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/17/3181813
Ground Floor Front Flat, 22 Danbury Street, London N1 8JU

- 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 P2017/2259/COL dated 8 June 2017 was refused by notice dated 3 August 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 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. In the last bullet point above I have used the wording from the LDC application form. The Council in its refusal notice referred to the proposal as a *'Certificate of Lawfulness (existing).* It is clear that what is being sought is a LDC confirming that the studio flat on the ground 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 8 June 2013.

Background information

3. The appeal property is on the ground floor (at the front) of the three storey mid-terraced property at No 22 on the East side of Danbury Street. The building is not listed but lies within the Duncan Terrace/Colebrook Row Conservation Area. The submitted plan indicates that the studio (total 25.64m²) is a one room space with a kitchenette and a corner shower room.

4. In 2013 the LPA opened an enforcement file in relation to Nos 22, 24, 26, 28 and 40 Danbury Street which were all in the ownership of the appellant company and had been converted to flats or studio flats. The company supplied information to the LPA dating from between 2003 and 2015 purporting that the residential flats and studios within each property were lawful for planning purposes. The LPA found the information to be inconclusive and the enforcement action was closed. The appellant company then submitted a series of LDC applications including one for this flat on the ground floor at the front of No 22.

5. The Council considers that the enforcement actions and the 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 unit needs 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, like all of the other LDC applications relating to the appellant company properties, this application must be assessed on its merits and on the evidence submitted. This is how I have dealt with this case.

Matters of clarification re LDC appeals

6. 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 use of the ground floor (front) flat at No 22 was lawful for planning purposes under section 191(1)(a) of the Town and Country Planning Act 1990 on the date of the application, 8 June 2017.

7. 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 flat had been lawful as a Class C3 residential unit for a four year period prior to the date of the LDC application. I have referred to the commencement date for the required 4 year period as the 'relevant date'.

8. 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. However, PPG also indicates that a refusal is not necessarily conclusive that something is not lawful because insufficient evidence has been presented. On appeal it is regularly the case that additional information submitted at appeal stage, as opposed to application stage, is taken into account.

9. 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.

10. 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

11. The appellant's case is based upon the documents submitted with the LDC application dated 8 June 2017. If any documents were submitted after this date I have also taken them into account in reaching my conclusion. The main issue is whether or not the Council's decision not to issue a LDC was sound.

12. There are 4 agreements submitted in support of the application. The first is an assured Shorthold Tenancy Agreement (ASTA) in the name of Adam Rowland and is dated 13 April 2012 with a reference 2200. It refers to 22 Ground Floor and

had a date of expiry of 12 October 2012. There are copies of bank statements in the name of Miss Nadia Boudjema, T/A Euro Lets, showing payments made by A Rowland between December 2012 and July 2013. There is a letter giving notice to cease the tenancy on 6 March 2014.

13. The second ASTA is in the name of James Yellow and is dated 12 April 2014 with the address as 22 Danbury Street but with a different reference, 2201, as opposed to 2200 for the first ASTA. The date of expiry is given as 12 October 2014, a period of 6 months. In addition to the signed ASTA there is an 'Acceptance of Condition' document dated 12 April 2014. Mr Yellow gave notice to leave in June 2014 and according to the appellant's planning statement left on 27 June 2014. Taking into account the start and finish dates this was a period of 76 days.

14. The next ASTA is in the name of Qinsu Zhou and is dated 12 July 2015. It referred to '22 Danbury Street, Ground Floor' but with no reference number. The date of expiry was 12 January 2016 and there is a notification of deposit and rental due, dated 12 July 2015. A second ASTA by the same tenant is dated 13 January 2015, reference 2200 and the address as 22 Danbury Street, Ground Front.

15. A third ASTA in this tenant's name is dated 14 July 2014 with an expiry date of 14 January 2015 reference 2200. It would appear; therefore that the tenant either rented two properties from July 2014, one on the 14th and one on the 12th or that there has been some error in the administration. There is evidence in the form of an e-mail that the last of these tenancies ended in December 2015, one month prior to the end of the contract.

