pina's statement is contradictory in relation to Flats 1 and 2 between July 2017 and February 2018 as he says that Sara Gizela Gomes Da Costa was living in both of these units for that period, but he does not say that she was paying the rent on two flats at the same time. If she was living in both of the flats, which seems unlikely, then this period would not count towards their individual use as separate units in any event as she would have been occupier both as one dwelling. A 3 month licence with Ms Da Costa dated 13 July 2017 was submitted in evidence but it refers only to 41 Bulwer Road and not a particular part of the property. Ms Da Costa is also shown on the Find UK

¹ Dated 21 March 2016, 25 April 2016, 16 May 2016, 21 July 2016, 19 August 2016, 15 September 2016, 21 October 2016 and 18 November 2016.

People search as resident at 41 Bulwer Road from August 2017 to the date of the search.

10. Mr Pina states that between February 2018 and August 2019, Flat 1 was occupied by Nazya Amorim Dos Santos and a 6 month licence dated 15 February 2018 is provided as proof but only refers to 41 Bulwer Road, and not a particular part, and she is also shown on the Find UK People search as resident from May 2018.
11. For the period between Mr Pina's statement and the service of the notice, October 2019 to April 2020, a copy of a 6 month licence dated 11 October 2019 with Helia Jercia de Moura Lumbu relating to Flat 1 is provided, but there is no other evidence of such as payment of rent or corroborative bank statements (which have not been provided despite being referred to in the appellant's statement of case). There is also a gas certificate dated 1 February 2020 which refers to Flat 1 and a council tax bill for Flat 1 2019/2020 payable by Tulip Hotels and Real Estate Limited but no other corroborative evidence regarding Ms Lumbu or actual occupation of the unit.
12. Despite the evidence outlined above, there is a significant period in the 4 years immediately prior to the service of the notice, between July 2017 and February 2018, when the appellant has not proved on balance that Flat 1 was being used as a self-contained residential flat. In addition, the evidence is not on balance sufficiently clear relating to the period after August 2019. The necessary 4 year period has therefore not been shown on balance in relation to Flat 1, either working forwards from the first alleged date of use of February 2016 or backwards from the date of the service of the notice of 16 April 2020. Ground (d) cannot therefore succeed in relation to Flat 1.

Flat 2, Rear Ground Floor

13. As set out above, there is an inconsistency in Mr Pina's evidence regarding where Ms Da Costa was living during the period July 2017 and February 2018 which similarly means the evidence submitted is not sufficiently precise and unambiguous for Flat 2 for that period. Bank statements, although not specific regarding the unit of occupation, do support Mr Pina's evidence regarding Mr Emanuel between July 2016 and February 2017² (although Mr Pina stated that the occupation covered December 2015 – July 2017 which accords with a licence for 41 Bulwer Road dated 29 December 2015). However, there is insufficient evidence on balance regarding the occupation of Flat 2 for the relevant continuous 4 year period, either immediately prior to the service of the notice or at any other time, to prove that this unit was immune to enforcement action.

Flat 3, Rear First Floor

14. Mr Pina's statement includes details of continuous occupation of this unit between October 2015 to the date of his statement. Bank statements have been provided which show payments from Mr Ahmed³ which appear to corroborate Mr Pina's evidence for that Mr Ahmed lived in the unit during the

² Dated 12 July 2016, 8 August 2016, 15 October 2016, 14 November 2016, 10 December 2016, 21 January 2017, 20 February 2017

³ Dated 26 October 2015, 25 November 2015, 23 December 2015 and 11 February 2016.

period of October 2015 to February 2016. The Find People UK Search shows Okba Khennouf at 41 Bulwer Road from May 2016 which accords with three licences dated 4 March 2016 (6 months), 27 November 2017 (6 months) and 30 July 2018 (12 months), although these licences and the search do relate to 41 Bulwer Road rather than Flat 3. Council Tax bills dated 2 March 2019 and 8 November 2017 to Mr Kennourf relates to "First Floor Flat Rear" which corroborates the other evidence relating to his occupation of that specific flat. A licence has also been provided for Ms Atoyebi from 31 July 2019 (6 months) which relates to Flat 3, 41 Bulwer Road.

