



Appeal Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 March 2025

Appeal Ref: APP/A1530/X/24/3340977

33 Artillery Street, Essex, Colchester CO1 2JJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Randal Goldsmith against the decision of Colchester Borough Council.
 - The application Ref 232584, dated 10 November 2023, was refused by notice dated 11 January 2024.
 - 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 of the whole property as 2 x self-contained studio flats.
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Summary of Decision

1. The appeal is allowed and a certificate of lawfulness is issued, in the terms set out below in the Formal Decision.

Preliminary Matter

2. The parties agree that it is not essential for me to enter the site to check measurements or other relevant facts. On that basis, injustice to the parties does not arise from an assessment of the written evidence only.

Application for Costs

3. An application for costs was made by Colchester Borough Council against Mr Randal Goldsmith. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the Council's refusal to grant a certificate of lawfulness is well founded.

Reasons

5. The site relates to a terraced property in a predominantly residential area.
6. In matters such as this the onus is on the appellant to demonstrate their case on the balance of probabilities that each flat has been used continuously for a period of 4 years (a relevant period).
7. The Council refused the appeal application because it considered sufficient evidence had not been provided to demonstrate on the balance of probabilities that Flat B had been used for a relevant period.

8. The appellant has then provided additional evidence for the purposes of this appeal. The additional evidence for Flat B principally comprises bank statements and booking documents for the period from 11 September 2019 until 29 May 2021. Similar evidence has been provided for Flat A as well. This combines with the evidence already provided for Flat B for the period from 30 May 2021 until the date of the appeal application in November 2023. It therefore corroborates the appellant's otherwise very brief statutory declaration.
9. The Council has confirmed that having now seen this additional evidence it demonstrates on the balance of probabilities the use of Flat B for a relevant period and thus the property has been used continuously as two separate flats. I have little reason to disagree as the additional evidence dovetails to ensure the appellant's case is sufficiently precise and unambiguous.
10. As a matter of fact and degree the appellant has therefore demonstrated their case on the balance of probabilities and the ability of the Council to take successful enforcement action has therefore expired.

Conclusion

11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawfulness 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.

Formal Decision

12. The appeal is allowed and attached to this decision is a certificate of lawfulness describing the existing development which is considered to be lawful.

Paul T Hocking

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 10 November 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:

The appellant has demonstrated on the balance of probabilities the use of the property as two flats for a relevant period.

Signed

Paul T Hocking
Inspector

Date: 24 March 2025
Reference: APP/A1530/X/24/3340977

First Schedule

Use of the whole property as 2 x self-contained studio flats

Second Schedule

Land at 33 Artillery Street, Essex, Colchester CO1 2JJ

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 were 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 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: 24 March 2025

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Scale: DO NOT SCALE

