The Planning Inspectorate

Appeal Decision

Site visit made on 9 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: 19 May 2017

Appeal Ref: APP/N5660/X/16/3155419
51 Babington Road, London SW16 6AP

- 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 Mr Min Jiang against the decision of the London Borough of Lambeth
- The application Ref 16/01523/LDCE dated 10 March 2016 was refused by notice dated 5 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 development is sought is for the existing use of the property as two self-contained flats.

Decision

1. The appeal is dismissed.

Background information and matters of clarification

2. The 3 storey plus basement semi–detached brick and slated roof property is located on the south east side of Babington Road and backs on to Gleneagle Mews. The property is not listed and nor is it within a conservation area. However, it is directly adjacent to the boundary of the Streatham High Road and Streatham Hill Conservation Area to the south east.

3. Although the Council's delegated report (at section 3.1) indicates that '*there is no relevant planning history to the site'*, there is evidence on file that it has been in use in the past (dating back to 1993) as two Maisonettes, comprising basement and ground floors and first and second floors. It seems to be accepted by the Council that this conversion dates back to the 1990s.

4. There are Council tax reference numbers to support this, in different Bands. This situation regarding Council Tax remained until February 2015. At that time, following a request from the Appellant's mortgagee, the Council merged the Council Tax listings for both Maisonettes into a single listing. In February 2016 the listings were again separated and two Council Tax accounts for the property were reinstated. That remains the case today.

5. During my site visit I noted the separate entrances to the two units; the separate gas meterage situation and that each unit had a fully fitted kitchen and bathroom. The lower maisonette/unit had 5 other rooms and the upper maisonette/unit had six other rooms. These were all locked (each had a separate knob/lock) and the appellant's representative did not have keys. Consequently I was unable to inspect these rooms. I was informed that they were separate bedrooms, some of which had en-suite bathroom facilities. It was not possible to inspect the en-suite rooms and they were not shown on the submitted plans.

6. It appears, therefore, that the current situation is that that each of the bedrooms (to both lower and upper maisonette/units) is tenanted separately with the kitchen and other bathroom facilities being shared. This conflicts with the layouts on the submitted drawings for the LDC application. It is not evident, therefore, exactly how the property has been used since February 2015.

7. On the drawings, the rooms are not all shown as bedrooms. The lower maisonette/unit is shown as a 3 bedroomed flat (referred to as the garden flat) with a living room, kitchen, bathroom and two storage rooms to the lower ground floor and 3 bedrooms at ground floor level. The upper maisonette/unit indicates a living room, kitchen and bedroom at first floor level and 3 bedrooms and a bathroom at second floor level. These layouts are typical of how two separate self-contained flats might be perceived.

Reasons

8. An appeal relating to a LDC is confined to the narrow remit of reviewing the LPA's reason for refusal and then deciding whether or not the reasons are well founded. The planning merits of the case do not fall to be considered. In relation to this LDC appeal what needs to be assessed is whether or not, at the time of the application (10 March 2016), the use as two separate flats would have been lawful. In this case, therefore, it must be shown (on the balance of probabilities) that the property has been in use continuously as two separate flats (or Maisonettes) between 10 March 2012 and 10 March 2016.

9. In support of the appeal it is contended that the Council failed to sufficiently take into account details of the letter from British Gas dated 14 August 2015; a letter from the Council's Tax Recovery team dated 12 August 2015; a letter from the Valuation Office and a 'Zoopla' listing for one of the maisonettes in March 2013. It is argued that had the Council taken all of the above into account it should have come to the conclusion that the Appellant had proven, on the balance of probabilities, that the building had been used as two separate flats for a period of at least four years preceding the date of the LDC application on 10 March 2016.

10. Having considered the submissions it appears to me that the property has a Council Tax and utilities provision history dating back to 1993. References are made to separate meters being installed in 2002 and 2008 (lower ground and ground) and 1996 and 2007 and I saw these during my visit. There appears to be no dispute that there were separate Council Tax accounts up until February 2015. The photographic evidence and other documents submitted reinforces my view that, up until February 2015 and on the balance of probabilities, the property had been used as two units of accommodation.

11. However, the question remaining, therefore, is whether or not the building was in use as two separate flats or maisonettes between February 2015 and the date of the LDC application of 10 March 2016. As indicated in the Council's delegated report, the case of *Secretary of State for the Environment, Transport and the Regions v Thurrock BC [2002] EWCA Civ 226* is relevant. In relation to this case it is necessary to show that there was no significant interruption in the use of the property as two self-contained flats or maisonettes for the whole of the relevant period (from 10 March 2012 to 10 March 2016).

12. The first indication of an interruption relates to when the request for a single Council Tax account was made in February 2015. At that time it would appear that the Appellant had intended to live in the property as a single dwelling house. I acknowledge that no applications were made for conversion back to a single

property and note that the Appellant did not carry out any works due to the financial and market situations at the time.

13. However, between February 2015 and the date of the LDC application there is a lack of detailed invoices, separate utility bills and other evidence to indicate without doubt, that the use of the two separate flats (Maisonettes) had continued without interruption for the necessary 4 year period. The fact that the units appear to now be let as separate rooms with shared facilities also adds to the ambiguity of the situation over this latter period in the history of the property.

14. Thus, on the basis of all of the submissions, I do not consider that, on the balance of probabilities, the Appellant has conclusively and unambiguously shown that the property has been in continuous use as two separate flats between 10 March 2012 and 10 March 2016. It follows that I consider the Council's decision to refuse to issue a LDC was well founded. The appeal, therefore, fails and a LDC will not be issued. The current use of the property not lawful and it is now a matter for the Appellant to liaise with the LPA with regard to any future applications for its use as separate units of accommodation.

Other matters

15. In reaching my decision I have taken into account all of the other matters raised in support of the application. These include the full planning history; the British Gas communications; the letter from the Valuation Office and the 'Zoopla' listing (March 2013) for one of the maisonettes. However, none of these factors, nor any other matter, carries sufficient weight to alter my conclusion that the Appellant has failed to conclusively and unambiguously show that the property has been used as two self-contained flats for an unbroken, uninterrupted 4 year period commencing on 10 March 2012.

Anthony J Wharton

Inspector