15. There is no further corroborative evidence in relation to Flat 3 but on balance the appellant's evidence is clear and unambiguous and has not been contradicted. It is therefore likely on the balance of probability, the separate residential use of Flat 3 has taken place for the requisite 4 years prior to the service of the notice.

Flat 4, Front First Floor

16. Mr Pina provides details that this flat was continuously occupied from June 2015 to date of the statement. There is some corroborative evidence by way of bank statements showing payments from the alleged tenants Mr Guha⁴ and Ms Monteiro. These payments do not cover the whole period of the alleged occupation by these tenants and no explanation is given regarding the other months.
17. The Find UK People Search shows Ms Monteiro at the property between July 2015 and September 2017 and there is a letter dated 6 March 2017 from the Council's Finance Dept regarding Ms Monteiro's housing benefit for the period April to Nov 2017 which records her as living at 41 Bulwer Road with Aaron Gabriel Gomes. This does not accord with Mr Pina's evidence which states that Ms Monteiro lived in Flat 4 between November 2015 and October 2016 and that Flat 4 was then occupied by Adriana Patricia Alves Carvalho Silva from November 2016 to the date of his statement. Ms Silva is shown on the Find UK People search at 41 Bulwer Road between May 2018 and June 2019, which clearly does not cover the full period of the alleged occupancy but there is a licence agreement for 41 Bulwer Road from 1 November 2016 (6 months) and 1 November 2019 (12 months) and a council tax bill in her name for "First Floor Flat Front" dated 13 December 2017.
18. Mr Pina's statement is therefore not clear and unambiguous regarding the dates and names of these tenants and there is contradictory evidence to suggest that the information is not correct, particularly in relation to the period between November 2016 and November 2017. On balance the separate residential use of Flat 4 has not been proven for the necessary 4 year period immediately prior to the service of the notice, as the evidence is contradictory and not sufficiently clear.

Flat 5, Attic

19. Mr Pita Da Costa Mendes has provided a sworn statement that he has lived in Flat 5 from 1 July 2015 until the date of the statement (17 September 2019).

⁴ Dated June 2015.

It seems likely on balance, taking Mr Da Costa's evidence with the evidence of Mr Rui and other documents provided such as a licence agreement dated 1 July 2015, an EPC dated 2 December 2017, letters from the Council's Finance Department dated 10 November 2015, 29 February 2016 and 15 August 2019 and the Find People UK Search which shows Mr Da Costa Mendes at the property from November 2018 onwards, that Flat 5 in the attic has been used continuously as a separate self-contained residential flat for the necessary 4 years and that the use as such is now immune from enforcement action.

Evidence that does not directly support appellant's case

20. The water bill submitted for April 2020 to March 2021 refers to 41 Bulwer Road so does not provide corroborative evidence in terms of the time period covered or use as separate dwellings and likewise, the unsigned and undated extract from tenancy agreement for an unidentified property with copy of identification card for Ms Paloma Da Silva Dias does not support the appellant's case. An unsigned extract from a licence with Ms Neia Da Costa dated 3 January 2020 does not tie to any other evidence submitted or identify a particular part of No.41.
21. The Emergency Lighting Construction Declaration dated 01/11/17 relating to "41 Bulwer Road" and Domestic Electrical Installation Condition Report (For a Single Dwelling) dated 30 November 2017 does not support the appellant's case as it relates to the whole property, and indeed the form should have only been used in the case of a single dwelling as is clear from its title. The EPC dated 1 December 2017 refers to Ground Floor Flat but is not specific as to whether this is the whole or part of the ground floor of No.41.
22. The gas (30 January 2020) and electricity (14 April 2020) bills relation to "1st Floor, 41 Bulwer Road" do not corroborate any other evidence in terms of named occupiers or identify a specific part of the first floor.
23. The council tax evidence submitted is confusing as it is incomplete, and it may take time for the records to catch up with changes in the bill payer, but it does appear that the property was split into 5 separate units for council tax purposes in 2017. This in itself does not prove actual use of the units and I have set out in the preceding paragraphs where these records corroborate other evidence.
24. The Gas Safety Inspection Records from 1 February 2020 relating to the first floor rear and ground floor rear flats do not provide evidence regarding whether these flats were occupied at that time and provide a customer name of Mr Hasan Younis, Century 21 which does not relate to any other evidence submitted in the ground (d) appeal, although Century 21 is referred to in Appeals B and C as the original tenant for No.41. Similarly, the Private Rented Property Licences provided, one per flat from 7 June 2019, do not provide any proof of occupation.
25. Very little direct evidence has been submitted regarding the use of any of the units between October 2019 and the date of the enforcement notice, April 2020. The appellant's appeal statement, submitted by the agent, sets out the details of the alleged occupiers but there is no direct evidence by way of statement or precise corroborative evidence to prove occupation for the individual units during this period on the balance of probability. The position

