The Planning Inspectorate

Appeal Decision

Site visit made on 8 May 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 11 May 2017

Appeal Ref: APP/D5120/X/16/3157764
Flat 5, Cray Buildings, Foots Cray High Street, Sidcup DA145HL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Mayfair Construction against the decision of the London Borough of Bexley (the LPA).
- The application Ref 16/01605/LDCE dated 1 July 2016 was refused by notice dated 23 August 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 the use of the premises as a residential unit.

Decision

1. The appeal is dismissed.

Background information and matters of clarification

2. The appeal property forms the ground floor of a two-storey building on the north east side of Foots Cray High Street. It is located within the Foots Cray Neighbourhood Shopping Parade (FCNSP). In November 2014 a shop survey identified it as being occupied by an A2 office use known as 'The Shed Factory'. A new shop front had been installed together with a solid metal roller shutter blind. At the time of my site visit I noted that alterations had been carried out to the shop window and that it was residential, rather than commercial, in appearance.

3. Although the site visit was set up to be accompanied and the LPA officer turned up for the visit, there was no reply and clearly no one in the flat at the time. However, I did not need to inspect the interior of the property and I am satisfied that, having dismissed the LPA officer, no injustice was caused in carrying out an unaccompanied visit.

4. The application seeks a LDC for use of the ground floor as a 1 bedroomed flat. In this case the onus is on the appellant to conclusively and unambiguously show that the ground floor property has been in such residential use for a continuous period of 4 years prior to the date of the LDC application. In this case, therefore, the relevant date is 1 July 2012, as confirmed by the Council, although the LDC application had been dated 26 June 2017. I can only take into account the information submitted at the time of the application

5. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reason(s) are well-founded. The

planning merits of the case do not fall to be considered and the relevant test relating to submitted evidence is '*the balance of probability*'.

Reasons

6. In support of the application various documents were submitted. These are set out in the Officer's report dated 22 August 2016. They include photographs, drawings, Council Tax letter reminders and various shorthold tenancy agreements of different dates with the first shown as dated 18 April 2012.

7. Clearly, after that date, if there had been a relatively unbroken run of dated and signed tenancy agreements with corroborating documents (such as utility bills; Council Tax records up until 1 July 2017 (date of LDC application), then there would be little doubt that the former shop unit had been used as a dwelling for the necessary relevant 4 year continuous period. Even from the outside it would appear that the former shop has been used as a residential flat for some time but the evidence relating to the use being continuous over the necessary 4 year period is far from conclusive.

8. Many of the documents and photographs are un-dated and/or un-signed. The Council Tax letters only refer back to April 2014 and the shop survey carried out later that year (in November) indicates that the property was then still recorded as 'The Shed Factory'.

9. Overall, therefore, I consider that the information submitted with the LDC application falls well short of indicating (on the balance of probabilities) that the unit has been in continuous residential use (that is without significant gaps) for the 4 year period commencing on 1 July 2012. It follows that I consider the Council's decision not to issue a LDC in relation to this particular application and on the basis of the submitted documentation was well-founded. The appeal, therefore fails.

10. In reaching my conclusion I have taken into account all of the Appellant's and the Council's submissions. However, none of these carries sufficient weight to alter my conclusions or to change my decision.

Anthony J Wharton

Inspector