
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/16/3152530

Studio 312, 303-311 Caledonian Road (1 Kember Street), London, N1 1BF

- 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 P2015/2466/COL, dated 15 June 2015, 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". The Council has refused the application on the basis of 'existing residential use of the flat as a self-contained studio flat'. 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 312 was occupied as a dwellinghouse on 15 June 2015 and was continuously occupied as such for four years before that date³.

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 residential use

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

was in operation on the material date, that is, the date of the application which in this case is 15 June 2015, and that it had continued throughout the four year period 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 15 June 2015 in which he declares that he granted assured shorthold tenancy agreements to a number of different people as follows: 6 September 2010 to 7 July 2011; 13 July 2011 to 12 June 2012; 24 August 2012 to 2 July 2013; 30 August 2013 to 28 June 2014; and 26 September 2014 to the date of the statutory declaration. The statutory declaration provides no other information.
6. The Appellant has also provided copies of tenancy agreements, schedules of payments, bank statements and correspondence. None of this documentation has been formally exhibited to the statutory declaration and therefore has not been declared to be true.
7. The tenancy agreements are all for a term of six months (some less one day) but from handwritten notes on each and from the other documentation it appears that each tenant may have held-over for various periods of time. The Appellant is named as the landlord in all save the final agreement where the landlord is Ploughcane (UK) LLP.
8. The extracts from the bank accounts are also in the name of Ploughcane (UK) LLP not the Appellant. The payment schedules are not easy to comprehend and differing amounts appear to be accepted from the rental quoted on the agreement, for example a payment dated 24 June 2013 by the named tenant, Himanshu Bagchi, of £410.60 when the monthly rental was £736.66.
9. Another example of confusion is the final named tenant, Mr Fronimos. His agreement is dated 26 September 2014 with a monthly rental of £780.00; the payment schedule records payments for September and October for that amount and a payment in January 2015 for £2,000 with rent outstanding on 26 January 2015 of £340; the second payment schedule shows payment of the rent for May 2015 but only £680 in June. The January 2015 and the June 2015 payments are shown on the bank statements as paid to Ploughcane (UK) LLP who was the named landlord.
10. In addition, as well as two pages of payment schedules for Sindre Melmen (Molmen on the agreement) which show among other payments a payment of £985 on 6 April 2011 there is also a copy receipt, headed with the Appellant’s name, for this amount. The monthly rent was £628.34. A payment of the same sum is recorded on the schedule for 5 April 2011 but there is no corresponding receipt. No bank statements showing payments by Sindre Melmen have been provided.
11. The Appellant has provided a valuation list for Council Tax as at 15 April 2013 which lists Studio 312 as Band A. No other information has been provided by the Appellant about Council Tax but the Council has verified the Council Tax

records and the first three tenants (Molemen (sic), Zheng and Bagchi) had accounts for the periods stated by the Appellant in his statutory declaration. From email correspondence concerning Mr Talboys tenancy it appears that he was in occupation for the period 30 August 2013 to 28 June 2014 and the Council confirm that a Council Tax account in his name was opened on that date. However the account has not been closed and there are no records for Mr Fronimos

12. Tenancy agreements are not evidence of occupation. It is a matter for the Appellant how he keeps his accounts and records but the information provided is confusing and the records do not show consistent and complete rental payments for all of the tenants or over the whole period of the relevant four years. I appreciate that there are often gaps in lettings for such things as decorating or while another tenant is found but there are several unexplained gaps of some length. These are 12 June 2012 to 24 August 2012; 2 July 2013 to 30 August 2013; and 28 June 2014 to 28 September 2014. With regard to the last period I note that this was the time when there was a change in landlord.
13. I note from the planning history in the Council's delegated report that in 1993 the first floor of 1 Kember Street was granted planning permission for use as student hostel accommodation and in 2008 an application to provide enlarged accommodation to ten bedsits on a front second floor extension to the existing hostel was refused. An application to provide seven additional self-contained residential units in a proposed roof extension was refused in 2011.
14. I have been provided with a copy of Drawing No.4340/05/D entitled 'Existing Second Floor Plan' which was originally drawn on 1 May 2010 but which was revised on 14 April 2013, 16 July 2013, 8 June 2014 and 16 September 2014. I am only concerned in this appeal with Studio 312 and I have no reason to question the veracity of the drawing showing how the second floor of the property and Studio 312 are currently laid out. But I have not been provided with any information about what those revisions were or what the layout of the floor, and thus Studio 312, was in 2010 and thereafter. Taking this into account together with the confused nature of the evidence concerning rental payments I am not persuaded that the Appellant has proved on the balance of probabilities that Studio 312 was a self-contained residential unit on 15 June 2011 or that it has been occupied as such for the required four year period.
15. I accept that the Council has no evidence of its own to challenge the Appellant's case but I am not satisfied that the Appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a LDC.

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' 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