



Appeal Decision

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: 31 August 2017

Appeal Ref: APP/N5090/X/17/3168103

42 Clifton Gardens, London, NW11 7EL

- 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 Grey Oak 800 Ltd against the decision of the Council of the London Borough of Barnet.
- The application Ref 16/3233/191, dated 16 May 2016, was refused by notice dated 18 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 'self-contained flats. Flats A, B, C, D, E, F and G (seven) at the premises'.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The applicant in the application dated 16 May 2016 was Mr Vikki Parti. His agent was Mr Saem Hussain of Grey Oak 800 Ltd. The appeal form states that Grey Oak 800 Ltd is the Appellant. The grounds of appeal state that 'Mr Vikki Parti on behalf of Plankton Ltd ("the Applicant") submitted an application'.
2. I note from the documents submitted in support of the Appellant's case that, among other things, Grey Oak Ltd is named as the landlord/agent on various tenancy agreements; Mr Vikki Parti represents Plankton Ltd; Plankton Ltd has the same address as Grey Oak Ltd; and Plankton Ltd is the registered owner of the property. It therefore appears to me that the various names are somewhat interchangeable and I will determine this appeal using the term 'Appellant'.
3. The notice of refusal and the grounds of appeal refer to the description of the lawful development certificate sought as 'retention of use of dwelling as 7 no self-contained flats'. This is different from the description of the use as stated in the application which I have set out above and on which I will determine the appeal.
4. In the circumstances of this appeal no site visit was necessary.

Reasons

5. The main issue in this appeal is whether the use of the premises on 16 May 2016 as 'self-contained flats. Flats A, B, C, D, E, F and G (seven) at the premises' was lawful.
6. The application for the lawful development certificate is dated 16 May 2016 and it was refused by the Council on 18 August 2016 with the reason given as 'on

- balance it is considered that there is strong evidence of positive deception and non-compliance with an appropriately served enforcement notice’.
7. On 11 November 2016 the Council made an application for a Planning Enforcement Order pursuant to s.171BA of the 1990 Act. The section is headed ‘Time limit in cases involving concealment’. A Planning Enforcement Order was made on 5 July 2017 with Plankton Limited named as the respondent and the breach of planning control stated as ‘The ‘material change of use of the property at 42 Clifton Gardens NW11 7EL to use as self- contained flats’.
 8. The Appellant’s grounds of appeal were sent in to the Inspectorate when the appeal was made on 26 January 2017 and at that time the Appellant said that the application for the Planning Enforcement Order was not valid. The Inspectorate sought the Appellant’s views when it received information from the Council that the Planning Enforcement Order had been made and his response dated 17 August 2017 was that as the Appellant had not been served an enforcement notice it would be premature to withdraw this appeal.
 9. By virtue of s.191(2) of the 1990 Act uses and operations are lawful if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or because the time for enforcement action has expired or for any other reason) and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force¹.
 10. However, pursuant to s.191(3A) of the 1990 Act the time for taking enforcement action will not expire if (a) the time for applying for an order under s.171(BA)(1) (that is a Planning Enforcement Order) has not expired, (b) an application for such an Order has been made but has neither been decided nor has been withdrawn and (c) a Planning Enforcement Order has been made, the order has not been rescinded and the enforcement year for the order (as defined in s.171(BA)(3)) has not expired.
 11. The use as self-contained flats as applied for cannot be lawful because, as a matter of law, enforcement action can still be taken against the use of the premises as self-contained flats because the time for so doing has not expired by virtue of the making of the Planning Enforcement Order.

Conclusions

12. For the reasons given above I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of ‘self-contained flats. Flats A, B, C, D, E, F and G (seven) at the premises’ 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

13. The appeal is dismissed.

Gloria McFarlane Inspector

¹ Although the reasons for refusing the LDC application refer to ‘an appropriately served enforcement notice’ the breach of planning control alleged in that notice, dated 16 December 2010, was ‘change of use from single dwellinghouse to HMO (sui generis)’ and it is therefore not a matter I take into account in the circumstances of this appeal