The Planning Inspectorate

Appeal Decisions

Public Inquiry held on 2 November 2016

Site visit made on 3 November 2016

by Mr Keri Williams BA MA MRTPI

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

Decision date: 18 November 2016

Appeal Ref: APP/Y5420/X/16/3144671
Unit 3, 822 High Road, London, N17 0EY

- 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 Miss Claire Smith of Aarc Estates against the decision of the London Borough of Haringey.
- The application, Ref.HGY/2015/2597, was dated 3 September 2015 and refused by notice dated 19 November 2015.
- The application was made under section 191(1) (a) of the Town and Country Planning Act 1990 as amended.
- The use for which an LDC is sought is use as a residential unit.

Summary of Decision: The appeal is dismissed. A Lawful Development Certificate is not issued.

Appeal Ref: APP/Y5420/X/16/3144667
Unit 4, 822 High Road, London, N17 0EY

- 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 Miss Claire Smith of Aarc Estates against the decision of the London Borough of Haringey.
- The application, Ref.HGY/2015/2592, was dated 3 September 2015 and refused by notice dated 19 November 2015.
- The application was made under section 191(1) (a) of the Town and Country Planning Act 1990 as amended.
- The use for which an LDC is sought is use as a residential unit.

Summary of Decision: The appeal is dismissed. A Lawful Development Certificate is not issued.

Appeal Ref: APP/Y5420/X/16/3144660
Unit 5, 822 High Road, London, N17 0EY

- 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 Miss Claire Smith of Aarc Estates against the decision of the London Borough of Haringey.
- The application, Ref.HGY/2015/2594, was dated 3 September 2015 and refused by notice dated 19 November 2015.
- The application was made under section 191(1) (a) of the Town and Country Planning Act 1990 as amended.
- The use for which an LDC is sought is use as a residential unit.

Summary of Decision: The appeal is dismissed. A Lawful Development Certificate is not issued.

Preliminary Matters

1. Oral evidence was given at the Inquiry with solemn affirmation. Two further appeals concerned rear ground floor flats at nos.820 and 822 High Road (refs: APP/Y5420/X/16/3144656 and APP/Y5420/X/16/3144666). Those appeals were withdrawn by the appellant at the Inquiry and therefore do not fall to be determined.

Background

2. No.822 is a three storey building on the east side of High Road. There are commercial premises on the ground floor and to the rear. Unit 3 is on the first floor and units 4 and 5 are on the second floor. Floor plans for each of the units are provided. The units are described as flats in much of the evidence and I also adopt that term in this decision.

Main Issue

3. The main issue in each appeal is whether the Council's decision to refuse to issue a Lawful Development Certificate (LDC) was well-founded. Planning merits are not relevant in these cases. They are not an issue for consideration in appeals under section 195 of the Act, which relate to an application for an LDC. My decisions rest on the facts of the cases, relevant planning law and judicial authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. It is consistent with *Planning Practice Guidance* that an appellant's case should be accepted if there is no evidence to contradict or otherwise make his version of events less than probable, provided that his evidence is sufficiently precise and unambiguous.

Summary of the Main Points of the Appellant's Case

4. The appellants' case is that there is immunity from enforcement because there was continuous use of each of the flats as a single dwellinghouse for more than 4 years before the date of the LDC applications.

Witness Evidence

5. Mr Havezjee is a director of Aarc Estates. It is the company that owns nos.820 and 822, including the three flats in dispute. Aarc Estates acquired nos.820 and 822 in March 2012. There are 8 flats in total and two ground floor shops. Mr Havezjee referred to the range of witness and documentary evidence provided. He considered that, when taken as whole, it is sufficient to show continuous use of each flat for more than 4 years before the applications were made. There have been only short periods of vacancy between tenants or for renovation. Mr Havezjee explained that any periods not covered by dates in the submitted tenancy agreements were explained by the practice of "periodic" or "rolling" tenancies. These are common because it is not necessary to issue a new tenancy agreement at the end of the period specified in an agreement unless a change in circumstances arises, for example a change in tenant. This practice avoids costs, including fees incurred by the tenants. He also explained that when Aarc Estates acquired the property there was a lot to sort out. The previous owners had not been fully focussed on managing the property,

achieving full market value and collecting rents. Some rents went unpaid. In an area of high housing demand Mr Havezjee asserts that it would be unlikely that a flat would be left empty. He also explained that he has limited involvement in the routine management of the company's properties.

