The Planning Inspectorate

Appeal Decision

Site visit made on 1 May 2018

by D H Brier BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2018

Appeal Ref: APP/V5570/X/17/3179971

1 Hanover Yard, London N1 8YA

- 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 Ms L Clarke against the decision of the Council of the London Borough of Islington.
- The application Ref P2017/1786/COL, dated 5 May 2017, was refused by notice dated 4 July 2017. 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 use as a single dwelling house (C3 Use Class).

Decision

1. I dismiss the appeal.

The Appeal Site and Background

2. The appeal property is a 2 storey building. Its planning history is set out in the Council's Delegated Report. Of particular note are 2 planning permissions granted on 19 September 2008 and 31 January 2011 respectively.

3. The September 2008 permission (reference P081545) was for alterations to the building and "*Change of use to a live/work unit*". The January 2011 permission (reference P102631) involved various works to the appeal building as well, but the description of the development also went on to say "*Division of ground floor level to provide self-contained office (B1) unit. Retention of live work unit across remaining ground floor floorspace and first floor level*". Condition 06 attached to this permission states:

   "*Those areas marked as G0.2 and G0.3 on approved drawing 1100 Proposed Ground Floor shall be used for work purposes only and shall not provide additional residential floorspace of a clearly recognisable nature*".

4. The matter in dispute focuses upon areas G.02 and G.03. These are identified on drawing 1100 as "*Independent Work Unit to let*" and "*Owner's Studio*" respectively. Together, these areas take up most of the ground floor of the appeal building. They are partitioned off internally from each other and from the rest of the accommodation in the property; access to each of the areas is gained by separate external doors. Another external door provides access to the rest of the appeal building. At the time of my site inspection, most of area

G0.2 was taken up by racks of clothing together with racks of shelving that contained footwear and boxes of clothes. Area G0.3 appeared to be used for general storage.

Appeal

5. In order for the appeal to succeed it has to be shown that the use in question commenced more than 4 years before the date of the LDC application, namely 5 May 2013 in this instance, and has continued actively throughout the subsequent 4 year period. The test for the evidence is the balance of probability, and the Courts have held that in cases such as this, the onus on proving it lies with the appellant.

6. In essence, the appellant's case is based on the premise that the appeal building, including the ground floor areas G0.2 and G0.3 shown on the approved drawing referred to above, has been used as a single residential property since September 2012.

7. I have read that the appellant acquired the property in May 2010 when the September 2008 permission was still extant, but because it did not suit her requirements, the scheme subsequently approved in January 2011 was put forward instead. Work began on the latter in March 2012 and the ground floor alterations were substantially complete by June of that year. The submission that neither the September 2008 permission, nor those that preceded it which go back to early 1998[1], were implemented, has not been called into question.

8. While it was intended that part of the work space would be occupied by the appellant for her own work purposes as an artist and part would be let out, the onset of illness meant that she was unable to pursue her initial plan. Instead, from September 2012 onwards, the ground floor space was put to residential use, including wardrobe space, overspill accommodation for guests, and general storage of the appellant's domestic goods and effects.

9. Evidence put forward in support of the appellant's case includes: statutory declarations from the appellant, a prospective tenant of the work space, and a neighbour; a statement from a neighbouring business; Building Control records and a clarification; Valuation Office entries; Council Tax records; and a series of photographs.

10. The statutory declaration and statement by the neighbours and the declaration by the prospective tenant of the ground floor are generally consistent with the appellant's evidence as set out in her statutory declaration, albeit the prospective tenant refers to the use having taking place from August/September 2012 as opposed to September as indicated by the appellant. I also acknowledge that the prospective tenant's reference to having visited the appellant on a number of occasions and observed that she was using the whole of the property, including the ground floor studio space, as a private dwelling house is reflected in the neighbours' evidence. Despite this, however, just how familiar with the property the parties concerned were, and how their conclusions were arrived at, is not particularly clear. As a result I am reluctant to attach a great deal of weight to this part of the appellant's case.

11. An email from the company who carried out Building Control inspections of the appeal property refers to October 2012 as opposed to the September date

[1] Planning permission reference 971901 approved in January 1998.

given by the appellant. The email notes that "*The ground floor area was completed first by 3 October 2012 but not occupied. The space was in fact being used to store the owner's personal belongings".*[2] A subsequent clarification notes that "*the only use at the time was the storage of the personal belongings of the occupant of the residence on the upper floor*".[3]

12. Notwithstanding the Council's scepticism, this evidence accords with the appellant's in that it points to the 'work' space not having been used for that purpose. I accept that there is some variation in the dates – October 2012 as opposed to September 2012 indicated by the appellant or August as put forward by the prospective tenant, but as all these dates are well before the relevant date of 5 May 2013, I am not inclined to attach much significance to these apparent anomalies. What concerns me more is that the Building Control evidence is essentially a 'snapshot' of the position at one particular time – it offers no assistance or insight insofar as the continuity of the use is concerned.

13. The Valuation Office entries go back to 2012, but they offer little insight into the actual manner in which the appeal property was being used. Moreover, if anything, they appear somewhat inconsistent with the main thrust of the appellant's case. An alteration to the Valuation List, effective on 9 January 2012, indicates that the property comprises a dwelling for Council Tax purposes, but the address given is 'Flat 1st Floor, 1 Hanover Yard'; it is silent insofar as the ground floor of the appeal building is concerned. New entries in the List, both effective from 1 September 2012, refer to "*Workshop and Premises*", at Studio 1 and Studio 2, 1 Hanover Yard. Non-domestic rates notices sent by the Council subsequently also use this description[4].

14. The documents appertaining to non-domestic rates show that the appellant's application for small business rates relief proved successful, and indicate that the work space was not in use for that purpose in the years concerned. However, there is nothing in these documents that shows that this part of the appeal property was being used as a dwelling house in association with the rest of the building. Indeed, mindful that the appellant appears to have enlisted professional support in this respect[5], I find it somewhat odd that this point seemingly was not made at the time. Moreover, the Council point out that the property valuation details still refer to 'workshop and premises' at Studios 1 and 2. The photographs put forward reflect what I saw during my site inspection, but as none of them are dated, I find this evidence rather inconclusive and so am not inclined to attach much weight to it.

Overall Conclusion

15. Often an appellant will be best placed to provide information about activities at his or her property, and I am mindful that in this case the appellant's own evidence is in the form of a statutory declaration. Be that as it may, when all the evidence is viewed in the round, I find it lacking in clarity and somewhat ambiguous.

[2] Exhibit LC-1 attached to Ms Clarke's statutory declaration.
[3] Appendix E to the appellant's appeal statement.
[4] The parties have confirmed that what are referred to as Studios 1 and 2 on the Valuation List and Non Domestic Rate documents equate to areas G0.2 and G0.3 shown on drawing number 1100.
[5] Email dated 20 February 2014 from Child and Child – contained in Appendix F to the appellant's appeal statement.

16. The circumstances of this case are such that I am not satisfied that the evidence is sufficiently precise to justify the grant of a LDC on the basis of the balance of probability. The burden of proof that lies with the appellant has not been discharged.

17. For the reasons given above, and having regard to all the other matters raised, I am satisfied that the Council's refusal to issue a LDC in respect of the use as a single dwelling house (C3 Use Class) at 1 Hanover Yard, London N1 8YA was well-founded. I shall therefore exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

D H Brier

Inspector