Appeal Decision

Site visit made on 4 April 2018

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 06 June 2018

Appeal Ref: APP/V5570/X/17/3181623

106 Evershot Road, Islington, London N4 3BF

- 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 Nicolas Gregoriou against the decision of the Council of the London Borough of Islington.
- The application Ref P2017/0258/COL, dated 18 January 2017, was refused by notice dated 1 June 2017.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is use as a single bedroom dwelling.

Formal Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Preliminary matter

2. The appellant has confirmed that his planning statement refers to the wrong address and the information contained in the statement is intended to refer to the appeal building, 106 Evershot Road. However there is no reason to believe the error misled the Council as to the appellant's case or has caused injustice.

Procedural matters

3. The identity of the appellant and the planning merits of the operation, use or activity are not relevant to the legal and factual issues in an LDC appeal.

4. The appellant points to various matters such as the alleged reduced impact on the local area of the new use, lack of complaints, and what he sees as an enhancement of the local area. These planning related matters are irrelevant to the main issue I have to decide which is, taking account but ultimately irrespective, of the reasons given by the Council, whether the refusal of the application is "well founded" under s195 (2) and (3) of the 1990 Act. The burden of proof lies with the appellant on the balance of probabilities.

5. Advice in Planning Practice Guidance (PPG) is that if the Council has no evidence itself, nor from others, to contradict or 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 probabilities.

6. The basis of the application is that the use as a dwelling began more than four years before the date of this application. It is claimed that in 2010 the property changed its use from a music studio to a single bedroom flat, and the only physical changes to the property at that time were minor decoration works with no external or internal works. The appellant relies on s171B(2) of the 1990 Act which states that where there has been a breach of planning control consisting of the change of use of any building to use as a single dwelling, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

Reasons

7. The appeal site is a single storey building on the western side of Evershot Road, to the rear of 162 Corbyn Street, currently used as a single bedroom dwelling with bathroom, with a small curtilage by its south-east elevation. It is now separated from No 162 in whose plot it once stood, by a wooden fence.

8. The appellant refers to the previous lawful use of the appeal building as a music studio, completed in 1999-2000, and states that "*the building contained a bathroom and kitchenette and separate room as part of the successful planning application to convert from a garage to a music studio*." I have not been supplied with any planning permission relating to a music studio, and the Council has not commented on this part of the statement or produced the planning permission but I have no good reason to doubt that it was granted.

9. Based on the plan dated 24.4.1999 provided by the appellant, it would appear that the appeal building was originally a garage store and part of No 162. It was proposed to be extended with an internal layout to include an extended area with a kitchen in the corner, another separate room and a separate bathroom, all similar to that which exists today. The Council points to another plan, DBON5346 dated 7th Oct 2016 showing the "Existing" building to be a single large room as the music studio. If correct this plan suggests that the unit was still a music studio in 2016. However the purpose of the plan is not exactly clear and it is incongruously entitled "loft conversion".

10. The appellant on the other hand, states that the 1999 plan formed part of the original drawings that were approved for the change of use to the music studio. That plan was provided with the LDC application and as I have noted, the Council does not contradict the appellant's version of events by providing a planning history confirming or otherwise the existence of the permission.

11. In any event, in a reply dated August 2016 to a pre-application submission a Council officer has noted the approval of application 991042: "single storey extension to detached garage to form music rehearsal room". He further stated that it is understood that the building has been in use as a single dwelling house for a number of years, and on this basis it may be that the use has now become immune from enforcement action. He advised submission of an LDC application to clarify its lawful use.

12. The Council officer's report expresses dissatisfaction that there are no statutory declarations, utility bills, or other corroborating documents. However I disagree that the details submitted are "light on robust details". The tenancy agreements and the invoices provide robust evidence of the use of the property for residential purposes during the claimed period. The tenancy agreements cover the period from November 2010 to September 2016/7 as follows:

A. Agreement dated 27.11.2010 for 12 months commencing on 27.11.2010 to Rosalind Morley and Robert Gilchrist, signed by them on 20.11.2010.

B. Agreement dated 14.9.2011 for 12 months commencing on 27.11.2011 to Rosalind Morley and Robert Gilchrist, signed by them on 17.9.2011.

C. Agreement dated 25.8.2012 for 12 months commencing on 1.9.2012 to Mireia Recasens and Alexander Hoffmann, signed by them on 25.8.2012.

D. Agreement dated 31.8.2013 for 12 months commencing on 1.9.2013 to Mireia Recasens and Alexander Hoffmann, signed by them on 7.8.2013.

E. Agreement dated 6.9.2014 for 12 months commencing on 12.9.2014 to Max Wheeler and Sophie Rogers, signed by them on 6.9.2014 (supposedly in the presence of a representative of Alex Marks Ltd whose signature is nonetheless dated 12.9.2014).

F. Agreement dated 10.8.2015 for 12 months commencing on 12.9.2015 to Max Wheeler and Sophie Rogers, signed by them on 15.8.2015.

G. Agreement dated 29.9.2016 for 12 months to Kim Cowie and Christopher Morgan, signed by them on 8.10.2016 and a guarantor agreement by Kevin Neil Cowie signed 29.9.2016.

