
Appeal Decision

Site visit made on 20 March 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: 29 March 2017

Appeal Ref: APP/H5960/X/16/3154558

28 Elmslow Road, London, SW15 5EL

- 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 A Hussain against the decision of the Council of the London Borough of Wandsworth.
- The application Ref 2015/6670, dated 24 November 2015, was refused by notice dated 5 April 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 use as two self-contained flats.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. In his grounds of appeal the Appellant referred to a number of documents that had been supplied to the Council in support of the application. These documents were considered by the Council in its refusal of the application and again in its appeal statement. No documents were, however, provided to the Inspectorate by the Appellant when he made this appeal. The Appellant was advised by the Inspectorate that if he wished the documents to be considered in the appeal he would need to supply them which he did by email dated 22 March 2017. It would appear that there are some differences between the documents provided originally to the Council and those provided in this appeal. I will consider these matters below.

Main Issue

2. The main issue in this appeal is whether the existing use of the premises as two self-contained flats would have been lawful at the date on which the application was made, that is, on 24 November 2015. In order to prove the lawfulness of the use the Appellant has to prove, on the balance of probability, that the use as two self-contained flats was occurring on that date and that it had been continuous for a period of four years prior to that date.

Reasons

3. The Appellant says on the application form that the use as two flats began in November 2011 and in his grounds of appeal that it began in January 2011.
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He has provided various documents in support of his appeal. These documents include:

4. In respect of Flat A an agreement between the landlord Hafizabad Management and one named person and signatories as tenant for six months from 1 December 2014; this document has not been signed by the named person. Various gas bills to John Lacoza from September 2010 to July 2014 but with some gaps; a letter confirming a gas supply to Gogo Stead for the period 17 February 2011 to 1 October 2011 and electricity in his name supplied to No 28A but with Mr Stead's address not being No 28A for the period September 2010 to September 2011; BT bills to Miss L Gallagher from January 2013 to November 2014 but with some gaps; and a water bill to Imitaj Ahmed dated June 2014. None of these individuals are named on the letting agreement.
5. In respect of Flat B an incomplete Lease dated 1 January 2012 to a limited Company (Trevco Ltd); an assured shorthold tenancy for the period 1 April 2013 to 1 July 2013 by Surkur Management Ltd as landlord to three named people as tenants individually and together and this document has not been signed by those people; an incomplete agreement for the period from 16 May 2014 to 15 January 2015 to one named person and signatories and again this document has not been signed. A water bill dated June 2014 to Dominic Hogg dated June 2014; a water bill dated December 2014 to Zafar Iqbal; and a BT bill to Zafar Iqbal dated October 2014. None of these names are on the letting agreements.
6. Fire alarm test certificates for Flats A and B, some of which refer to devices on the ground floor and the first floor, which date from January 2011 to July 2013; the final certificate is blank. Emergency lights were checked from September 2013 to November 2014. A letter about insurance dated May 2012 and an insurance schedule dated July 2013 have been redacted so that there is no way of telling what property they relate to. A plan of Flat A is dated December 2010.
7. As I have mentioned above, it appears that the Council had sight of more and different documents. With regard to letting agreements, those I have do not cover the period in question from November 2011 to November 2015. Those referred to by the Council indicate that there are a number of gaps in the tenancy agreements and I note in particular from 31 March 2014 to 1 December 2014 for Flat A and from 1 July 2013 to 16 May 2014 for Flat B. I accept that properties are vacant for various reasons and that tenants could hold-over but these periods of time appear to me to be excessively lengthy. In addition there are no tenancy agreements for the application date of 24 November 2015 as the last one for Flat A is to 31 May 2015 and for Flat B to 15 January 2015.
8. The Appellant appears to accept that the tenancy agreements are not an accurate reflection of what actually happens in that he states 'tenants may continue to occupy flats after the end of the tenancy agreement' but there is no evidence that the tenants named in the agreements expiring in May 2015 and January 2015 did so. Therefore there is no evidence that the flats, or indeed the property, were occupied on the application date even if tenancy agreements were evidence of occupation, which they are not.
9. The fire alarm test certificates provide no evidence of how the property was used for those two and half years; nor does the checking of emergency lighting

for just over a year. It is notable that these documents do not cover the whole four years and in particular do not include the date of November 2015. Similarly the sporadic utility bills in names that do not appear elsewhere provide no evidence of the use of the property.

10. The Council has provided evidence that in July 2010 a house in multiple occupation (HMO) licence was granted for the property; in May 2011 the property was occupied by six people as one HMO in accordance with the licence; on 24 October 2014 the property was occupied as a HMO; and on 10 June 2015 it was occupied by one person who stated that the property was being used as a HMO and not as two separate flats. On this last occasion there had been alterations to the property so, among other things, it comprised eight bedrooms. At some stage the property was further altered to provide the entrance to the upstairs flat at the front and the entrance to the ground floor flat at the back and this is the arrangement I saw on my visit. I also noted that, as well as the entrance door having a lock, each of the bedroom doors had its own lock which is often an indication of a HMO use.
11. The Planning Practice Guidance advises that 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 probability¹.
12. From the documents I have seen and those referred to by the Council I find that the Appellant's evidence is not sufficiently specific and precise to prove to the required standard that the use of the property as two self-contained flats was occurring on the date of the application and that it had been continuous for a period of four years prior to that date.

Conclusions

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use as two self-contained flats 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

14. The appeal is dismissed.

Gloria McFarlane

Inspector

¹ Planning Practice Guidance: Lawful Development Certificates paragraph 006