
Appeal Decision

Site visit made on 16 May 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 22 May 2017

Appeal Ref: APP/U2805/X/16/3162951
49 Reigate Walk, Corby NN18 9JP

- 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 Miss Anna Jasinska against the decision of Corby Borough Council.
 - The application Ref 16/00377/CLE, dated 27 August 2016, was refused by notice dated 12 October 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 is sought is the use of the property as two flats.
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Decision

1. The appeal is dismissed.

Main Issue

2. An application for a certificate of lawful use is not a planning application. The application is made purely to establish whether the use of the land as two flats would have been lawful, in planning terms, at the time the application was made. As such, the planning merits of any development are not relevant to my decision. The main issue is whether the Council's decision to refuse the application was well founded.

Reasons

3. In planning terms, a self-contained flat constitutes a dwellinghouse. There appears to be no dispute that the property was in use as two flats at the time the application was made; one on the ground floor and one on the upper floor. No planning permission has been granted for the use as two flats and the question is whether the use has become lawful through the passage of time.
 4. Section 171B of the Town and Country Planning Act (1990) (the Act) sets out the time periods within which enforcement action must be taken against various forms of development. In terms of a change of use to a single dwellinghouse, s171B(2) states that no enforcement action may be taken after the end of a period of four years from the commencement of a breach. Therefore, in order to become lawful, the property would need to have been occupied continuously as two flats for a period of four years or more at the point the application was submitted to the Council in August 2016.
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5. Paragraph 006 of the Planning Practice Guidance (PPG) makes clear that the applicant is responsible for providing sufficient information to support an application for a certificate of lawful use. Further, 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. A letter to "The Council Taxpayer" at the first floor flat was sent from the Valuation Office Agency on 16 February 2015. That letter indicates that the property had been banded as a separate flat with effect from 01 December 2014. Council Tax bills have been issued to the ground and first floor flats from 2015 onwards. The Council does not dispute that the building was used as two separate flats from December 2014 up to the point it made its decision on the application but contends that insufficient evidence has been presented to indicate that the change of use occurred prior to 2014 when the property was re-banded. The appellant maintains that the building, which was formerly a single dwellinghouse, was occupied as two flats after conversion works were substantially completed in December 2011.
7. The documentary evidence from 2011 onwards is unclear. A Building Notice from the Council's Building Control service, dated 11 May 2011, refers to the installation of en-suite showers into four bedrooms. That notice states that the use of the building was a residential house and I note that the fees for the Building Notice were calculated on the basis that it was a single dwelling. Similarly, certificates of compliance in relation to electrical work, dated 19 August 2011, refer to a single address of 49 Reigate Walk and provide no indication that the property had been converted into two flats at that point in time.
8. I note that the appellant suggests that two certificates were issued on the basis that the ground floor was wired separately of the first floor. The certificates themselves do not provide any detail to corroborate those comments but, even if that were the case, the granting of a certificate for electrical work does not provide evidence that the property was occupied as two flats. The installation of en-suite bathrooms and re-wiring of the property may well have been undertaken with the future intention of converting the building into two flats but the information provided by the appellant in respect of those elements of work sheds no light on when the change of use took place.
9. Moreover, letters from the County Council's Fire Protection Officer, dated 15 December 2011 and 30 July 2014, refer to the property as "HMO 49 Reigate Walk". Whilst the letters provide limited detail on the nature of how the property was laid out and who lived there at the time, the reference to a HMO (House in Multiple Occupation) and the use of a single address – 49 Reigate Walk – does not indicate that the property was, in fact, two separate flats at the time it was inspected by the Fire Safety Officer.
10. At my site visit I noted a lockable door within one of the bedrooms of the ground floor flat which, if opened, would provide access to the flat above. The door was locked and covered by a wardrobe within the bedroom at the time of my visit such that there was no access between the upper and ground floors. However, given the reference to a HMO within the Fire Safety Officer's letter, it

is not clear whether that was the case when the fire service visited the property and I cannot rule out the possibility that the two floors were connected at that point in time.

11. Consequently, I find that the evidence from 2011 up until 2014 to be less than clear and somewhat conflicting. In the absence of any other corroborative information, such as sworn statements from those who lived at the premises, photographic evidence depicting work being undertaken or utility bills relating to each flat, the information before me does not demonstrate that, on the balance of probability, the property was in use as two separate flats from 2011 onwards. Nor does the evidence demonstrate that the property was in use as two flats prior to being re-banded for Council Tax purposes in December 2014.
12. I can only determine the appeal on the basis of the information before me. Bearing in mind that the onus rests with the appellant to demonstrate her case, the evidence is not sufficient to show that the property had been used as two flats for a continuous period of four years at the date the application was made. Consequently, I conclude that the Council's refusal to grant a certificate of lawful use for the use of the property as two 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 Act, as amended.

Chris Preston

INSPECTOR