13. Apart from Agreement E the signatures of the tenants are witnessed by a representative of Alex Marks Ltd on the same date. There is an overlap in the duration of the tenancies between the end of Agreement B and the start of Agreement C; however this would be consistent with the outgoing tenants leaving slightly earlier than the expiry of their tenancy.

14. Monthly statements and invoices are also provided that evidence receipt of rent from 2011. They show that there was a check out inventory in August 2012 which is consistent with the overlap I have noted between Agreements B and C. The other check out inventories are not inconsistent with the dates of the agreements. Sundry items are included in the invoices, such as renewal of gas safety certificate every year, provision of a new mattress in September 2011, and in January 2011, maintenance for front door; repairs to bathroom and changing the front door lock in September 2014 and replacement of the fridge in December 2016.

15. However the Council is also concerned that the submitted invoices made no reference to the letting agent, Alex Marks Ltd. Yet it fails to identify that within the spreadsheets there is a note, albeit in small print that reads "*any negative figures in the bottom line are payable by AM to the Landlord*". Furthermore the email trail that produces the invoices clearly shows they were provided by the branch manager of Alex Marks to the appellant's own planning agent.

16. Then it is said by the Council that the rental fee in the invoices is inconsistent with the tenancy agreements, but I have not found any such discrepancies and the Council has not explained what these are or where they are to be found.

17. The Council also takes issue with the appellant's statement that before the owner rented the property, he contacted the Council so that a bill was calculated and Council tax was immediately paid by the tenants and is up to date. The Council does not dispute the accuracy of this statement but appears to make the point that the tax records do not by themselves prove any

material change of use in planning terms at any given date. This may be so but such records if they exist, may still be relevant to consider when assessing the evidence. Planning Practice Guidance states at Paragraph: 006 Reference ID: 17c-006-20140306 that the applicant is responsible for providing sufficient information to support an application, although a local planning authority always needs to co-operate with an applicant who is seeking information that the authority may hold about the planning status of the land.

18. Paragraph: 008 Reference ID: 17c-008-20140306 also states that, as to whether a local planning authority needs to consult on an application for a lawful development certificate: "There is no statutory requirement to consult third parties including parish councils or neighbours. It may, however, be reasonable for a local planning authority to seek evidence from these sources, if there is good reason to believe they may possess relevant information about the content of a specific application." In this case the Council has information readily available from one of its own departments and was put on notice that relevant information exists which is not otherwise contradicted. The Council simply states that it "may hold a council tax record against the property". Even if a different department has regarded as a "third party", I see no good reason why the existence of these records could not have been confirmed.

19. It is one thing for a developer to register retrospectively for Council tax, pay up and attempt to put the records forward as corroborative evidence of past continuity of use. It is another to seek out registration before the property is used and pay the tax during the period in respect of which the bills are issued. As the Council has not disputed that the tax was paid from the date when the property was first rented, which according to the agreements would be in 2010-11, and has declined to provide any confirmation of the records, the appellant's statement on this matter weighs in favour of the application.

20. The Council also objects that the main access of the unit to Evershot Road is missing from the plans of the building referred to above. It is possible that the front entrance door to Evershot Road was constructed later although if the appellant's claim is correct that no internal or external changes were made since it was extended, there may have been a departure from the approved plans. Against that however, it appears to me from the plans that the existing access from Evershot Road was enclosed to form a porch element essentially separate from the physical structure of the rest of the building.[1] The omission from the plan of the front door appears to be in error but does not affect the integrity of the rest of the information provided.

21. In summary therefore, the 2016 plan suggests on its face that the building at that time had a single open area which would be inconsistent with the claim that the present layout was in place much earlier. However the rest of the evidence, including the 1999 approved plan, signed tenancy agreements, and spreadsheets with statements and invoices, provide more compelling and robust evidence that in my opinion make it more likely that, by around 2010 or 2011 the building had a layout substantially similar to that which exists today, its residential use had begun and has continued uninterrupted to the present.

22. The Council's case does not include its own evidence that makes the applicant's version of events less than probable, and overall its arguments against the

[1] See Appellant's statement at paragraph 5.1

application are flimsy. I find the appellant's evidence sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a LDC in respect of 106 Evershot Road, Islington, London N4 3BF was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

Grahame Kean

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT: SECTION 191 (as amended by section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 January 2017 the use described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The use was lawful because:

a) No enforcement action could be taken in respect of it because the time for taking enforcement action had expired – a material change of use of the building to use as a single dwelling has continued for a period in excess of four years (s171B(2)), and there is nothing to show that the use was subsequently superceded or abandoned.

b) The use does not constitute a contravention of the requirements of any enforcement notice in force.

Signed

Grahame Kean

Inspector

Date: 06 June 2018

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First Schedule

Use of a building as a single bedroom dwelling as shown on plans:

Second Schedule

106 Evershot Road, Islington, London N4 3BF.

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended) and in response to an application made under Section 191(1)(a).
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

Plan

This is the plan referred to in Lawful Development Certificate dated: 06 June 2018

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

Land at: 106 Evershot Road, Islington, London N4 3BF

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Scale: Not to Scale