



Appeal Decision

Site visit made on 20 July 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 August 2021

Appeal Ref: APP/B5480/X/20/3258930

Amadeus House, 1 Carlisle Road, Romford RM1 2QP

- 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 Ben Benaziza against the decision of the Council of the London Borough of Havering.
 - The application Ref E0025.20, dated 3 April 2020, was refused by notice dated 11 May 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:
Use as two self-contained 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 found to be lawful.

Preliminary Matter

2. I have taken the description of development in the heading above from section 5 of the application form. I am satisfied this is clear and consistent with the wording used in the Council's decision notice.

Main Issue

3. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

4. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use.
5. Section 191(2) of the same Act states that for the purposes of this Act uses are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

6. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
7. The Planning Practice Guidance states that the applicant is responsible for providing sufficient information to support an application¹. In the case of applications for existing use, it states that 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.
8. Section 171B(2) of the 1990 Act states that where there has been a breach of planning control consisting in the change of use of any building² to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
9. So based on the evidence provided, I must consider whether any part of the appeal building changed use to a self-contained flat and was used as such continuously, apart from de minimis breaks, for at least 4 years after the date of the change and before the date of the application, ie 3 April 2020.
10. The appellant states that when he bought the property in 2007 it had been used as two flats since 1977. A letter to this effect has been provided, from a representative of the previous owner, dated 18 January 2008. A tenancy agreement for the appeal property, referring to "the flat", for a term of 1 year from 15 January 2008 has also been provided, together with an electricity bill for Flat 1, for the period 11 August 2008 to 7 November 2008.
11. A building regulations completion certificate dated 12 September 2012, for the conversion of the property into 2 flats, inspected on 7 September 2012 and details of tenancy agreements for the upper floor flat, dating from 2015 have been provided. The Council states: "It is therefore more probable than not that the use of the property as two flats had been occurring for longer than four years by the end of 2015. It is therefore clear that the use of the property as two flats became lawful at that point..." Taking into account section 171B(2) noted above, and the aforementioned documents, I have no reason to disagree with the Council in this regard.
12. However, the Council considers that after the lawful use as two flats was established, it was then abandoned at some point in August 2019. This is based on correspondence from the appellant at that time, in which he stated: "I currently use the property as one dwelling." However, in the same correspondence he also states: "My property has always been a property with two kitchens and two bathrooms before I purchased it back in 2008..." This is consistent with the aforementioned letter from the representative of the previous owner and is consistent with how the property was laid out (and was being used, ie as two flats) at the time of my site visit.

¹ Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

² Under section 336 of the 1990 Act "building" includes any part of a building

13. I have considered the concept of abandonment, referred to by the Council. But, taking into account the relevant criteria, established in case law, I am not satisfied that the occupation of both flats by the appellant means that the use of either flat has been abandoned, or that the building has been 'de-converted' from two flats to a single dwellinghouse.
14. This is particularly so given that there is no evidence of any physical alterations to the property having been carried out to change it from two flats to one dwellinghouse and given the intentions of the appellant/owner. He has stated that he decided to take a break from having tenants (having had difficult tenants in previous years) and that he wanted the property to be considered as one because he was hoping to pay a single Council Tax bill for the property rather than two. In my judgement, this does not mean the property is a single dwellinghouse or that its use as two flats has been abandoned.
15. I note the Council's concern about substantial gaps in the Council Tax evidence. But this may be explained by the fact that it is the tenant who is liable for the payment of Council Tax, rather than the landlord. So as landlord the appellant would not necessarily have comprehensive Council Tax payment records and so Council Tax is not necessarily conclusive in respect of lawfulness.
16. The Council says that providing facilities required for independent day to day living would not necessarily mean that there are separate residential planning units within the envelope of the dwelling. Whilst this may be true, this must be seen within the context of all the circumstances in this case, including the Council's acceptance that the use of the property as two flats became lawful in 2015 and the lack of evidence of any physical alterations since to 'de-convert' the property.
17. The Council states that there are no affidavits by the appellant sworn before a solicitor. But this makes no difference to my conclusion in this case in light of all the other relevant factors and the lack of evidence to contradict or otherwise make less than probable the appellant's version of events.
18. Taking into account all of the above points, on the basis of the appellant's evidence, which is sufficiently precise and unambiguous, the two flats which are the subject of this appeal have been continuously used as self-contained flats for 4 years prior to the date of the LDC application and that use had not been abandoned by that date.

Conclusion

19. 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 use of the property as two self-contained flats, 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.

L Perkins

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 3 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 building has been used as two self-contained flats continuously for 4 years prior to the date of the application and that use had not been abandoned by that date.

Signed:

L Perkins

Inspector

Date: 6 August 2021

Reference: APP/B5480/X/20/3258930

First Schedule

Use as two self-contained flats

Second Schedule

Land at Amadeus House, 1 Carlisle Road, Romford RM1 2QP

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: 6 August 2021

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Scale:

