



Appeal Decision

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2021

Appeal Ref: APP/Q5300/X/21/3268051
369 Firs Lane, Palmers Green, N13 5LX

- 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 Huseyin Sar against the decision of the Council of the London Borough of Enfield.
 - The application Ref: 20/03796/CEU, dated 20 November 2020, was refused by notice dated 18 January 2021.
 - 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 use of side of property as 1 self-contained flat.
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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.

Preliminary matter

2. Because of the nature of this case, which essentially relies on documentary evidence, it was agreed with the parties that it was not necessary for me to conduct a site visit.

Reasons

3. The appeal property is a two-storey, semi-detached house. In 2013, planning permission was granted to convert the side garage into a habitable room, involving a single storey front extension and front porch and a single storey rear extension (LPA ref: P13-00589PLA). This development at ground floor level to the side of the dwelling has been converted into a self-contained flat, with access via the communal front porch, which also serves the main dwelling. The appellant submits that the flat, which is sometimes referred to as no.369A Firs Lane, was substantially complete and in use as a self-contained dwelling by November 2014, and that it has been continuously used as such up to the date of the application in November 2020.
4. There is no dispute that the flat is physically separate from the main dwelling and has the required facilities for independent living – the submitted plan indicates a living/dining/kitchen area, a separate bedroom and a bathroom.

5. In a case of this type, the onus is on the appellant to demonstrate his case. Planning Practice Guidance indicates that, in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
6. The appellant has submitted 7 shorthold tenancy agreements, each for a period of 12 months. The first is dated 19 November 2014 and the last expired in November 2021. They cover a continuous and unbroken period save for a 2 month gap between October and December 2018. All of the agreements, bar 2, are signed. However, the 2 unsigned agreements in the name of Mr Hayirli appear to be continuations of an initial tenancy agreement that he did sign.
7. The tenancy agreements are supported by an annual income and expenditure summary from Filey Properties which shows continuous, regular payments of 'rent received' over the period in question. Although the payments are shown as relating generically to no.369 Firs Lane, and not explicitly to the flat in question, the amounts paid appear to correspond to those indicated in the tenancy agreements.
8. The submitted Barclays Bank statement shows regular income from November 2015 to June 2017 relating to Filey Properties but with no reference to an address. From July 2017, the payments are shown as relating to no 369 Firs Lane. The final credit payment in the statement, of November 2020, is shown as having a different account title and applying to no 369A. Whilst there is some lack of clarity as to the address to which they relate, the payments appear to correspond to those in the tenancy agreements, less the indicated management fees.
9. The appellant has submitted an affidavit dated 18 November 2020, stating that the side extension has been used as a 1 bedroom flat, currently by Mrs Papadopulu and Mr Papadopoulos, and by other tenants since 2014. This is corroborated by the affidavits of 2 near neighbours, Eoustinianos Christou of no.358 Firs Lane and Subash Gupta of no.373 Firs Lane.
10. The Council has not presented any evidence to contradict the appellant's version of events – it has simply cast doubts as to the continuity of occupation. Whilst there appears to be a short gap in the tenancy agreements, as indicated in para 6 above, this appears to be minimal in the context of the 7 year period which they cover and I note that there was no significant gap in rental payments during that period. To my mind, the appellant's evidence is sufficient to make it probable that the flat in question has been continuously occupied for more than 4 years prior to the date of the application.
11. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the ground floor flat to the side of no.369 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.

B.S.Rogers

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 November 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black 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:

On the balance of probability, the side extension to no.369 Firs Lane has been in continuous use as a self-contained flat for more than 4 years prior to the date of the application.

Signed

B.S. Rogers
Inspector

Date: 08 July 2021

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First Schedule

Use of the side extension to the property as 1 self-contained flat.

Second Schedule

The single storey, self-contained flat to the side of no.369 Firs Lane, Palmers Green, N13 5LX

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 lawful, 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 and identified on the attached plan. 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 08 July 2021

by **B S Rogers BA(Hons) DipTP MRTPI**

Land at: 369 Firs Lane, Palmers Green, N13 5LX

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Scale: nts

