



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 15 November 2022

Appeal Ref: APP/T5150/X/20/3254383

FLATS 1-9, 68 HIGH ROAD, LONDON, NW10 2PU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by MINDS LTD against the decision of the Council of the London Borough of Brent.
 - The application ref 19/3771, dated 24 October 2019, was refused by the Council by notice dated 23 December 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 use as 9 flats.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 16 May 2022.

Decision

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

Main Issue

2. The main issue is whether the refusal of the LDC was well-founded. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of an enforcement notice in force.¹
3. Where there has been a breach of planning control consisting of the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. In this case, the appellant's case is that the appeal property is comprised of 9 self-contained units, and so use would need to be proven in relation to each unit in order for the appeal to be successful in relation to that part of the property.
4. There is no evidence of an enforcement notice in relation to the appeal property at the time that the LDC application was made (24 October 2019). It is therefore necessary to consider whether the use of each unit as a self-contained flat continued for a substantially uninterrupted period of 4 years prior to that date.
5. Planning practice guidance advises that in the case of applications for existing use, if a local planning authority has no evidence itself, nor from any others, to

¹ Section 191(2) of the 1990 Act.

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. The burden of proof is on the appellant.

Reasons

6. The Council's case is simply that the appellant has not provided evidence in relation to each unit which is sufficiently precise and unambiguous to provide the necessary use on the balance of probabilities. The Council did not provide any evidence themselves to rebut the appellant's version of events. They accept that the appeal property has been converted into 9 self-contained flats (as evidenced by the council tax records) but not that the continuous use of each has been demonstrated by the appellant. It is clear from the photographs and plans provided that each of the units contains an ensuite bathroom with shower and kitchen area including hot-plate, extractor fan, sink and storage (some also have a washing machine). There is no evidence before me to suggest that there are any shared facilities.
7. The appellant has provided a statutory declaration from its director who states that he has managed the appeal property since 2014 and that it has been let and used as 9 self-contained flats throughout that time without interruption. The appellant also states that the copies of the tenancy agreements provided were for fixed terms but that in accordance with statute they automatically converted to a periodic tenancy at the expiry of the fixed term (where the tenant remained in occupation). The appellant also states that much renovating and decorating has been undertaken to the flats but has not provided any specific details in relation to any specific work or unit.
8. The Council Tax records supplied show an individual account for each flat between 26 January 2015 and 14 June 2020. However, in direct contravention to this, the appellant states that the property has been licensed as an HMO for over 4 years. Neither of these matters are conclusive in any event when considered in isolation.

Flats 5, 6 & 7

9. The decision issued by the Council related to the whole of the appeal property. However, the planning officer's report accepts that the evidence provided in support of the application did show that, on the balance of probability in light of the payments schedules submitted, Flats 5, 6 and 7 had been used as self-contained units for a period of 4 years or more. I have been provided with copies of these payment schedules, and I agree with the Council's conclusion in relation to Flats 5, 6 and 7 and do not need to consider them any further. I will therefore turn to each of the remaining units in turn.

Flat 1

10. The appellant has provided tenancy agreements which on their face grant express fixed terms between 19 January 2015 and 17 August 2016 with a single tenant. There is then a gap in the tenancy agreements until 11 November 2016, but the payment schedules show that it was paid for Flat 1 during that time. Further agreements are provided which cover much of the period between 11 November 2016 and 31 March 2018 (with the same tenant

so it is likely on balance that the tenancy arrangement 'rolled over' as a periodic tenancy between the fixed term agreements), and a final tenant between 12 March 2018 to the date of the LDC application (with supporting fixed term agreements). The appellant has therefore proven on balance a substantially uninterrupted use of Flat 1 for a period 4 years prior to the date of the application.

Flat 2

11. A statutory declaration from the tenant of Flat 2 states that he has occupied the unit between January 2015 and 4 June 2020, and is corroborated by tenancy agreements covering periods between 26 January 2015 and 13 November 2019. The appellant has therefore proven the use of Flat 2 for over 4 years prior to the date of the application on the balance of probability.

Flat 3

12. A statutory declaration from the tenant of Flat 3 states that he has lived there continuously from 7 March 2016 and is corroborated by some tenancy agreements. This does not provide a 4 year period prior to the LDC application. A 6 month tenancy agreement is provided with the same tenant dated 16 March 2015 (which pre-dates the date of his occupation given in the statutory declaration), and a separate 12 month tenancy agreement with a different tenant is also provided dated 26 January 2015. As no explanation has been provided regarding these overlaps in lease terms, or the discrepancy between the statutory declarations and the tenancy agreements, the appellant has not provided sufficiently precise and unambiguous evidence of the 4 year continuous use in relation to Flat 3.

Flat 4

13. Whilst various tenancy agreements have been provided by the appellant, there is a gap of 3 months in 2017 and a further 3 month gap in 2019. I do not find these breaks to be de minimis but the payment schedules do show that rent was being paid throughout the 2017 gap. However, these records do not show payment for the whole of the period in 2019, and no explanation has been provided about the reason for this gap or whether the unit was being occupied during that time. The appellant has not provided sufficiently precise and unambiguous evidence of the necessary use in relation to Flat 4.

