The Planning Inspectorate

Appeal Decision

Site visit made on 8 May 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 25 May 2017

Appeal Ref: APP/T5150/X/16/3157200
45 Ashcombe Park, London NW2 7QU

- 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 William McGowan against the decision of the Council of the London Borough of Brent.
- The application, Ref 15/5349, dated 7 December 2015, was refused by notice dated 7 June 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 described as 'Retention of residential flats'.

Decision

1. The appeal is dismissed.

The Description of Development

2. Government advice in the Planning Practice Guidance[1] is that a LDC application needs to describe precisely what is being applied for. In cases relating to an existing use, the Secretary of State has the power under section 191(4) of the Act to modify the description of development. I find 'Retention of residential flats' to be imprecise as it does not specify the number or type of flats. The Council have amended the description to specify that a LDC is sought for three, self-contained flats; having had regard to the information submitted with the application.[2] This description is more accurate and reflects the layout shown on the appellant's plans. I shall therefore deal with the appeal based on this description.

Main Issue

3. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well-founded. That turns on whether the appellant can show, on the balance of probability, that the material change of use to three self-contained flats took place more than four years before the date of the application (that is 7 December 2011). The appellant also has to show that the use has continued without material interruption thereafter, so as to be immune from enforcement.

[1] Paragraph: 005 Reference ID:17c-005-20140306
[2] A one bedroom self-contained flat on the ground floor, a two bedroom self-contained flat on the first floor and a self-contained studio flat within a converted and extended loft area

Reasons

The Appellant's Case

4. According to the Council's officer's report on the original application the appellant produced the following information to support his case together with plans and elevations to show the layout of the property:

   Ground floor flat

   (i) Council Tax Instalment Reminder Notice sent to the appellant dated 15 November 2010;

   (ii) Council Tax Bill 2010-2011 sent to the appellant, Reason for Bill: Closure of Account, Band C costs deducted as flat unoccupied and unfurnished 20 September 2010 - 23 September 2010, dated 26 January 2011;

   (iii) Email from appellant to customer services at Thames Water stating with effect from 20 September 2010 that the appeal site has been divided into three flats and names of three tenants listed, sent 18 February 2011; and

   (iv) Valuation Office Agency (VOA) 'Search the Council Tax Valuation List' result shows ground floor flat rated Band C with effect from 20 September 2010. List published 31 March 2011.

   First floor flat

   (v) Council Tax Instalment Reminder Notice sent to the appellant dated 15 November 2010;

   (vi) Email from appellant to customer services at Thames Water stating with effect from 20 September 2010 that the appeal site has been divided into three flats and names of three tenants listed, sent 18 February 2011;

   (vii) VOA 'Search the Council Tax Valuation List' result shows first floor flat rated Band C with effect from 20 September 2010. List published 31 March 2011; and

   (viii) Council Tax Bill 2015-2016 sent to appellant, Reason for Bill: New Account, charge for period 11 September 2015 – 31 March 2016, dated 18 September 2015.

   Studio flat (second floor)

   (ix) Email from appellant to customer services at Thames Water stating with effect from 20 September 2010 that the appeal site has been divided into three flats and names of three tenants listed, sent 18 February 2011;

   (x) VOA 'Search the Council Tax Valuation List' result shows second floor flat rated Band B with effect from 27 January 2009. List published 31 March 2011; and

   (xi) Thames Water Bill addressed to Mr Henry Gebski for period 17 July 2014 – 31 March 2016, dated 25 September 2015.

5. The appellant submits that these documents demonstrate the existence of the flats and that they include tenancy agreements. However, no tenancy agreements were either listed on the appeal form or included with the appellant's documents and the Council make no mention of them in their assessment of the application.

The Council's Case

6. The Council's case though does include a copy of a tenancy agreement which has been obtained from the Council's Housing Benefit Department. It is dated 22 April 2015 and is for a period of six months for Mr Albert Gross to occupy 'Rooms 3 & 4 Ground Floor Flat'. There is also a letter dated 22 April 2015 addressed to Brent Council Housing Benefit Department, signed by Mr Gross, setting out that the rent should be paid directly to the appellant. The address of the property is handwritten on the letter as 'Rooms 3 & 4, 45 Ashcombe Park'. The Council also include a redacted version of Mr Gross' online housing benefit claim form, dated 15 May 2015. This shows the address of his accommodation has not changed and is still referred to as 'Rooms 3 & 4 Ground Floor Flat'.

7. In addition, the Council include another copy of an online housing benefit claim form dated 2 November 2015. This was made by Mr Alan Monro who gives his address at 45 Ashcombe Park as being 'Rooms 1 & 2, Ground Floor Flat'. The claim was made as the tenant previously occupied a single room and changed to two rooms with effect from 31 October 2015.

Assessment

8. I am required to consider not the availability or suitability of each flat for residential use but whether they were actually put to such use and in this respect the evidence from the appellant is limited. He seeks to show that continuous use for each flat began on 20 September 2010 when the property was converted into three flats and he gives the names of the tenants at that time.

9. However, there is an anomaly with this claim as the Council Tax Bill dated 26 January 2011 shows that a ground floor flat was unoccupied and unfurnished for three days from 20 September 2010 – 23 September 2010. The appellant's statement is also contradicted by the information held by the VOA for the studio flat which was given a Council Tax Band of B with effect from 27 January 2009. The appellant offers no evidence to explain these discrepancies.

10. Whilst the appellant refers to occupation by tenants from 20 September 2010 no particular dates are offered as to the exact periods of residential use. There are no tenancy agreements or affidavits from previous occupiers and there are no documents submitted to show, for example, the receipt of either rent or housing benefit which recorded the names of previous or current tenants. Furthermore, the VOA extracts do not demonstrate that each flat was being used for residential purposes. They merely provide recognition that a dwelling may have been created although as the Council point out, it is not known whether the premises are inspected by a VOA officer before they are given a banding.

11. The Thames Water bill dated 25 September 2015 does provide some support to the appellant's case for the studio flat as it covers a 20 month period up to 7 December 2015 and four months beyond it as well as providing the name of an individual. However, even with the VOA record it is insufficient to demonstrate on the balance of probability that this flat has been occupied for a continuous period of four years.

12. The Council's evidence with regard to the ground floor of the building appears to show that this is not occupied as a self-contained flat. This is because the address on the tenancy agreement is given as 'Rooms 3 & 4' which is repeated in the letter to the Council and is also given in the application for housing benefit. This application provides other information about how the property was laid out as the tenant states he shares the use of a kitchen, bathroom and toilet with other tenants but he has sole use of a bedroom and living room. The second housing benefit application form supplied by the Council is also in relation to the ground floor of the property. The address refers to 'Rooms 1 & 2' which also contradicts the appellant's claim that the ground floor is occupied as a self-contained flat.

13. In an appeal relating to a LDC the burden of proving relevant facts rests with the appellant and the test of the evidence is the balance of probability. The appellant's own evidence does not have to be corroborated by 'independent' evidence. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.

14. I have had regard to all of the appellant's submissions. My conclusion is that he has failed to show, on the balance of probability, that the material change of use of the building to three self-contained flats took place more than four years before the date of the application. He has also not shown that the use of each flat has continued without material interruption thereafter so as to be immune from enforcement.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of 45 Ashcombe Park as three 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.

D Fleming

INSPECTOR