about whether the appellant can prove a continuous period of 4 years self-contained residential use prior to the service of the notice does not in fact turn on this period for any of the units. The appellant did not provide sufficiently precise and unambiguous evidence in relation to this period of time but it has not affected my findings as set out above.

Conclusions on ground (d)

26. For the reasons set out above, it has been proven on the balance of probability that the areas of No.41 known as Flats 3 and Flat 5 have been used continuously as self-contained residential units for a period of more than 4 years prior to the service of the notice. Such use has not been proven on the balance of probability for the rest of No.41.

Appeal B

Ground (a) and the deemed application deemed planning permission

27. The main issues in the ground (a) appeal are the effect on:

- The living conditions of the occupiers with regard to space, outlook, privacy and outdoor space;
- The living conditions of occupiers of neighbouring properties; and
- Parking and waste collection arrangements in the area.

Living conditions of the occupiers

28. The appellant's case does not provide measurements for the individual units but does state that "the conversion averages 30sq.m per unit". This is below the minimum space standards contained in Policy 3.5 of the London Plan (2016) and Development Management Policy DM7 (check). The appellant's case is that the flats are entirely suitable for a single person. However, it is clear from the evidence submitted, and from the site visit, that the units have not be used solely as accommodation for single residents.

29. Only the rear ground flat (Flat 2) which has direct access to the back yard has any private outdoor space. The appellant's case is that all of the units can share the outdoor space to the front and rear of the property despite the fact that the only access to the rear yard is through Flat 2. This is in conflict with DM7 which requires that all dwellings should have an element of private external amenity space and that any communal external amenity space should be easily accessible by all residents. The size of the units fail to meet the space standards and, other than Flat 2, do not have private external amenity space and are contrary to Policy 3.5 and DM7 set out above as well as Core Strategy Policy CS2.

30. In addition, Flats 1 and 2 are not dual aspect and have low levels of natural light as a result; the main living area in Flat 2 and the kitchen/living area in Flat 1 do not have natural light so that the living areas of these units are dark. These factors cause material harm to the living conditions of the occupiers and are contrary to Core Strategy Policies CS13 and CS2 and Policies DM23 and DM32 which seek to promote satisfactory amenity for occupiers and high-quality housing design.

Living conditions of neighbours

31. When comparing three residential units with a single household, it is likely that the occupiers of the former will have separate living patterns and routines with fewer linked trips and more visitors. This will increase noise and disturbance to the neighbours and the potential long-term impact of the development needs to be considered notwithstanding that there is no current evidence of complaints from the neighbours. This intensification of use, including the lack of additional refuse storage, will cause material harm to the living conditions of occupiers of neighbouring properties contrary to Development Management Policies DM23 and DM32, Core Strategy Policy CS13 and Policy 3.5 of the London Plan, which are intended to provide high quality development and improve health and well-being.

Parking

32. It is accepted by the parties that the property has a good level of public transport accessibility. However, there is limited permit parking on Bulwer Road and the Parking Standards would require parking spaces which have not been provided, nor in the alternative is there adequate provision to ensure that the development is car free. The condition suggested relating to car free housing would not be reasonable and would therefore not meet the tests in the National Planning Policy Framework as it is unlikely to be achievable or enforceable. Future occupiers of the development must also be considered, and whilst it may be the case that the current occupiers are unlikely to own cars this may not necessarily always be so. There is also no cycle storage provision within the development and these elements of the development cause material harm which is in conflict with Core Strategy Policy C7 and Development Management Policies DM14 and DM16 which seek to encourage sustainable travel and effectively manage parking.