6. Ms Segieta gave evidence with the assistance of a translator. She has lived with her family in flat 822a since June 2012. It is a first floor flat, close to Flat 3 and to the stairs leading to Flats 4 and 5. Ms Segieta explained that Flats 3, 4 and 5 were there when she moved in. She had often seen residents of the flats coming and going. They were friendly and helpful.

7. There are sworn affidavits by Ms K Kurex in respect of each flat. Ms Kurex has a grocery shop on the ground floor of no.820. She says that she knows that the flats have been in existence for more than 4 years. She goes on to say that all of the residents use her shop. She knows the residents and says that the flats have been in continuous occupation throughout the term of the lease.

Documentary Evidence

8. Some documents are relevant in all 3 appeals. A Royal Mail online address finder document of 7 August 2015 refers to Flat 822C and Flats 1-5 at no.822. A set of photographs shows the interiors of the flats and the entrance door to the building. Letters of 9 November 2015, from Clinton Davis Pallis solicitors, explain that they act for the owners of nos.820 and 822. They go on to refer to information from the Land Registry that the building in which each flat is located was first registered in 2006 and to understanding that there were existing tenancies when the properties were acquired in 2012. Lastly, it is said that each flat is shown as part of the title numbers.

9. For Flat 3 there are 5 tenancy agreements covering various periods between 12 August 2008 and 6 January 2015. Three HMRC letters for dates in 2015 are addressed to Ms Ozaroswska at Flat 3. A letter of 22 May 2016 concerning a Council Tax appeal is also addressed to her at Flat 3, as is an NHS letter of 10 February 2015. 5 invoices are for dates in 2008, 2009, 2010 and 2014. 4 of them refer to Flat 3.

10. For Flat 4 there are 4 tenancy agreements covering various periods between 4 April 2009 and 5 May 2015. 2 HMRC letters for dates in 2015 are addressed to Mr Isajew and Ms Zamorska respectively, both at Flat 4. A Council letter concerning benefits, dated 24 March 2015 is addressed to Mr Isajew at Flat 4. A benefits decision notice, dated 12 May 2014 is addressed to Aarc Estates and refers to Mr Chwal at Flat 4. 3 invoices for dates in 2009 and 2013 are also submitted. Each refers to Flat 4.

11. For Flat 5 there are 3 tenancy agreements covering various periods between 5 January 2008 and 21 May 2014. 2 HMRC letters for dates in 2014 are addressed to M Sarawara at no.822. A DWP letter of 18 December 2014 is to the same address. A benefits decision notice, dated 13 August 2015 is addressed to Aarc Estates and refers to M Sarawara at Flat 5. 4 invoices are submitted for dates in 2009, 2010, 2013 and 2014. Each refers to Flat 5.

Assessment

12. Mr Havezjee and Ms Segieta attended the inquiry and were cross-examined. Ms Kurex did not attend. The absence of an opportunity for cross-examination of her evidence reduces the weight I attach to it where it conflicts with other

evidence. It is not disputed that each of the flats was in use as a single, self-contained dwellinghouse at the date of the LDC applications. That is consistent with what I saw on site and there is no evidence that would lead me to a different conclusion.

13. The LDC applications were made on 3 September 2015 so that the relevant 4 year period began on 3 September 2011. All three of the flats were registered for Council Tax on 18 November 2013. Ms Scubis's tenancy agreement for Flat 3 began on 5 December 2013. That of Ms Chwal for Flat 4 began on 25 November 2013 and that of Ms Sarawara for Flat 5 began on 22 November 2013. Taking this evidence into account the Council considers it likely that all three flats were occupied continuously from around the common date of Council Tax registration, of 18 November 2013. I share that view. On that basis, the period remaining in dispute is from the start of the relevant 4 year period, on 3 September 2011, up to 18 November 2013.

14. Some of the documentary evidence submitted is not of much assistance to the appellants' case. The set of photographs is undated. It is intended to show current residential use but that is not disputed. The Royal Mail document confirms the existence of the flats on 17 August 2015 but is not relevant to the disputed period. The Clinton Davis Pallis letters do not explain the basis for the expressed understanding that there were existing tenancies when the properties were acquired in 2012. Nor did any witness from Clinton Davis Pallis attend the Inquiry to provide such an explanation.

