

Appeal Decision

Site Inspection on 3 December 2015

by John Whalley

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 December 2015

APPEAL A - Certificate of Lawfulness appeal ref: APP/R5510/X/15/3006070
47 Fairfield Road, West Drayton, Middlesex UB7 8EY

- 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 by the London Borough of Hillingdon Council to grant a certificate of lawful development.
- The appeal was made by Mr Malkit Purewal.
- The application, No. 70257/APP/2014/4230, dated 1 December 2014, was refused by a notice dated 22 January 2015.
- The application was made under s.191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful development is sought is for the change of use from dwellinghouse (Use Class C3) to a 6 bed House in Multiple Occupancy (Use Class C4).

Summary of decision: The appeal succeeds. An LDC is issued

APPEAL B - Certificate of Lawfulness appeal ref: APP/R5510/X/15/3006071
47 Fairfield Road, West Drayton, Middlesex UB7 8EY

- 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 by the London Borough of Hillingdon Council to grant a certificate of lawful development.
- The appeal was made by Mr Malkit Purewal.
- The application, No. 70257/APP/2014/4229, dated 1 December 2014, was refused by a notice dated 22 January 2015.
- The application was made under s.191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful development is sought is for single storey rear extensions and loft conversion involving installation of rear dormer window.

Summary of decision: The appeal succeeds. An LDC is issued

Appeal property

1. The appeals concerns a 2 storey end of terrace dwelling with living accommodation in the second floor attic at No. 47 Fairfield Road, West

Drayton, Middlesex. Rear extensions have been added to the house, together with a roof extension to form the attic rooms.

2. At the time of the appeals site inspection, the house at No. 47 had been re-fitted to provide 6 bedsitting rooms, each with its own small separate shower and w.c. room. Each bedsitting room had a sink, but no cooking facilities. They were provided in a single shared room that was equipped with cookers and washing facilities. Each of the 6 bedsitting rooms had a lockable door. Bell ringers for each room were provided at the front door to the house. The plans attached to the LDC applications, dated November 2014, describe the floor plans and building elevations as "works already carried out".

APPEAL A - s.191(1)(a) - lawful use of No. 47

3. The development for which a certificate of lawfulness is sought is change of use from dwellinghouse, (Use Class C3), to a 6 bed House in Multiple Occupancy, (HMO), (Use Class C4). As the change of use of No. 47 was shown on the application to have been carried out by 31 October 2014, the application must be considered as having been made under s.191(1)(a) of the Act – a person wishing to ascertain whether any existing use of buildings or other land is lawful.
4. The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010, (SI 2010/653), set out definitions, including:

Class C3. Dwellinghouses - Use as a dwellinghouse (whether or not as a sole or main residence) by —

- (a) a single person or by people to be regarded as forming a single household;
- (b) not more than six residents living together as a single household where care is provided for residents;
- or (c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Interpretation of Class C3 - For the purposes of Class C3(a) "single household" shall be construed in accordance with section 258 of the Housing Act 2004.

Class C4. Houses in multiple occupation - Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

5. The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 (SI 2010/2134) made further amendments to the Order. The changes gave permitted development rights for changes of use from Class C3 to C4. From 1 October 2010 a change of use from a dwellinghouse (Class C3) to a house in multiple occupation (Class C4) and from a house in multiple occupation to a dwellinghouse became possible under permitted development rights. Planning applications are not needed.
6. The Council said that No. 47 was not in either a Class C3 or C4 use when the application for a certificate of lawfulness was made. They took the view that the 6 residential units in the former dwelling were self-contained. The use of No. 47 was therefore not as a dwellinghouse nor as a house in multiple occupation. The Appellant pointed out that the Council had based their opinion on an external inspection of the property and had failed to inspect the internal layout that showed the use of a shared room for cooking, washing clothes and, to some extent, the mixing of residents.