15. The next ASTA is dated 5 January 2016 and is in the name of Adam Vafai–Blom. It refers to 22 Danbury Street, Ground Floor and the reference is 22 Ground Front. The date of expiry was initially set out as 4 July 2016 but, in the notes to the document it was stated that the tenancy was for a fixed period from 5 January 2016 to 4 June 2016 (6 months). However, the tenant left the property on 29 February 2016 which (taking both start and finish dates into account gives a total rental period of 45 days.

15. The final ASTA is in the name of Amy Boyd and is dated 10 March 2016. It refers to '22 Danbury Street, Shopfront' and is referenced 2201. The date of expiry is 9 September 2016. There is a deposit and rental amount document also dated 10 March 2016. In the planning statement the appellant company indicates that Amy Boyd's tenancy was from 10 March 2016 to present date, which, for the purposes of this appeal I will take as 8 June 2017.

16. The Council indicates that there are discrepancies between the appellant's planning statement and the ASTAs. The Council accepts that 'roll-over' options are possible and this is indicated in the notes at the end of each ASTA. The Council, however, queries why evidence to substantiate the 'roll-over' periods was not submitted. With regard to the overlapping of tenants Zhou and Vafai-Blom it is clear that Zhou vacated on in December 2015, one month early. Thus the Council's evidence re overlapping cannot be correct.

17. The Council refers to the short lettings of Messrs Yellow and Vafai-Blom. The former tenancy was a total of 76 days starting in April 2014 and ending in June 2014. This is less than 90 days and is classed as a short term let. However, a Class C3 residential property can be let for a total of 90 days in any one calendar year. Mr Vafai's let of 45 days is also within the 90 days allowable for a Class C3 residential use. Because Mr Yellow's let started in April 2014 the next calendar which would be relevant would start in April 2015. Clearly Mr Vafai's rental was not within the same calendar year as that of Mr Yellow and thus both periods of

less than 90 days would be acceptable periods of residential use on the basis that the flat had a Class C3 residential use.

18. On the basis of the agreements submitted I acknowledge that there are only short periods between tenancies which have broken the continuous 4 year period required. However, there is a noticeable lack of other information relating to the tenancies. One would normally expect other documents to corroborate the agreements. In these cases there are no utility bills or details of Council Tax payments. I accept that lack of any Council Tax records does not necessarily mean that the property is not in Class C3 residential use. However, one would expect some evidence to back up and corroborate the submitted ASTAs. In addition the Council Tax account has only been effective since 14/7/2014

19. I note as well that there are two properties on the ground floor at No 22. The ASTAs have different reference numbers. The first is referenced 2200, the second is referenced 2201 and the third has no reference at all simply referring to '22 'Danbury Street Ground Floor. The fourth one reverts to the 2200 reference. With the discrepancies relating to documentation and referencing I find the submitted evidence to be imprecise and ambiguous.

20. I am also concerned about the Council's findings in relation to their site visit which took place on 21 July 2017. The contents of the property (clean towels, a set dining table and other items etc) clearly indicate the characteristics of a hotel room rather than a normal Class C3 residential unit. I accept that the unit could be have been between more permanent tenants but it would seem more likely to have been made ready for another short-term guest. The fact that there was 'an official laundry room' in the courtyard at No 40 demonstrates a communal facility which, as the Council indicates, could imply a sui-generis as opposed to a Class C3 residential use.

Conclusion

21. Having considered all of the submissions from the appellant company and the Council, I do not consider that the appellant company has discharged the onus of proof to demonstrate, on the balance of probability, that the use of the ground floor front flat at No 22 Danbury Street has been in continuous use as a Class C3 residential unit for the required 4 year period from 8 June 2013 to 8 June 2017, the date of the LDC application. The appeal therefore fails.

Other Matters

22. 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 above or to change my decision.

23. 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