



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 January 2023

Appeal Ref: APP/W5780/X/21/3282442

76 Eton Road, Ilford IG1 2UG

- 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 M Miah against the decision of London Borough of Redbridge.
 - The application ref 2485/21, dated 15 June 2021, was refused by notice dated 12 August 2021.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which an LDC is sought is use of dwellinghouse as three self-contained flats, since August 2016.
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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 Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the required information is included with the application and appeal documents, a decision can be reached on the papers.
3. The question being asked in any application for an LDC under section 191(1)(a) is whether any existing use of buildings or other land is lawful. National Planning Practice Guidance (PPG) indicates that an applicant for an LDC is responsible for providing sufficient information to support an application and that, without sufficient precise or unambiguous information, an LPA may be justified in refusing a certificate. The planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence and relevant planning law.
4. The use for which an LDC is sought is described by the appellant as in the banner heading above. The description was modified by the council to "use as three self-contained flats". As this succinctly summarises the use, I shall determine the appeal on this basis.

Main Issue

5. This is whether the council's refusal to issue an LDC was well-founded. In this particular case this turns on whether the appellant can show that the lawful use sought has continued for 4 years prior to 15 June 2021, without any other intervening uses until the date of the application, so as to be immune from enforcement action in accordance with s171B(2) of the Act.

Reasons

6. The appeal property is a two-storey mid-terraced dwelling house, built circa 1900's. The property, formerly a single dwellinghouse is said to have been internally rearranged by the appellant in August 2016. The application plans¹ show how the internal layout of the property is divided into 3 flats (Class C3 residential use). The ground floor flat has two bedrooms and there are 2no. two bedroom flats with accommodation on both the first floor and within the loft space. There is one entrance door to the front of the appeal property which leads into a communal hallway. From the hallway there is an entrance door to the ground floor flat. Stairs lead up from the hallway. At the top of this flight is a door which leads into flat 1 and a door which leads into flat 2. The ground floor flat is purportedly occupied by the appellant and his family, and the remaining two flats are said to be rented to tenants. Each door is shown² to be lockable with a key.
7. The council considers that insufficient evidence had been submitted to establish that on the balance of probabilities the property had been in continuous use as three flats for the requisite period, that is 4 years. It says that the information provided generally refers to the property as a whole and the licence agreements show the property let on a room by room basis, more akin to a house in multiple occupation. Furthermore, it considers that this view is supported by the fact that the property has only one entrance and that the house is listed for Council Tax rather than three individual flats.
8. Firstly, it is not uncommon for individual flats within a property to be accessed internally and Council Tax records which show the property to be registered as a single dwellinghouse are non-determinative to how a property is used. The appellant has provided supporting documentary evidence with copies of Licensing Agreements (LAs) plus 2 Tenancy Agreements (TAs) (for the initial rental period in 2016-2017) for both flats on the first floor. These documents cover the period from October 2016 to the date of the application for the LDC.
9. The appellant has also provided: photographs of the inside and outside of the property; advertisements dated September 2016 posted on Gumtree for the 2 flats marked 'let agreed'; copies of letters addressed to some of the tenants at 76 Eton Road; copies of bank statements from 2016 to 2021; gas certificates dated 28 October 2016 for the 3 flats and building regulation certificates of compliance for electrical works dated 3 August 2021 in relation to the individual flats; invoice dated 25 September 2016 for works carried out to separate the property into 3 flats; inventory lists; statutory declarations by the appellant, his wife, one neighbour, 2 residents of Eaton Road and current tenants of Flats 1 and 2; personal statements provided by 3 former tenants.
10. The TAs and LAs provided cover the following periods and the dates on which tenants vacated are provided by the appellant.