7. The row of 6 bell ringer pushes by the front door to No. 47 may give the impression of there being 6 self-contained flats within. Conversely, the Council's issue of an HMO licence for the house suggests that is its use. However, the more salient factors are what is the internal layout of rooms and how are they occupied? The availability of the shared first floor rear room to all the occupants of No. 47 for cooking meals, washing clothes and some social mixing is most relevant.
8. The Housing Act 2004 sets out the meaning of a "house in multiple occupation". It says that for the purposes of the Act a building or a part of a building is a house in multiple occupation if it consists of one or more units of living accommodation not consisting of a self-contained flat or flats; the living accommodation is occupied by persons who do not form a single household; the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it; their occupation of the living accommodation constitutes the only use of that accommodation; rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.
9. In my view No. 47 is, and was at the time the appeal application was made, a house in multiple occupation. That is, because of the provision of the shared cooking and clothes washing amenity room of the first floor being shared by all occupiers of the 6 bedsitting rooms. That room is of limited social amenity. But it provides sufficient facilities for all occupiers for the whole of the property to be considered as living together in a house in multiple occupation as defined in the Housing Act 2004. Without that shared amenity room, and were the bedsitting rooms to be provided with cooking facilities, they would be more likely to be considered as self-contained units, or flats.
10. At the time the appeal application was made, a change of use of the former Class C3 dwellinghouse to a Class C4 house in multiple occupation was development permitted by the Order in being. A certificate of lawfulness to that effect is issued.

APPEAL B - s.191(1)(a) - lawful operational development at No. 47

11. The development for which a certificate of lawfulness is sought was the construction of single storey rear extensions and loft conversion involving installation of rear dormer window.
12. As the works were said to have been completed by 31 October 2014, the application must be considered as having been made under s.191(1)(b) of the Act – a person wishing to ascertain whether any operations which have been carried out in, on, over or under land are lawful.
13. As for Appeal A, the Council's position was that the 6 residential units at No. 47 were self-contained. Their reason for refusing to issue a certificate said: "... the existing use of the property is not a dwelling house as defined within the above Order.". The Council said it was not known whether No. 47 was actually a Class C3 dwelling when the appeal works started or whether the property was already in use as separate units of accommodation. I

consider that No. 47 was unlikely to have been converted to its present HMO use before those works that facilitated the new use were carried out. In any case, I disagree with the Council that the units provided are self-contained flats to which the Classes C3 to C4 permitted development rights would not have applied. On the balance of probabilities, the house at No. 47 was in a lawful Class C3 residential use and the works to the rear of the house and to its roof amounted to works permitted by Classes A and B to Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 as amended. There was nothing in the Council's case that showed they took the view that the extension works already carried out would not have been permitted development if, at the time they were constructed, the lawful use of No. 47 was that of a Class C3 dwellinghouse.

FORMAL DECISIONS

Appeal A - S.195 Certificate of Lawful Development appeal: Use of the property. APP/R5510/X/15/3006070 47 Fairfield Road, West Drayton, Middlesex UB7 8EY

14. The refusal by the London Borough of Hillingdon Council to issue a Certificate of Lawfulness for the change of use from dwellinghouse (Use Class C3) to a 6 bed House in Multiple Occupancy (Use Class C4) at No. 47 Fairfield Road, West Drayton, Middlesex UB7 8EY was not justified. I exercise the powers transferred to me by s.195(2)(a) accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is the relevant plan.

Appeal B - S.195 Certificate of Lawful Development appeal: Operational development of the property. APP/R5510/X/15/3006071 47 Fairfield Road, West Drayton, Middlesex UB7 8EY

15. The refusal by the London Borough of Hillingdon Council to issue a Certificate of Lawfulness for the erection of single storey rear extensions and loft conversion involving installation of rear dormer window at No. 47 Fairfield Road, West Drayton, Middlesex UB7 8EY was not justified. I exercise the powers transferred to me by s.195(2)(a) accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as are the relevant plans.

John Whalley

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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 1 December 2014 the use of the property described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, would have been lawful within the meaning of section 192(1)(a) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The use of the property as a house in multiple occupation, (Use Class C4), was lawful under the provisions The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2010 (SI 2010/2134).

John Whalley

INSPECTOR

Date: 15.12.2015

Reference: APP/R5510/X/15/3006070

First Schedule

The change of use of the property from a dwellinghouse, (Use Class C3), to a house in multiple occupation, (Use Class C4).