15. The evidence of Ms Kurex is limited to knowledge acquired from customers' comings and goings at her shop. The shop is in close proximity to the flats and to that extent she is likely to have had frequent contact with people living in them. On the other hand, she does not refer to having been in any of the flats or to specific people occupying each flat during the 3 September 2011 to 18 November 2013 period. Similarly, Ms Segiata's evidence is general in terms of seeing comings and goings. It is not specific about dates or about tenants occupying each of the flats during the disputed period. These matters limit the weight I attach to the evidence of Ms Kurex and Ms Segiata.

16. The correspondence submitted does not assist the appellants with regard to the period from 3 September 2011 to 18 November 2013. With regard to Flat 3, the HMRC letters, Council Tax letter and NHS letter do not fall within that period. The same applies to the HMRC letters, benefit decision notice and benefits letter adduced for Flat 4. The HMRC letters, the DWP letter and the benefits decision notice relating to Flat 5 are all dated after 18 November 2013.

17. None of the invoices relating to Flat 3 concern work carried out or items delivered in the disputed period of 3 September 2011 to 18 November 2013. The three invoices provided for Flat 4 also fall outside that period. Nor do any of the invoices relating to Flat 5 concern the disputed period of 3 September 2011 to 18 November 2013. Mr Havezjee was unable to explain how the various invoices were acquired and the Council has identified several discrepancies contained within them. Two of the invoices, which are said to be from different companies, contain the same error in referring to an "undercounted" rather than an "undercounter" fridge. There are also discrepancies in invoice serial numbers and a number of errors in company postcodes. No satisfactory explanation of these errors was provided. When taken together they reduce the weight I give to the invoice evidence.

18. There are no tenancy agreements for Flats 3 and 4 which explicitly cover any part of the period from 3 September 2011 to 18 November 2013. Of the 3 tenancy agreements for Flat 5, only one of them falls within that period. It was for Mr Leon and covered the period 4 January 2011 to 4 January 2012, so that it ended before Aarc Estates acquired the properties in March 2012.

19. Mr Havezjee confirmed that rents were collected by Aarc Estates and agreed in cross-examination that rental information would have been provided to the company's accountants. Nevertheless, despite reference in the Council's evidence to the absence of rental information, the appellants have not provided evidence of rental payments. I take into account the appellants' references to "rolling tenancies". However, there is no evidence from former tenants of the flats in respect of such tenancies. There is also an absence of documentary evidence such as bills or tenants' correspondence for the 3 September 2011 to 18 November 2013 period. That contrasts markedly with the period after 18 November 2013 when, in addition to Council Tax registration, there is other supporting documentary evidence of use of the flats, including tenancy agreements, correspondence and other documents.

20. Aarc Estates acquired the three flats in March 2012, so that they were not in its ownership for part of the disputed period of 3 September 2011 to 18 November 2013. Having regard to Mr Haverjee's characterisation of the management of the property by its previous owners, it would not be surprising if the flats were not in use for periods prior to March 2012, notwithstanding the housing pressures in the area to which he refers.

Conclusions

21. In their closing statement the appellants described their own evidence as scant and chaotic. That, it seems to me, applies particularly with regard to the period from 3 September 2011 to 18 November 2013, which covers a significant portion of the relevant 4 year period. The appellants' evidence is not sufficiently precise and unambiguous to show, on the balance of probabilities, that the use of each flat as a single dwellinghouse was continuous during the 4 year period prior to the LDC applications on 3 September 2015. Having regard to the above and to all other matters raised I conclude that the Council's decisions not to issue certificates were well-founded. The appeals should therefore not succeed.

Formal Decisions

22. I dismiss each of the appeals.

K Williams

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr N Jahangiri.

He called:

Mr M Havezjee	Director of Aarc Estates.
Ms A Segieta	Local resident. In giving her evidence Ms Segieta was assisted by Ms M Laskarzewska who acted as a translator.

FOR THE LOCAL PLANNING AUTHORITY: Mr E Grant, of Counsel.

He called:

Mr R McNaugher MA(Hons), MRTPI	Team Leader, Development Management, London Borough of Haringey.

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Mr Havezjee's letter of 2 November 2016 withdrawing appeal refs: APP/Y5420/X/16/3144666 and APP/Y5420/X/16/3144656.

2. Council's Opening Statement.

3. Copy of floor plan for Unit 3, 822 High Road.

4. Shorthold Tenancy Agreement for flat 822A High Road, dated 7 June 2013.