



Appeal Decision

Site visit made on 17 December 2020

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 08 January 2021

Appeal Ref: APP/N5660/X/20/3249792 68 Harpenden Road, London, SE27 0AF

- 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 Messrs Anton & Stefan Samson Baskerville against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 19/01049/LDCE, dated 20 March 2019, was refused by notice dated 28 June 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 the property as two self-contained residential flats.
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Decision

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

Costs

2. An application for costs was made by the appellants against the Council and this is the subject of a separate decision letter.

Preliminary Matters

3. As this is an LDC application then the only question before me is whether the use of the property as two flats is lawful. The merits of such a use are not relevant to my determination, which is made on the facts of the case. It is up to the appellants to demonstrate that on the balance of probability the subdivision took place and the use affirmatively established over a four year period.

Reasons

4. The appellants explain that they are two brothers who purchased the property in February 2019 intending to refurbish it and live in one flat each. At the time of purchase it was already split into two flats and had been since the 1980s. There seems no doubt that by 2019 the property was physically subdivided into two flats. It had separate entrances, two gas and electricity meters and separate boilers. Both flats had bathrooms, kitchens and other rooms capable of being a bedroom, a living room and a dining room. This is substantiated by a letter from a surveyor and by photographs provided by the previous owner.

There is no real dispute that this was the case. The photographs show the whole property is in a poor state of repair and the conversion looks like it must have happened some time ago.

5. The previous owner was Sandhya Dass, who bought the property in 1983. She occupied the ground floor and her parents lived on the first floor. This is evidenced by statutory declarations from her nephew, Anoop Dass, who visited the property regularly as a child from the 1980s. He also provided the photographs of the flats with two kitchens and bathrooms and explains this has not changed from the early days. Further statutory declarations from neighbours, Mary and Sheila Fox, also assert that Sandhya converted the property into two flats and her parents lived upstairs. For a while also Sandhya's sister (Sudha) lived with her parents as she needed some help. It would seem the parents passed away in early 2015 and Sandhya followed in late 2015. Sudha carried on alone in the property (living in the upstairs flat according to the Foxes) until 2016. The property then stood empty until it was sold by Anoop to the appellants. Anoop was the executor of the estate. All of this is corroborated by land registry, electoral register, and death certificate evidence. I have no reason to doubt any of this.
6. The Council's main concern, despite all this evidence, is that while the property may have been subdivided into two flats it was not occupied as two. In 2011 Sandhya applied for planning permission to reconstruct the rear ground floor extension to provide a wheelchair access to a downstairs shower room for her parents. The Council officer's report accepts there is a degree of subdivision of the property, but there is no suggestion the Council at that time thought that 2 separate flats had been created. The design statement submitted with the application describes the property as a house. Sandhya lives downstairs and her parents upstairs and in this arrangement the application was designed to change. However, the description of the house and the plans submitted with the application make it clear that while the downstairs seems to be a self-contained flat, upstairs has 3 bedrooms, one of which is used as a living room and a bathroom. There is no mention of a kitchen and the Council have concluded the property was used as a single dwelling, with Sandhya providing care for her parents.
7. There is nothing unreasonable in reaching this conclusion. Case law is clear that the mere sub-division of a property (if indeed that had taken place at this time, which is in doubt) does not mean a material change of use has taken place. It is quite reasonable to provide a building on your property that might have the appearance of a self-contained flat but is used in an ancillary fashion to the main property. No separate planning unit would have been created. It is entirely possible the upstairs, even if it was self-contained, was actually used in a way that meant no separate planning unit had been created and no material change of use took place. If the parents took their meals with Sandhya for example. The question is whether the evidence suggests this was the case.
8. Unfortunately, by the time of my site visit the interior of the building was very different as it had been gutted and refurbished, as well as extended. However, from the historic evidence it is clear there was a subdivision of the property at some time, and it would seem from the state of the fixtures and fittings this must have taken place some years ago. The 2011 application would seem to me to be firm evidence there was no upstairs kitchen at that time, but as the

application was never implemented it may be the kitchen was installed shortly after. It is clear that some form of care to her parents was provided by Sandhya, but that does not mean the upstairs flat was not occupied as a separate unit.

9. I accept the Foxes, and to an extent a young Anoop would not necessarily have a clear understanding of exactly what the domestic arrangements of the Das family at No68 were but I have no reason to disbelieve their statements. In particular their recollections gain credibility the closer to the present they come. I am also convinced by the appellants' explanation for the lack of corroborating evidence in the form of bills, post etc, as the occupants all died or moved away 4 to 5 years ago and there would be no reason for Anoop to keep these documents as evidence as he has never had any intention of regularising the subdivision of the property.
10. It seems clear to me that the Das family did not realise they had created a separate planning unit or that they needed to register it for a separate council tax assessment. This is not unusual in cases such as this. Consequently, despite the evidence of the 2011 application I believe, that on the balance of probability the appellants have been able to demonstrate that No68 was subdivided into two flats, a material change of use did take place and the property was occupied as two separate flats for more than 4 years prior to the date of the application.

Simon Hand

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 20 March 2019 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason: the subdivision took place more than 4 years before.

Signed

Simon Hand

Inspector

Date 08 January 2021

Reference: APP/N5660/X/20/3249792

First Schedule

The use of the property as two self-contained residential flats.

Second Schedule

Land at 68 Harpenden Road, London, SE27 0AF

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 in the First Schedule taking place on the land specified in the Second Schedule was on the certified date and, thus, was 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 described in the First Schedule and to the land specified in the Second Schedule. Any use 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.