



Appeal Decision

No site visit

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 06 September 2023

Appeal Ref: APP/K5600/X/22/3310728

15-17 Holland Road, LONDON, W14 8HJ

- 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 Asif Ansari against the decision of Royal Borough of Kensington and Chelsea.
 - The application ref CL/22/3600, dated 6 June 2022, was refused by notice dated 12 August 2022.
 - The application was made under section 191(1) 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 flats 3, 3a, 4, 4a, 5, 5a, 9 and 9a.
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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 Matters

2. A site visit was not necessary as there is no dispute that separate units are now present, just the history of that use is in question.

Reasons

3. For LDCs the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict it 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 is precise and unambiguous to justify the grant of a certificate on the balance of probability.
4. The Council's refusal noted that the submitted evidence is not sufficient to demonstrate that, on the balance of probability flats 3, 3a, 4, 4a, 5, 5a, 9 and 9a of 15-17 Holland Road have been in use as 8 dwellings within Use Class C3 for at least the last 4 consecutive years; therefore, the use of such development cannot be confirmed as lawful.
5. The Council say that Statutory Declarations are made by the applicant's employees and colleagues instead of tenants. Declarations of the 4-year continuous residence of all eight flats made by the tenants have not been received. No time stamped photographs, utility bills, building invoices or council tax records have been submitted in support of the case. Only very few rental payment receipts are attached to the handwritten rental payment log. The supporting information and evidence are therefore considered insufficient to

- establish the continuous use of flats 3, 3a, 4, 4a, 5, 5a, 9 and 9a as 8 dwellings over four years.
6. There is not one single piece of evidence that must be provided in relation to an application for an LDC. There may be some types of evidence such as tenant declarations etc. that are considered good information. However, it is an overall judgement that has to be made on the balance of probability, whether that which is being claimed is probable.
 7. In this case we have a declaration from the appellant's accountant that notes his responsibility in relation to rent collection and arrears, tenancies and agreements, so he is in a good position to know the occupation of each flat. He confirms the veracity of the documents, whilst acknowledging that he has made few visits to the flats themselves.
 8. The office manager confirms that the relevant flats were converted/split more than four years ago. She notes that most agreements were witnessed by her over the 4 year period and she knows many of the tenants.
 9. A handyman and electrician that work for the appellant confirm the flats were converted more than four years ago. A carpenter and plumber who worked on the subdivision of the flats confirm the alterations were done more than four years ago (2016/2017). There is a tenant declaration, but this does not cover the whole four year period back to 6 June 2018, but notes that she moved in during 2019. Another tenant notes moving into flat 5a on 28 February 2017. She moved out in 2020. Another declaration from a tenant notes moving in on 4 May 2017 and notes the rental agreements presented by the tenant are accurate copies.
 10. The tenancies provided are as follows. Flat 3a starts on 26 October 2019, so not covering all of the four year period. Flat 4 tenancy is dated 2020. Flat 4a tenancy is dated 19 September 2017 so covers the relevant period. The tenancy agreement for flat 5 commences on the 28 December 2017. There is a tenancy agreement for flat 5a commencing on 20 November 2017. There is a tenancy agreement for flat 9a that commences 25 January 2018. There is a Fire Risk Assessment carried out on 28 July 2018. There is no plan or mention of flat numbers, but it notes it was concerned about the communal areas only, but also indicates that the building is split into 16 apartments each with a kitchenette, bathroom and bedroom area.
 11. A spreadsheet is provided related to the flats from 2018 and various information over the period.
 12. I accept that evidence from the tradesmen provides little in the way of continuity of use and loyalty is a consideration, but the declarations support the formation in 2016/17, which supports the tenancy agreements for later in the year. Some of the tenant statements support the commencement in 2017. The Fire Assessment supports formation by the end of 2017. The accountant and office manager are in a strong position to know the overall use of the building, forming tenancies and taking in rent and the spread sheets have a strong feeling of authenticity and this supports continuous use.
 13. To my mind, assessing all the information provided shows the strong probability that the flats were formed in 2016/17 and first occupied around the end of 2017. Once the flats were formed, they would be available for use and

the spreadsheet, accountant and office manager support the probability that the flats have been continuously occupied, as noted by the appellant's own evidence.

14. The Council identify a lack of particular evidence, but as noted it is the evidence that is submitted that needs to be assessed. The Council has little information that makes the appellant's version of events less than probable.

Conclusion

15. 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 3, 3a, 4, 4a, 5, 5a, 9 and 9a 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.

Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

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 6 June 2022 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 evidence presented indicates, on the balance of probability, that the formation of the flats was more than 4 years before the date of the Lawful Development Certificate, and that use was continuous thereafter.

Signed

Graham Dudley
Inspector

Date: 06 September 2023
Reference: APP/K5600/X/22/3310728

First Schedule

Use of flats 3, 3a, 4, 4a, 5, 5a, 9 and 9a.

Second Schedule

Land at 15-17 Holland Road, LONDON, W14 8HJ

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 /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.