Second Schedule

Land and building at No. 47 Fairfield Road, West Drayton, Middlesex UB7 8EY.

IMPORTANT NOTES OVERLEAF

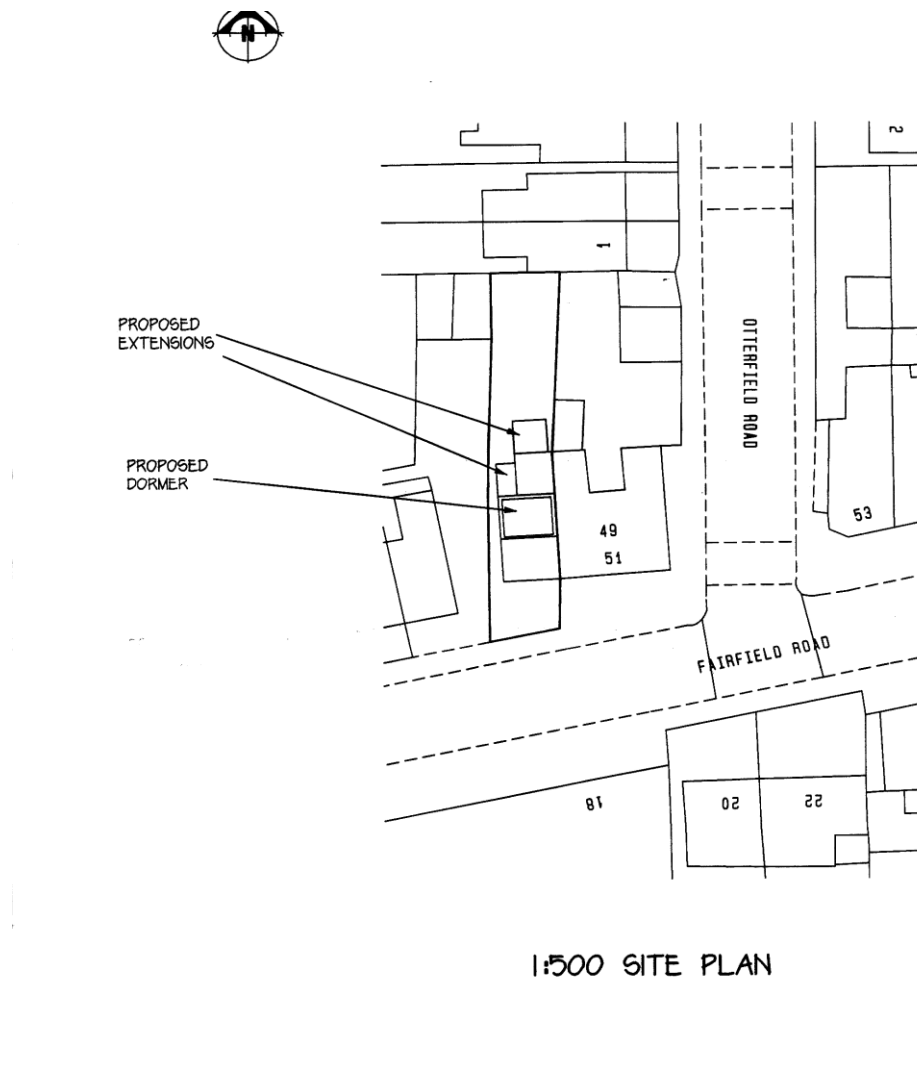
NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the change of use described in the First Schedule and specified in the Second Schedule would have been lawful, on the certified date and, thus would not have been not liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the change of use described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development 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.
4. The effect of the Certificate is subject to the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

Lawful Development Certificate Plan

Appeal reference: APP/R5510/X/15/3006070 **Date: 15.12.2015**

Land and building at No. 47 Fairfield Road, West Drayton, Middlesex UB7 8EY



Plan 1 of 1 attached to the Lawful Development Certificate - Do not scale

John Whalley

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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 1 December 2014 the building operations described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, were lawful within the meaning of section 191(1)(b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The works to the rear of the house and to its roof amounted to works permitted by Classes A and B to Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) Order 1995 as amended.

