
Appeal Decision

Site visit made on 11 January 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 19 January 2017

Appeal Ref: APP/V5570/X/16/3152740

Studio 1st Floor Rear Flat, 249 Caledonian Road, London, N1 1ED

- 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 Andrew Panayi against the decision of the Council of the London Borough of Islington.
- The application Ref P2015/2401/COL, dated 20 August 2014, was refused by notice dated 26 May 2016.
- 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 "residential Class C3".

Summary of Decision: The appeal is dismissed.

Procedural matters

1. The description on the application of the LDC sought is "residential Class C3 use". The Council has refused the application on the basis of 'existing residential use of the flat as a self-contained unit (Class C3)'. A Class C3¹ use is a dwellinghouse use and a 'dwellinghouse' is premises that afford the facilities required for day to day private domestic existence². I will take both of these descriptions into account in the determination of the appeal.

Main Issue

2. An existing use is lawful at any time if no enforcement action may be taken in respect of that use; and the use does not constitute a contravention of any requirements of any enforcement notice. I therefore consider that the main issue is whether the premises at Studio 1st Floor Rear Flat (the Flat) was occupied as a dwellinghouse on 20 August 2014 and was continuously occupied as such for four years³ before that date.

Reasons

3. The Planning Practice Guidance: Lawful Development Certificates (the Guidance) advises that "the applicant is responsible for providing sufficient information to support an application". In this appeal the onus is therefore on the Appellant to prove on the balance of probabilities that the Flat was

¹ The Town and Country Planning (Use Classes) Order 1987 as amended

² *Gravesham BC v SSE* (1984) 47 P & CR 143

³ S.171B(2) of the 1990 Act

occupied as a dwellinghouse on 20 August 2014 and was continuously occupied as such for four years before that date.

4. The Guidance also advises that "in the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability".
5. The Appellant has provided a statutory declaration dated 10 June 2015 in which he declares that he granted assured shorthold tenancy agreements to a number of different people, the first of which is dated 21 September 2010. A tenancy agreement with that date has been provided as has a payment schedule with the first payment noted as 21 September 2010. A Council Tax Bill dated 17 May 2011 states 'New Property Band A 22 September 2010 to 31 March 2011'.
6. However, although the application is date stamped by the Council as being received on 12 June 2015, the notice of refusal refers to that date, and that is the date referred to in the Appellant's statement and statutory declaration, the application itself is dated 20 August 2014. At part 9 of the application the Appellant specifically states that the ground under which the LDC is sought is that 'the use as a single dwellinghouse began more than four years before the date of this application', which in this case is 20 August 2010. The date of the application is therefore some one month before the date of any evidence provided by the Appellant and I therefore find that the Appellant cannot prove a continuous four year period of occupation.
7. Given my finding, I have not considered any of the matters raised by either the Appellant or the Council in this appeal other than those mentioned above.

Conclusions

8. For the reasons given above, although different from the Council's, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'residential Class C3' was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Decision

9. The appeal is dismissed.

Gloria McFarlane

Inspector