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/17/3181788
Flat 4, 32 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 P2017/2020/COL, dated 23 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 the one bedroom flat on the second floor as C3 residential use.

Decision

1. The appeal is dismissed.

Matter of clarification

2. The LDC application form referred to *'the existing use of the property as a one bedroom flat on the second floor. It has always been residential with evidence to show'.* The wording in the last bullet point above is the wording adopted by the Council and used in the refusal notice. I have used the same wording as the Council since it is clear that what is being sought is a LDC confirming that the one bedroom flat on the second floor has been in continuous residential (Class C3) use for a period of 4 years up until the date of the applications. Therefore the relevant 4 year commencement date is 23 May 2013.

Background information

3. The appeal flat is on the second floor of the three storey building which is in commercial use on the ground floor. It lies within the Duncan Terrace / Colebrook Row Conservation Area (DTCRCA). Planning permission was granted in 1990 for conversion of the first, second and third floor s of the building to provide a two bedroom maisonette and a one bedroom flat. In June 2016 a LDC application was refused relating to the use of the lower ground floor as two flats. In May 2017 permission was refused for altering the ground floor unit to create a one bedroom unit.

Matters of clarification re LDC appeals

4. 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 flat was lawful for planning purposes under section 191(1)(a) of the Town and Country Planning Act 1990.

5. 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 C3 residential unit for a continuous four year period prior to the LDC application. The application was made on 23 May 2017 so the onus is upon the appellant to show that Flat 4 (reference 3202) has been in continuous Class C3 residential use since 23 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.

6. Having taken into account relevant case-law, I consider it appropriate to consider any additional information submitted since the date of the initial application. Section 195 of the Act refers only to a refusal being '*well-founded'* or '*not well-founded'.* This relates to the decision itself and not to the reasons for it. In the case of *'Cottrell v SSE and Tonbridge and Malling BC [1982] JPL 443',* it was held that the Secretary of State (SOS) cannot be compelled to issue a certificate where the opinion is that one should not be granted. Conversely it was also held that for a LPA to argue that the only evidence to be considered was that placed before them as part of the application, denies the purpose of the LDC procedure.

7. The LDC procedure is aimed at the decision-maker arriving at an objective decision (on the balance of probabilities) based upon the best facts and evidence available. It is also the case that if subsequent information is available it is always open to an applicant to re-apply. In this case I consider it appropriate to take all of the submissions into account. I am satisfied that in taking this course of action no injustice has been caused to either the Council or the appellant company.

Assessment

8. The appellant's case is based upon the documents submitted with the LDC application and dated 23 May 2017. The occupant on that date is stated to have been Sarah Edgar an employee of the appellant company. She confirms that she works as a caretaker in the evenings and at weekends on behalf of Eurolets UK Ltd and that, in return, she receives rent free accommodation with Council Tax being paid.

9. Various agreements (ASTAs) are submitted in support of the application. The first is in the name of Simon Davies and is dated 15 April 2013 with a date of expiry given as 14 October 2014. On 2 November 2013 there is evidence to show that the tenant gave one month's notice to terminate the agreement and a later e-mail indicates that it was terminated on 29 November 2013. A second ASTA (reference 3204) in the name of Fanny Gasnier is dated 5 February 2014 which over 2 months after the previous tenancy ended. The expiry date was given as 5 August 2014.

10. However, this tenancy did not last until the expiry date and a third ASTA (with a different reference 3202) was made in the name of Richard Fautley and Shuangzi Guo on 19 July 2014. This showed an expiry date of 19 January 2015. There is evidence of a Council Tax payment for the period between 19 July 2014 and 10 April 2015 as well as a closing deposit register document in Richard Fautley's name dated 16 April 2015. After that date there are no further submitted documents but in the appellant's statements it is indicated that Sarah Edgar (see above) had been in occupation since 24 April 2015. The only Council tax document submitted for Flat 4 at No 32 indicates that the property was registered in Band C with effect from 29/01/2016.

11. In the Delegated Report relating to the LDC application the Council sets out a table at paragraph 11 which refers to the tenancy agreement I have referred to above. However in paragraph 13 of the same report the Council refers to three completely different tenancy agreement periods. Having seen all of the submissions relating to

this appeal it seems clear to me that the first set of agreements (in paragraphs 7 and 8 above) are the appropriate ones on which to base a judgement as to whether or not Flat 4 has been in continuous Class C3 residential use for the required 4 years. This is how I have dealt with the appeal.

12. The letter from the employee is not a statutory declaration and the Council has not provided any evidence to counter the information which has been submitted in support of the original application and the appeal. However, in the circumstances it is surprising that there is no evidence from the appellant company to corroborate their employee's letter or indeed a Statutory Declaration. As a major letting agency one would have expected some form of contractual arrangement with the employee. There is also a query as to why the Council Tax was not effective until 29/1/2016. One would have expected this to have been set up at the start of the occupancy of the employee either to be paid for by Eurolets or the employee. Also there is still a significant gap of over 2 months (see above) when there is no evidence that this particular flat was occupied as a Class C3 residential use.

Conclusion

13. For the above reasons, I do not consider that the appellant company has discharged the onus of proof to demonstrate, on the balance of probabilities, that the use of Flat 4, 32 St Peter's Street has been in continuous use as a Class C3 residential unit for the required 4 year period from 23 May 2013 to 23 May 2017, the date of the LDC application. The appeal therefore fails and a lawful development certificate will not be issued.

Other Matters

14. In reaching my conclusions I have taken into account all of the other matters raised by and on behalf of the appellant company and by the Council. However, none of these carries sufficient weight to alter my conclusion that the appellant has failed to show, on the balance of probabilities that Flat 4 has been in continuous Class C3 residential use for the relevant 4 year period.

15. 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