The Planning Inspectorate

Appeal Decision

Site visit made on 2 October 2018

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 23 October 2018

Appeal Ref: APP/V5570/X/17/3181789
Flat 5, 30 St Peter's Street, London N1 8JT

- 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 Eurolets against the decision of the Council of the London Borough of Islington (the LPA).
- The application, Ref P2017/1886/COL, dated 12 May 2017 was refused by notice dated 11 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: the use of a studio flat that has been in use as a residential unit for over 4 years with evidence to show.

Decision

1. The appeal is dismissed.

Matter of clarification

2. The Council's decision notice dated 11 July 2017 refers to the application for a LDC for a residential studio on the second floor. However the plan clearly relates to the third floor and it is on this basis that I have dealt with the appeal.

Background information

3. As indicated above the studio flat is on the third floor of a public house located at the junction of St Peter's Street and Danbury Street. It lies within the Duncan Terrace / Colebrook Row Conservation Area. It is locally but not statutorily listed. Enforcement action was commenced in 2013 relating to unauthorised self-contained units at the property. This action included numbers 22, 24, 26, 28 and 40 all of which are owned by the appellant company, Eurolets. However, the action was closed because the LPA considered that each individual unit of occupation would need to be considered on its own merits and that supporting evidence was necessary in each case to establish whether or not each unit was lawfully in Class C3 residential use.

4. In relation to this appeal the Council considers that the enforcement action and any evidence submitted as part of the earlier investigations cannot carry any weight in relation to the assessment of this application for a LDC. It is contended that, in considering whether or not a LDC should be granted, the individual unit would have to be considered on its own merits and in relation to the evidence submitted. Clearly the enforcement action is part of the planning history which is a material consideration, but I agree with the LPA that this LDC application case must be assessed on its merits and on the evidence submitted.

Matters of clarification re LDC appeals

5. An appeal relating to a LDC refusal is confined to the narrow remit of reviewing the LPA's reason for refusal. The planning merits of the case do not fall to be considered. This LDC was applied for in order to establish whether the existing residential uses of the studio/flat was lawful for planning purposes under section 191(1)(a) of the Town and Country Planning Act 1990.

6. The LPA refused the application on the basis that there was insufficient, precise and unambiguous evidence submitted to demonstrate, on the balance of probabilities that the properties had been in lawful use lawful as a Class 3 residential unit for a continuous four year period prior to the LDC application. The application was made on 12 May 2017 so the onus is upon the appellant to show, precisely and unambiguously that Flat 5 has been in continuous Class C3 residential use since 12 May 2013. National Planning Practice Guidance (PPG) indicates that an applicant for an LDC is responsible for providing sufficient information to support an application and that, without sufficient or precise information, a LPA may be justified in refusing a certificate.

Assessment

7. The appellant's case is based upon the documents submitted with the LDC application and dated 12 May 2017. A plan of the third floor of the premises is submitted indicating a studio/flat size of 5.94m x 5.28m. Photographs show the interior and an external balcony on to a flat roof. There is a Council tax band sheet indicating that for Flat 5, 44 Danbury Street the Council Tax was effective from 07/02/08. An e-mail from the Council's Revenue Collection Section (RS) indicates two payments of £224.17 and £810.00 being made by Mr Damian Lucas and Mr Gabor Varadi respectively between 21/6/14 to 27/10/16.

8. Various copies of Assured Short-Hold Tenancy Agreements (ASTAs) are submitted. The first is an agreement in the names of Mariani Gianmichele and Cristina Barilla with a start date of 17 December 2012. This shows reference 4405 and an e-mail to the landlord (the appellant company) indicates that the tenants moved out on or around 28 April 2014. The second is an ASTA in the names of Kent and Lynn Hamilton with a start date of 21 June 2014. A letter from Lynn Hamilton dated 22 June 2015 confirmed that the tenancy would be given up on 22 July 2015. The property address of Flat 6 had been changed to Flat 5 ref 4405 by hand with the changes initialled KH and LH.

9. The third ASTA is in the name of Gabor Varadi commencing on 25/8/15 and refers to Flat 5 with reference 4405. The date of expiry was shown as 24 February 2016. Although it is addressed 44 Danbury Street, this in effect is also 30 St Peter Street. There are bank details relating to the rent and a deposit scheme. The next reference to Mr Varadi is in the e-mail referred to above from the council's RCS whereby a Council tax payment was made on 27/10/16.

10. The Council refers to just one tenancy agreement and that it related to Flat 6. This could be due to the fact that one of the above agreements was clearly altered by hand. However, the Council's 'Assessment of the Application' as set out in the Delegated Report dated 10/7/17 also refers to Flat 6 and that some names on documents do not match those on the tenancy agreement. I find this confusing but, in any case I have dealt with the application on the basis of the information (ASTAs and other documents) as set out above.

11. Whilst acknowledging that the Council had registered the property for Council Tax as far back as 2008, the critical period relating to the necessary 4 year continuous use

as a Class C3 residential unit is from 12 May 2013 to 12 May 2017. I accept that the submitted evidence shows that between 17 December 2012 and 24 February 2016 there were tenants living in the third floor studio flat. I also accept that these periods were continuous other than for short periods of changeover. However, from 24 February when Mr Varadi's tenancy was stated to expire, there is no firm evidence of his occupation between 24 February 2016 and the date of the application, 12 May 2017. I have noted that the appellant claims that Mr Varadi occupied the property at the time of the LDC application but there is no documentary evidence to that effect.

12. Considering the appellant's requirement as a letting agent to keep appropriate records, it would seem clear to me that there should be a precise and unambiguous record of payments for the studio flat right up until the application date for the LDC. In the absence of such documentation I am not convinced that the studio flat at No 5 St Peter Street (or No 44 Danbury Street) has been in continuance residential use in Class C3 for the relevant 4 year period. On the balance of probabilities, therefore, I find that the appellant company has not shown that the use of Flat 5 was lawful for planning purposes on the date of the LDC application.

13. For the above reasons the appeal must fail and a LDC will not be issued.

14. The appellant company is not precluded from re-submitting a LDC application for Flat 3 assuming that the necessary evidence is available

Anthony J Wharton

Inspector