Loss of dwellinghouse

33. It is accepted by the appellants in Appeals B and C that the property was a single dwellinghouse. The property is located in the council ward of Leytonstone which is designated a "Restricted Dwelling Conversion, HMO and Building in Multiple Residential Occupation Ward" pursuant to Development Management Policy DM6. The purpose of this policy is to seek to improve housing quality and choice and to meet a range of housing needs, and a key objective is to prevent the loss of larger family-sized homes in line with the Council's preferred housing mix in Policy DM5. The conversion of such larger homes, which includes this property even without the parts covered by Flats 3 and 5, into smaller self-contained homes within this ward is contrary to Policy DM6 and also contrary to CS2 of the Core Strategy. The use as an HMO with up to 6 residents is also contrary to Policy DM6 and permitted development rights to change the use from a C3 (single dwellinghouse) to C4 (HMO) were removed by a direction under Article 4(1) of the Town and Country Planning (General Permitted Development) Order 1995 as amended.
34. The use as self-contained flats is therefore contrary to the development plan and there is not a "fall-back position" that it could be used as an HMO without an express permission.

Other Matters

35. The appellant has raised various other matters. The units do not provide affordable housing as defined in the Framework and Development Plan and I therefore afford limited weight to the appellant's argument that the development is providing this type of development. In addition, the suggested condition to restrict the occupation of each dwelling to only one person would not be enforceable as it would simply be too onerous on the Council. It is accepted that the property has good public transport accessibility, is close to local amenities and is in accordance with other relevant policies but this does not overcome the conflict with the development plan as set out previously.

Conclusion on Ground (a)

36. The change of use to three self-contained residential flats has failed to meet the housing need and parking and waste requirements and is harmful to the living conditions of the occupiers and the neighbours. It is contrary to the development plan as set out above and since there are not material planning considerations to outweigh the conflict with the development plan, I conclude the appeal on this ground should be dismissed and planning permission refused.

Appeals A, B and C

Ground (f)

37. The appellant in Appeal A has argued that the requirement to cease the use as self-contained flats is sufficient and that all other requirements are not necessary. In this instance, to be successful on an appeal under this ground it is necessary to show that the steps required exceed what is necessary to remedy the breach of planning control.
38. The appellant is seeking to retain the internal partitions, kitchens, bathrooms, and additional boilers and energy meters which have been used to facilitate the use of the property as self-contained flats. As a result of the findings relating to the ground (d) appeal, the requirements need to be varied to reflect the lawful use of Flats 3 and 5 as separate units and to allow the associated partitions, kitchens, bathrooms, energy meter and boilers to remain. However, as the purpose of the notice is to remedy the breach of planning control the lesser steps suggested by the appellant, i.e. leaving the additional facilities in place, in relation to the rest of the property would not be effective. In addition, allowing such facilities to remain would make it easy to use as separate dwellings in the future.
39. For the reasons given above I conclude that the requirements are excessive because they should only apply to the parts of the property that are not included in Flats 3 and 5, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.
40. The lesser steps suggested by in these Appeals B and C have been addressed in the ground (a) appeal as they were effectively to grant permission for the deemed planning application without or without conditions to provide that the development was car free and restricted to single person occupancies, and were not in fact really lesser steps. For the reasons set out previously relating to the ground (a) appeal the application for deemed planning permission is

refused and the conditions suggested would not remedy the breach of planning control. Appeals B and C do not therefore succeed on this ground.

Appeals B and C

Ground (g)

41. The appellants in Appeals B and C have argued that 8 months is the minimum time need to evict the existing tenants and that they would then require up to 6 months to secure removal and are seeking an extension to 18 months as the compliance period. Whilst the licence or tenancy terms are not clear from the evidence submitted, the 8 month compliance period on the notice is adequate. A longer period would not be appropriate given the failure to provide appropriate living conditions for the current and future occupiers and the other conflict with the development plan as set out previously. The Council has also indicated that they may use their power under section 173(1)(b) of the 1990 Act to extend the compliance period if the appellants can demonstrate that they have taken all reasonable steps to comply with the notice, particularly in light of any issues arising from the Pandemic. The appeal on this ground therefore fails.

