



Appeal Decision

Site visit made on 15 August 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 25 August 2022

Appeal Ref: APP/A5270/X/21/3269776

79 Park View, Acton, LONDON, W3 0PU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr K. Wong against the decision of London Borough of Ealing.
 - The application ref 203287CPE, dated 20 August 2020, was refused by notice dated 16 December 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 continued use as 10 self contained units for more than 4 years since 20/06/2015.
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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.

Main Issues

2. Whether 10 self-contained flats have been created and if so whether there is sufficient evidence to show they were created and then used continuously for 4 or more years prior to 20 August 2020.

Reasons

3. The issue over the number of flats revolves around 'flat 10'. The other 9 units of accommodation are all self-contained within the walls of each unit. Unit 10 however is mainly in the roof, where there is a kitchen/bed/sitting room, but with a separate bathroom on the floor below. This is, according to the appellant, a private bathroom for which only the occupiers of unit 10 can access. I saw on my site visit the bathroom had personal items in it. As all the other units have their own bathroom there is no reason why anyone would want to share this one, even if they could and I am satisfied it is solely for the use of the occupiers of unit 10.
4. The Council suggest that unit 10 is actually an HMO but that cannot be correct as there are no shared facilities. The only difference between unit 10 and the other units is that it is split over 2 floors. Whilst that is unusual it is not unknown, particularly in converted houses. There is nothing in case law that suggests for a unit of accommodation to comprise a separate dwelling it must be contained on one floor or cannot be split over two floors, it is a matter of fact and degree in each case and here I have no doubt that unit 10 is operated as a self-contained flat as applied for in the LDC.

5. The Council argue that the evidence for the use of the self-contained flats is insufficiently precise. The test is whether on the balance of probability the use has continued for 4 or more years. Where the Council do not have counter evidence of their own it is sufficient to rely on the appellants version of events providing it is credible and consistent.
6. In this case there is no counter evidence, but the appellant provides copious amounts of evidence to demonstrate the use, in many cases going back to 2012. I shall deal with the main pieces of evidence below.
7. For flat 1 there is correspondence with the Council concerning Council Tax (CT) for the flat between 2014-June 2016 while a Mr Smith was the tenant, then there is further correspondence and bills for CT from 2016-2017 when Casals took over, there is then a tenancy agreement from July 2017-2018 for Eremiti and Gonzales and further CT correspondence for those occupiers from 2017 to the present day.
8. For flat 2 there is CT correspondence concerning the occupancy of Mr Kuznetsov from 2013 to 2015 when Hambley and Varga took over. There is a tenancy agreement from 2015-2016 for Hambley and Varga, but then a gap until CT bills for the same occupiers in 2019-21.
9. For flat 3 there are CT bills for Mr Francis for 2012-2015 who lived there with Ms Matsumoto, the latter until February 2016. There is then evidence from emails between them and the appellant of Erika and Stanislas living there from February 2016 to December 2019, including a rental company seeking the appellants reference for Stanislas after moving to a new flat in late 2019 and CT bills from 2016-2019. Then there is an AST for Mr Noor December 2019-June 2020 and CT bills up to March 2021.
10. For flat 4 there is CT correspondence that Mr Amin lived there until April 2016, and CT bills for 2016-2017 while Mr Mihai was there for a few months then Mr Dimou from July 2016 to July 2017, then Mr Samuel until September 2018, then Mr Brandani. An AST for Mr Brandani from September 2018 to 2019 who also paid CT until March 2021.
11. For flat 5 Mr Fernandez was there in 2014 and he was paying CT from 2015-November 2017 when Saunders and Price took over until April 2019. Then there is an AST from Ms Haidau from May 2019-2020 who paid CT to March 2021
12. For flat 6 there is CT correspondence for Mr Pilcher who lived there from May to September 2016. There is a gap until October 2016 when Mr Orelov moved in. After that an AST for Ms Marcisz from May to November 2017. She also paid CT up to March 2021.
13. For flat 7 there is CT correspondence for Mr Zuze in the flat from 2013 to April 2017, then Caroline Ho was there to March 2019, followed by an AST for Ms Harrison from May to October 2019 who also paid CT to March 2021.
14. For flat 8 there is CT correspondence for tenants in 2016 and Ms Birando until February 2017 when a Mr Zyumbyulev took over until July 2017, followed by Mr Johnson until 2019. There is also an email from him confirming he was there for 2 years until November 2019. Then there is an AST for the Kioses for November 2019 to May 2020 and the paid CT until March 2021.

15. For flat 9 there is correspondence with Ms Qari who was staying there and was exempt from paying CT from February 2012 until 2017. This was prompted by a revaluation of the flat for CT in August 2017 at which point Ms Novikaite was there. Mr Qari seems to have left in March 2017, according to papers forming part of the valuation appeal when Karys and Novikaite took over until January 2018. These also make clear the building was converted into 9 flats in 2012 with the 10th flat added in August 2013. There is an AST for the Bartics from January 2018 to 2019 and they paid CT until March 2021.
16. For flat 10 there is CT correspondence saying Uchida and Cooper were tenants in August 2013 and they paid CT from 2014 to May 2017. Then there is an AST for Sabatini and Kucher from July 2017 to 2018 and they paid CT up to March 2021.
17. There does seem to be a comprehensive record of occupation of the flats from 2016 (and in many cases earlier) onwards, apart from flat 2 but even here the same tenants appear either side of the gap. As the evidence is coherent and consistent and there is no other evidence to suggest the building has been used in any other way it would seem to me the balance of probability test has been easily passed. I shall issue an LDC as applied for.

Conclusion

18. 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 10 self-contained units 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.

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 August 2020 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 use as 10 flats was begun before August 2016.

Signed

Simon Hand

Inspector

Date: 25 August 2022

Reference: APP/A5270/X/21/3269776

First Schedule

The use of 79 Park View as 10 self-contained residential units

Second Schedule

Land at 79 Park View, Acton, LONDON, W3 0PU

IMPORTANT NOTES – SEE OVER

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. 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.