Flat 8

14. A statutory declaration provided from a tenant states that he occupied Flat 8 continuously between 16 December 2015 and 23 September 2019 and this is corroborated by tenancy agreements. A tenancy agreement with a different occupier is also attached from November 2019, after a short break when the property was presumably being re-let and which is de minimis in this instance. The appellant has therefore proven on balance that Flat 8 was occupied for a substantially uninterrupted 4 year period prior to the making of the application.

Flat 9

15. A statutory declaration provided from tenant who has lived in Flat 9 to the date of the application since March 2015 and is corroborated by tenancy agreements. The appellant has proven the necessary uninterrupted use on the balance of probability.

Conclusion

16. The appellant has proven the necessary use in relation to Flats 1,2,5,6,7,8 and 9 but has failed to do so in relation to Flats 3 and 4.
17. Section 193(4) provides that an LDC may be issued for the whole or part of the land specified in the application.
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 Flats 1 2,5,6,7,8 and 9 was not well-founded and that the appeal should succeed to that extent.
19. In addition, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Flats 3 and 4 was well-founded and that the appeal should fail to that extent.
20. I will therefore exercise the powers transferred to me under section 195(2) and (3) of the 1990 Act as amended.

Zoë Franks

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 24 October 2019 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 as self-contained flats began more than 4 years before the date of the application and continued thereafter; and

The use does not contravene the requirements of any enforcement notice in force.

Signed

Zoë Franks

Inspector

Date: []

Reference: APP/T5150/X/20/3254383

First Schedule

Use as 7 self-contained flats.

Second Schedule

Land known as Flats 1,2,5,6,7,8 and 9, 68 HIGH ROAD , LONDON, NW10 2PU

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 /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

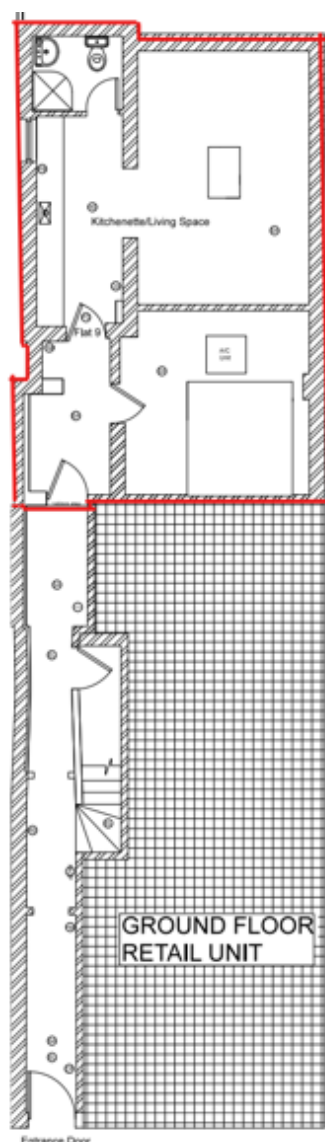
This is the plan referred to in the Lawful Development Certificate dated: []

by Zoë Franks Solicitor

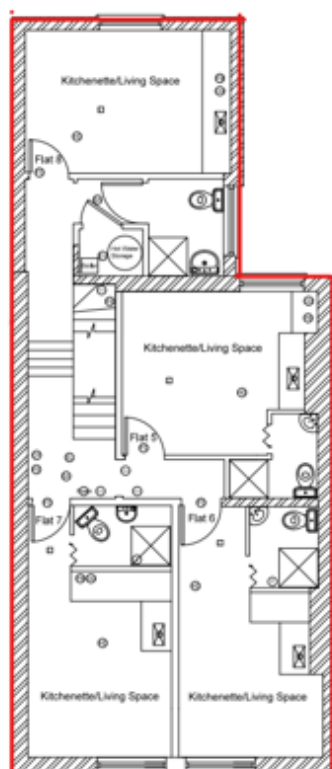
Land at: **FLATS 1-9, 68 HIGH ROAD , LONDON, NW10 2PU**

Reference: **APP/T5150/X/20/3254383**

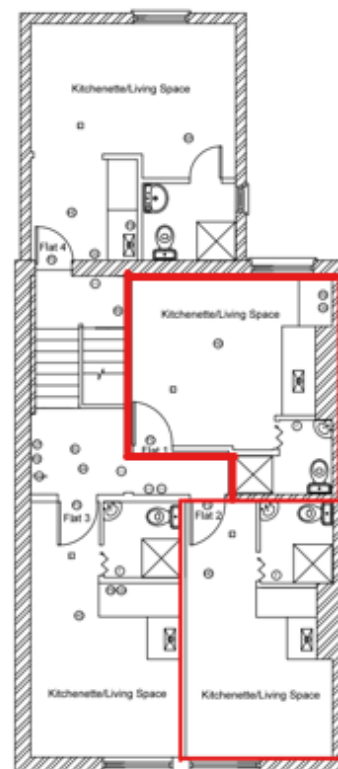
Scale: Not to Scale



Existing Ground Floor Layout Plan
(1:50 @ A1)



Existing First Floor Layout Plan
(1:50 @ A1)



Existing Second Floor Layout Plan
(1:50 @ A1)