Appeal D – Certificate of Lawful Development

42. The main issue in this appeal is whether, on a balance of probabilities, the Council's refusal to grant the certificate of lawful development (LDC) was well-founded. This turns on whether the appellant can show, on the balance of probability, that the change of use to five self-contained flats took place more than 4 years before the date of the LDC application and has continued without material interruption since.
43. The appellant has relied on the same evidence in the appeal against the refusal to grant the LDC as they did the appeal under ground (d). The relevant time period for the continuous use in the LDC appeal is 4 years prior to the date of the LDC application which was 5 November 2019. The evidence and reasons that I have set out above in relation to the ground (d) appeal apply equally in the case of the LDC appeal but with an additional period of unproven use in relation to Flat 1 between November 2015 and February 2016. This does not change my overall findings in relation to any of the units.
44. For the reasons given above, the Council's refusal to grant a certificate of lawful use or development in respect of Flats 1,2 and 4 was well-founded as the application was not sufficiently precise and unambiguous regarding the date and period of use. The appeal should therefore fail in relation to those parts of No.41. However, the application was proven on balance in relation to Flats 3 and 5 and the Council's decision not to grant the certificate of lawful use or development was not well-founded in relation to these parts of the property. The appeal should therefore succeed in part, in relation to the parts of No.41 which constitute Flats 3 and 5, and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended in relation to those parts.

Decisions

Appeal A: APP/U5930/C/20/3251499

Appeal B: APP/U5930/C/20/3252906

Appeal C: APP/U5930/C/20/3252907

45. It is directed that the notice be corrected by:

- (i) the deletion of the word "plan" in paragraph 2 and the substitution of the words "Plan 1";
- (ii) and inclusion of Plans 1 and 2 as attached to this decision;

and varied by:

- (iii) the deletion of the requirements in paragraph 5 and the substitution of the words:
 - 1. "With the exception of Flats 3 and 5 shown outlined in red on Plan 2 attached to this decision, cease the use of the property as separate self-contained units of accommodation;
 - 2. With the exception of Flats 3 and 5 shown outlined in red on Plan 2 attached to this decision, remove from the property all internal partitions which facilitate the use of the property as separate self-contained units of accommodation;
 - 3. With the exception of Flats 3 and 5 shown outlined in red on Plan 2 attached to this decision, remove from the property two of the three kitchens including all cooking facilities, kitchen units, kitchen sinks and associated drainage connections;
 - 4. With the exception of Flats 3 and 5 shown outlined in red on Plan 2 attached to this decision, remove from the property one of the three bathroom facilities including all shower units, hand wash basins and W/C toilets and associated drainage;
 - 5. With the exception of Flats 3 and 5 shown outlined in red on Plan 2 attached to this decision, remove all additional energy meters from the property so that only one remains;
 - 6. With the exception of Flats 3 and 5 shown outlined in red on Plan 2 attached to this decision Remove all additional boilers from the property so that only one remains;
 - 7. Remove from the property all associated debris resulting from compliance with the above steps";

46. Subject to these corrections and variations required by the partial success on ground (d), the appeals are dismissed and the enforcement notice is upheld. In relation to Appeal B, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D: APP/U5930/X/20/3244683

47. The appeal is allowed in part 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.

Zoë Frank

INSPECTOR



Plan 1

This is Plan 1 referred to in my decision dated:

by Zoë Franks Solicitor

Land at: 41 Bulwer Road, London, E11 1DE

Reference: APP/U5930/3251499/3252906/3252907

Scale: Not to scale





Plan 2

This is Plan 2 referred to in my decision dated:

by Zoë Franks Solicitor

Land at: 41 Bulwer Road, London, E11 1DE

Reference: APP/U5930/3251499/3252906/3252907

Scale: Not to scale





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 5 November 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown edged in unbroken 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 use as self-contained flats began more than 4 years before the date of the application and continued thereafter; and

The use does not contravene the requirements of any enforcement notice in force.

Signed

Zoë Frank

Inspector

Date 6th November 2020

Reference: APP/U5930/X/20/3244683

First Schedule

Use as two self-contained flats.

Second Schedule

Land known as Flats 3 and 5 at 41 Bulwer Road, London, E11 1DE

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 /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:

by Zoë Franks, Solicitor

Land at: Flats 3 and 5, 41 Bulwer Road, London, E11 1DE

Reference: APP/U5930/X/20/3244683

Scale: Not to scale