John Whalley

INSPECTOR

Date: 15.12.2015

Reference: APP/R5510/X/15/3006071

First Schedule

Extension works to the rear of the house and to its roof.

Second Schedule

Land and building at No. 47 Fairfield Road, West Drayton, Middlesex UB7 8EY.

IMPORTANT NOTES OVERLEAF

NOTES

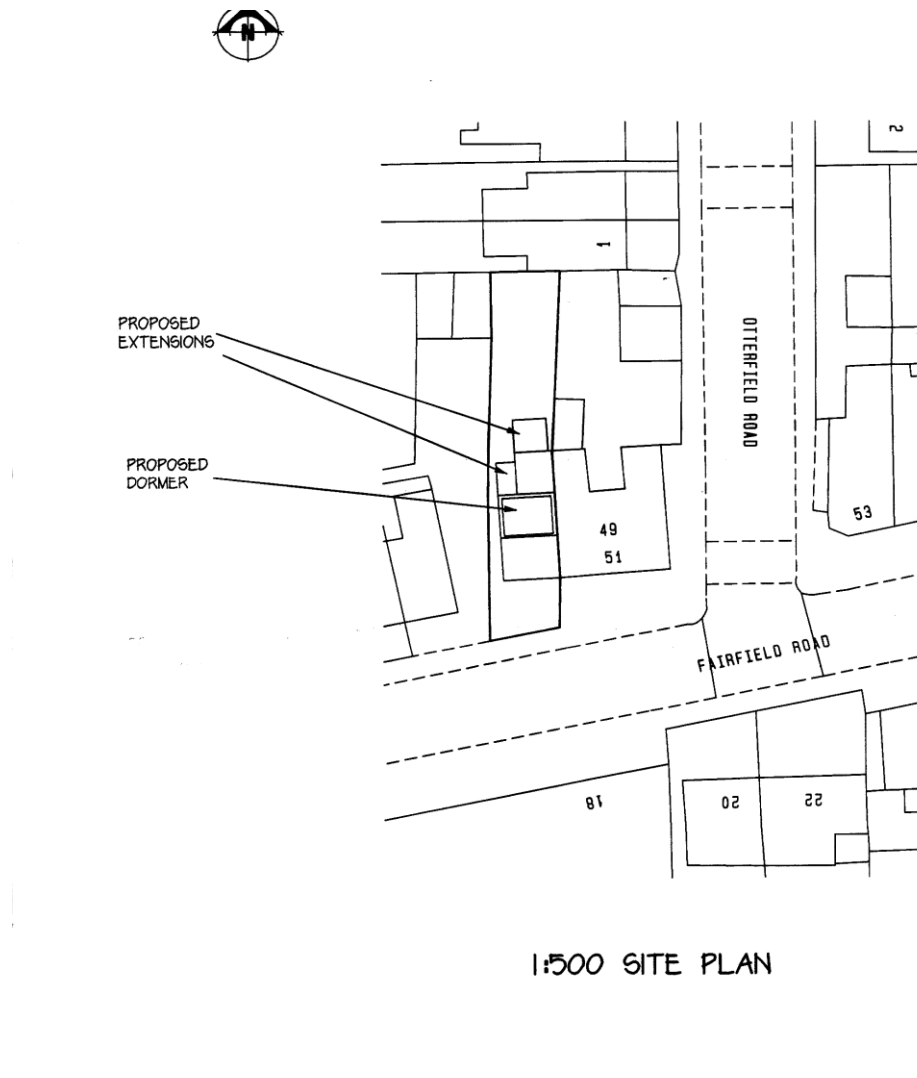
1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the works described in the First Schedule and specified in the Second Schedule would have been lawful, on the certified date and, thus would not have been not liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the works described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development 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.
4. The effect of the Certificate is subject to the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.

