
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/16/3152761

Flat F, 241 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 P2015/2400/COL, dated 19 January 2015, was refused by notice dated 15 June 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 of the LDC sought on the application is for "residential Class C3". The description on the notice of refusal refers to 'the existing use of the property as a single residential unit'. 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. The two descriptions are not materially different and I will take both of them into account in my determination of the appeal.
2. The application on the file originally supplied by the Appellant has been redacted and it was not possible to see the date on it. At my request the Appellant provided a copy that had not been redacted³. The un-redacted copy has the date of 9 September 2014 crossed out and 19 January 2015 substituted. The redacted application is date stamped by the Council as being received on 12 June 2015 and the decision notice records this as the date on which the application was made. Part 9 of the application asks the applicant to state under what grounds the LDC is sought and in this instance 'the use as a single dwelling house began more than four years before the date of this application' has been ticked. In the circumstances I will determine the appeal on the basis that the application was made on 19 January 2015.

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

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

³ Sent in by email to the Inspectorate on 16 January 2017

Main Issue

3. 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 Flat F, 241 Caledonian Road (Flat F) was in use as a dwellinghouse on 19 January 2015 and was continuously occupied as a dwellinghouse for four years⁴ before that date.

Reasons

4. 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 Flat F was in use as a dwellinghouse on 19 January 2015 and was continuously occupied as such for four years before that date.
5. 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".
6. The Appellant has provided a statutory declaration dated 10 June 2015 in which he states, in essence, that groups of about three to four people have occupied Flat F since 8 December 2010 until the date of the statutory declaration. The statutory declaration only provides evidence about the starting dates of the various agreements and the dates the groups left, or in the case of the last group, continue in occupation. No explanation is provided by the Appellant about the documents that have been provided and those documents are not exhibits to the statutory declaration and therefore have not been declared to be true.
7. The statutory declaration sets out periods of occupation of 8 December 2010 to 17 July 2011; 17 July 2011 to 16 April 2012; 15 May 2012 to 16 November 2012; 19 November 2012 to 1 May 2013; 22 June 2013 to 22 February 2014; 10 March 2014 to 14 December 2014; and 29 December 2014 to 10 June 2015. These periods do not correspond directly with the tenancy agreements which apart from one for a term of five months are for terms of six months. Some of the tenancy agreements have been marked in hand writing with the date said to be the moving out date. I also note that the landlord in the tenancy agreements dated 19 June 2013 and 29 December 2014 is Ploughcane (UK) LLP whereas in the other agreements the Appellant is the landlord.
8. Bank statements in the name of Ploughcane (UK) LLP and schedules of rent paid by each group of tenants have been provided. The payments shown on the bank statements have names but apart from one payment by 'Berry' on 19 January 2012 there is no specific reference to the property to which the payment relates. Miss J L Fish paid the sum of £365 on 21 June 2011 but the tenancy agreement with her name on it does not start until 17 July 2011; this date is clearly marked on the payment schedule where the 21 June 2011

⁴ S.171B(2) of the 1990 Act

- payment appears as the date the occupiers, who did not include Miss Fish, left. No explanation has been given about these apparently inconsistent payments.
9. The payment of the sum of £8,264.74 by 'Square Quart' on 24 June 2013 is shown on the bank statement; the date and the amount are also shown as an entry on the payment schedule but six months are also bracketed together with the sum of £7,284. This latter figure represents six months' rent. At that time the tenants were Tran and Reahal but no explanation has been provided about who 'Square Quart' are and why they were paying rent for Flat F. A page in the documents refers to 'Square Quarters We're not no.1, You are' and 'Assured Shorthold Tenancy Agreement for [Flat F]'. This document says that all communications particularly bank payment details must include the property reference number – PRO23 but many of the payments said to be rent for Flat F in the bank statements do not have this reference.
 10. On the same schedule there are two references to 20-12-14 and payments by Reahal £606.57 and Tran/David £606.67. The reference to 2014 is incorrect and presumably should be 2013 but only one payment on that date, made by David Tran, is recorded on the bank statement.
 11. Tenancy agreements do not provide evidence of occupation and those provided do not cover the whole period of four years. Whilst I accept that tenants do not always stay for the whole of the term and some may hold-over and that there are periods when refurbishment is required, the statutory declaration identifies some relatively lengthy periods when the property was apparently unoccupied. These are 16 April 2012 to 15 May 2012; 1 May 2013 to 22 June 2013; and 22 February 2014 to 10 March 2014.
 12. An example of a tenancy agreement not proving evidence of occupation is the one issued to Fish, Fleming and Williams which started on 17 July 2011 for six months, that is, ending on 16 January 2012 and this later date is shown on the payment schedule. The date of 16 April 2012 is hand-written on the agreement and that is the date in the statutory declaration given as the date on which the tenants left. But there is a court order dated 28 March 2012 which states 'the defendants [Fish, Fleming and Williams] having vacated the property' which indicates the property was not occupied from at least 28 March 2012 until the next tenants moved in, which is said to be 15 May 2012.
 13. Flat F has been registered for Council Tax since March 2002⁵ and I note that other units at No 241 are similarly registered. But such registration is not evidence of occupation.
 14. The bank statements are, in the words of the Appellant's statement, extracts of payments; the payments have been made to Ploughcane (UK) LLP, not the Appellant and who for several of the agreements was not the landlord and they are not evidence of occupation. The schedules of payment are difficult to decipher, there are gaps in payments, not all the payments add up to the monthly rental and there is an unexplained payment for six months by 'Square Quart' when there is a tenancy agreement in the names of two persons
 15. It is a matter for the Appellant how he keeps records of tenancies and rent paid but given the discrepancies and the inaccuracies in the documentation and the lack of explanation for them together with the relatively lengthy gaps when the

⁵ The Council's delegated report

premises was not occupied, whilst I acknowledge that the Council has no evidence of its own, I find that the evidence provided by the Appellant is not sufficiently precise and unambiguous to prove, on the balance of probabilities, that Flat F was in use as a dwellinghouse on 19 January 2015 and was continuously occupied as such for four years before that date.

Conclusions

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'residential Class C3 use' 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

17. The appeal is dismissed.

Gloria McFarlane

Inspector