
Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 20 May 2021

Appeal Ref: APP/E5900/X/20/3256640

First and Second Floor Flat, 606 Commercial Road, London E14 7HS

- 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 Johan Grefstad against the decision of the Council of the London Borough of Tower Hamlets.
 - The application Ref: PA/20/00826, dated 22 April 2020, was refused by notice dated 10 June 2020.
 - 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 existing use of roof to the rear of the property, between 1st/2nd floors as a terrace.
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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 proposed use which is found to be lawful.

Procedural Matter

2. The description of the application in the banner heading above does not specify what the terrace has been used for. It is, however, clear that its use is for domestic enjoyment associated with the residential occupation of the flat. The LDC application was advanced and considered by the Council on this basis. It is not possible to impose conditions on a LDC and so, to clarify the use, I consider it necessary to amend the description accordingly. This will not cause injustice to either side.

Main Issue

3. Having regard to the above, the main issue is whether the Council's decision to refuse a LDC to use the roof to the rear of the property, between 1st/2nd floors as a domestic terrace was well founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit.

Reasons

4. The site contains a three-storey mid terrace property which has been converted into flats. The flat the subject of the appeal is the upper floor flat. Outside an existing window there is a small flat roof which the appellant says is used as an outdoor terrace. Submitted photographs show the felted roof with a low brick

- parapet surround with a table and chairs on it. The Council refused the LDC application because the evidence provided was considered insufficient to demonstrate that, on the balance of probability, the use of the roof as a terrace had occurred continuously for residential purposes for at least 4 years.
5. S55(1) of the 1990 Act defines development, in short, as the carrying out of building operations or the making of any material change in the use of any buildings or other land. I am aware that the appellant applied for permission to the Council to replace the existing sash window with full length French doors to give better access onto the roof, along with the erection of iron railings around the edge of the existing flat roof. That application was refused and is the subject of a separate appeal (Ref: APP/E5900/W/20/3256845). That other appeal is not before me and none of those works are included in this LDC appeal. I make no comment on the merits of the other works proposed. This LDC application does not involve any operational/building development.
 6. Although the flat roof is outside space, it falls within the limits of the building that already has a residential use. Using the space for domestic sitting out on and enjoyment associated with the residential occupation of the existing flat would be no different to, for example, using a garden within the curtilage of any other house or building converted into flats. The use of the terrace as such, incidental to the main residential use of the flats, would not constitute a material change of use of the building or the land.
 7. In view of the above, the domestic use of the flat roof does not comprise development. Under s191(2)(a) of the 1990 Act, uses are lawful at any time if no enforcement action may be taken in respect of them because they did not involve development. Consequently, the use of the flat roof as a domestic terrace is lawful and the Council's application of the 'four-year rule' was not the correct approach.

Conclusion

8. 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 the roof to the rear of the property, between 1st/2nd floors as a domestic terrace was not well-founded. The appeal should therefore succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Gareth Symons

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 22 April 2020 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 use does not comprise development.

Signed

Gareth Symons

Inspector

Date 20 May 2021

Reference: APP/E5900/X/20/3256640

First Schedule

Use of the roof to the rear of the property, between 1st/2nd floors as a domestic terrace.

Second Schedule

Land at First and Second Floor Flat, 606 Commercial Road, London E14 7HS

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: 20 May 2021

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Land at: First and Second Floor Flat, 606 Commercial Road, London E14 7HS

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Scale: Do not scale.