Lawful Development Certificate Plans

Appeal reference: APP/R5510/X/15/3006071

Date: 15.12.2015

Land and building at No. 47 Fairfield Road, West Drayton, Middlesex UB7 8EY

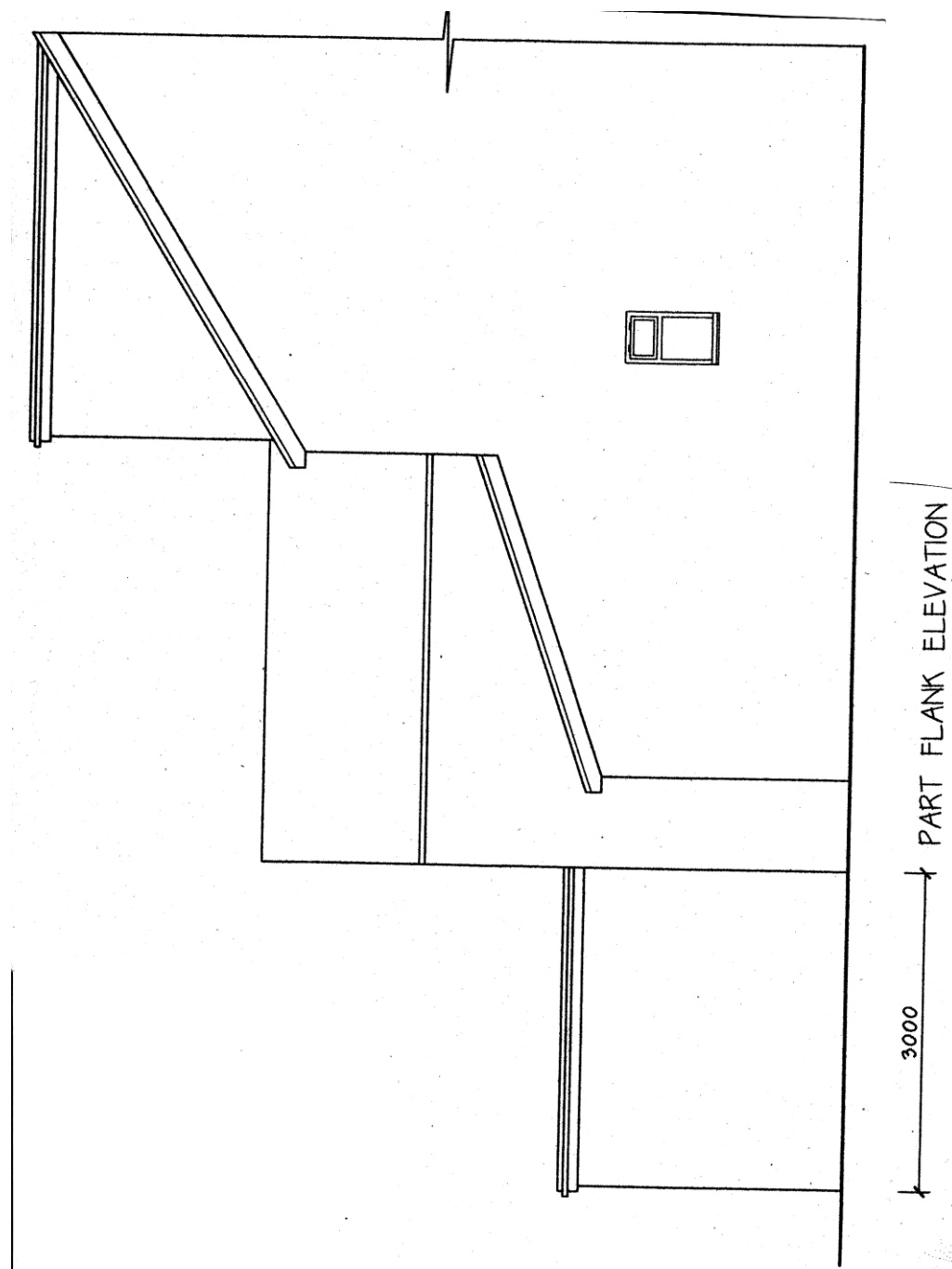


Plan 1 of 3 attached to the Lawful Development Certificate - Do not scale



REAR ELEVATION

Plan 2 of 3 attached to the Lawful Development Certificate - No scale



Plan 3 of 3 attached to the Lawful Development Certificate - No scale

John Whalley

INSPECTOR