¹ JS/SP/1488/02 and JS/SP/1488/03 by JS Surveying and Design Services Ltd

² Photographs provided by the appellant within the statement of case

FLAT 1

7 October 2016	12 months TA	Mr Pitchai and Ms Govindharaj	Terminated on 7 July 2017
30 July 2017	6 months LA	Mr Young and Mr Guastella	Left on 28 December 2018
1 January 2019	12 months LA	M. Williams	Left on 25 March 2019
31 March 2019	12 months LA	Mr Kamthe and Mr Hari	Moved to Flat 2 on 22 July 2019
22 July 2019	1 month rolling LA	N. Nomaqhiza	Left on 20 April 2021
22 April 2021	1 month rolling LA	Mr Ratul	Current tenant at time of appeal

FLAT 2

2 October 2016	12 months TA	S. Kaur and S. Singh	Left on 29 November 2017
10 December 2017	1 month rolling LA	Mr Mender	Left on 24 April 2018
8 May 2018	6 months LA	N. Nomaqhiza	Moved to Flat 1 on 22 July 2019
22 July 2019	12 months LA	Mr Hari	Left on 27 June 2020
25 July 2020	6 months LA	A. Kaur and S. Singh Dhindsa	Left on 22 January 2021
10 February 2021	1 month rolling	Mr Hussan and Mrs Begum	Current tenants at time of appeal

11. The LAs are said to be used in place of Assured Shorthold Tenancy Agreements because the appellant is a resident landlord. These LAs specify the areas within the property that are available for use by the licensee, whom I shall refer to as the tenant(s). While not specifically referring to the accommodation as a flat, the LAs describe the space within the property as "Room 1, 2, open plan kitchen, bathroom situated at 76 Eton Road, Ilford IG1 2UG together with the furniture and effects therein - all bills inclusive" and "Room 3, 4, open plan kitchen, bathroom situated at 76 Eton Road, Ilford IG1 2UG together with the furniture and effects therein - all bills inclusive".
12. While the terminology of the description of the rental space may suggest individual bedrooms, the evidence provided by the appellant suggests otherwise. Inventories and the photographs show that each area let under the LA provides a cooker, washing machine, fridge freezer, bedroom furniture and a fitted bathroom. This indicates to me that the space rented to the tenants provides everything necessary for self-contained day-to-day living rather than individual bedrooms and shared space.

13. From the submissions, I have no reason to dispute that there has been a material change of use of the property from a single dwellinghouse to 3 self-contained flats. The evidence before me in the form of gas certificates dated 28 October 2016 for the 3 flats and an invoice for works, dated 25 September 2016, which specified internal reworks to create the 3 flats, point to this change of use occurring in 2016. Also, I have no reason to doubt that the ground floor flat is occupied by the appellant and his family. The evidence shows rent paid to the appellant, albeit in a random fashion, and LAs show that the flats have been let to various tenants since October 2016 without a significant break between when a tenant leaves and a new licence agreement is signed.
14. The National Planning Policy Guidance provides that the onus is on the appellant to provide sufficient factual information to support their application. In the case of applications for existing use, if there is no evidence to contradict or otherwise make the applicant's (appellant's) version of events less than probable, there is no good reason to refuse the application, provided the applicant's (appellant's) evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
15. Weighing up the evidence presented, I am satisfied that the appellant has demonstrated that, on the balance of probabilities, the appeal property has been in use as three self-contained flats for a continual period of 4 consecutive years prior to the submission of the LDC application.

Conclusion

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development was not well-founded and the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.

S A Hanson

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 15 June 2021 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, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the appeal property as three separate self-contained flats has operated as such on a continual basis, without any other intervening uses, up to and including the LDC application date, which was 15 June 2021.

Signed

S A Hanson

INSPECTOR

Date: 17 January 2023

Reference: APP/W5780/X/21/3282442

First Schedule

Use of property as three separate self-contained flats

Second Schedule

Land at: 76 Eton Road, Ilford IG1 2UG

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 would have been lawful, on the certified date and, thus, 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 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: 17 January 2023

by **S A Hanson BA(Hons) BTP MRTPI**

Land at: 76 Eton Road, Ilford IG1 2UG

Reference: APP/W5780/X/21/3282442

Scale: Not to scale

