



Appeal Decision

Site visit made on 6 March 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2024

Appeal Ref: APP/Z0116/X/23/3331906

Rear of 9-11 Cannon Street, Bedminster, Bristol BS3 1BH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Adler against Bristol City Council.
 - The application ref 23/02509/CE is dated 22 June 2023.
 - 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 the use of the rear building as 4 flats: Flats A, B, C and D.
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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. The address included on the application form states, "Flat A, Rear of 9-11 Cannon Street". From the information submitted, it is abundantly clear that the application refers to not only Flat A, but Flats B, C and D as well. I have therefore omitted "Flat A" from the address in this decision and in the accompanying certificate.

Background and Main Issue

3. The appellant applied for a certificate of lawful use, seeking to establish that the use of a building as four flats was lawful. The Council failed to determine that application. The Council submitted a statement in respect of the appeal, but this was returned due to being submitted out of time. As such, I have reviewed the evidence submitted with the application.
4. In this light, the main issue in this case is whether or not the appellant has proved on the balance of probabilities, that use of the building as four flats began on or before 22 June 2019, and continued without significant interruption for four years after the date of the change.

Reasons

5. Section 191(2) of the Act states that:

(2) For the purposes of this Act uses and operations 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. In respect of time limits, Section 171B of the Act, as amended, states:

Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of -

(a) in the case of a breach of planning control in England, ten years beginning with the date of the breach

7. However, transitional provisions set out in Statutory Instrument 2024/452, at Regulation 5, state:

(5) The amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) do not apply where—

(a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (time limits), the operations were substantially completed, or

(b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred,

before the day on which that section comes into force.

8. The development subject of the appeal is the change of use of a building to use as four separate flats i.e., dwellinghouses. The appeal is accompanied by a floor plan showing the building divided into four separate and independent units of accommodation. I observed at my site visit that the units are indeed set out in accordance with this layout and are discrete residential units. The breach of planning control is alleged to have occurred prior to the amended section of the Act coming into force and so the relevant period is four years.
9. The application was accompanied by a statutory declaration from the director of the company owning the property which states that the four flats have been let, used, and occupied solely as four separate self-contained residential flats and for no other use since 20 May 2014, up until the date of the declaration (10 August 2022). During this time, the flats have been let by three different letting companies, and the periods of this management by each is set out. This is supported by copies of bank statements showing the payments of rent, in respect of the flats, from the respective letting companies to the owners of the property.
10. Also included are council tax details for each of the flats showing that they were liable for council tax from May 2014, details of leases between the owner and companies managing the property, copies of assured shorthold tenancies (dating from 2015), correspondence in respect of rent increases, deposit protection certificates, as well as various other correspondence pertaining to the four flats.

11. Based on the evidence that has been submitted, the appellant has proven on the balance of probabilities that the four flats have existed and been used as self-contained and separate units of accommodation since May 2014. There is no evidence before me to counter this, and no suggestion that there has been any intervening use or break in occupation such that the residential use would have ceased or been abandoned.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

Martin Allen

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 22 June 2023 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:

- It has been demonstrated, on the balance of probability, that use of the building as four flats began on or before 22 June 2019, and continued without significant interruption for four years after the date of the change.

Signed

Martin Allen

Inspector

Date: 26 June 2024

Reference: APP/Z0116/X/23/3331906

First Schedule

Second Schedule

Rear of 9-11 Cannon Street, Bedminster, Bristol BS3 1BH

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 /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: 26 June 2024

by Martin Allen BSc (Hons) MSc MRTPI

Land at: Rear of 9-11 Cannon Street, Bedminster, Bristol, BS3 1BH

Reference: APP/Z0116/X/23/3331906

Scale: Not to Scale

