



Appeal Decision

Inquiry Held and Site Visit made on 14 August 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 23 September 2019

Appeal Ref: APP/G5750/X/18/3200865

Basement Flat, 171 Plashet Grove, East Ham, London E6 1BX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Farhan Merchant against the decision of the Council of the London Borough of Newham.
 - The application Ref 18/00186/CLE dated 18 January 2018, was refused by notice dated 19 March 2018.
 - The application was made under section 191(1)(a) of the 1990 Act as amended.
 - The use for which a certificate of lawful use or development is sought is a self-contained flat - Class C3 dwellinghouses¹.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.
3. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.
4. During the Inquiry, the appellant repeatedly referred to additional evidence that had not been submitted. This included invoices for building works and materials, an additional statement from one of the tenants and further tenancy agreements. I made it clear before and during the Inquiry that all evidence to be relied upon should have been submitted in accordance with the Inquiry Rules². None of the evidence referenced has been submitted and I cannot have regard to it.

¹ This refers to Class C3 of The Town and Country Planning (Use Classes) Order 1987, as amended.

² The Town and Country Planning (Enforcement)(Determination by Inspectors)(Inquiries Procedure)(England) Rules 2002.

5. The premises is subject to an extant enforcement notice alleging the material change of use of the basement to a self-contained unit of residential accommodation. I am not aware of any appeal against that notice.
6. All oral evidence to the Inquiry was given on oath.

Main Issue

7. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.
8. It is necessary to consider whether the appellant has shown, on the balance of probability, that a material change of use of the basement to a self-contained flat occurred on or before 18 January 2014 and has continued after the date of change without significant interruption.

Reasons

The evidence

9. The appellant explained that the premises was originally let to FS Globe Limited for the period of 1 August 2010 to 1 December 2013. He stated that he first became aware that the basement was being used as a flat when he took back possession of the property. At that time, the flat was occupied and the tenant remained on an informal basis. Although the commercial agreement does not detail the specific use of the property, the appellant believes that the residential use commenced in February 2011, as stated on the LDC application form.
10. In written evidence, the appellant indicated that he carried out improvement works between the date of possession and 30 October 2013. The works included repositioning the stairs and the creation of a new entrance door from the street to enable separate access to the basement³. The Council has no record of these buildings works but street view images indicate the alterations to the front elevation were undertaken between August 2012 and June 2014.
11. The appellant has submitted a copy of a Guaranteed Rent Agreement between himself and All Seasons Lettings and Management Limited, dated 5 January 2014, for a term of 12 months. In addition, the management company confirms it has managed the basement flat since that date and it has been occupied on a regular basis. However, the appellant explained that the original tenant, S Singh, lived in the flat until 2016 under an informal arrangement, as explained above. It seems that the managing agent was not actively involved until much later. A summary of tenant details and dates of occupancy has been submitted commencing 3 October 2016.
12. Council Tax records provided by the Council confirm that the basement flat has been banded for residential purposes since 30 June 2014. The names of the account holders have been obtained from the Council's database. The appellant has also submitted copies of Council Tax bills addressed to his company, London East Limited, the dates of which largely correspond with the Council's records.
13. Property licences issued on 26 February 2015 and 9 August 2018 have also been submitted in evidence, however, the corresponding application forms do

³ In opening, the appellant's agent said that the staircase was moved in March 2014, but this was later corrected.

not provide the names of tenants. In addition, utilities bills have been submitted comprising gas records for various periods from 9 January 2014, electricity records from 18 August 2015 and water bills from 30 June 2014. These are all directed to the appellant.

14. The Council has submitted evidence from its corresponding enforcement investigation. Notes from a visit dated 23 October 2015 detail that the flat was probably empty. This assertion is supported by a series of dated photographs and an email from the appellant's agent dated 26 October 2015. The email explained that the contract for residential occupation of the basement flat was terminated to ensure there was no breach of planning legislation. A further email confirmed the flat was empty on 20 January 2016.
15. A second site visit by the Council on 16 August 2016 also notes the flat was vacant. Dated photographs show mattresses and a fridge in very similar locations to the previous photographs, and an accumulation of dust/mould in the kitchen and bathroom areas, which suggests they had not been used in the intervening period.

Assessment

16. The Council maintained that a self-contained flat could not have existed prior to the works to create the separate access. It was argued that the lack of physical separation would mean that the basement was not a separate planning unit. Hence, any residential use of the basement would have likely comprised a mixed use with the commercial use of the ground floor. Irrespective of this, I accept that the physical works were probably undertaken sometime prior to the relevant date. However, it is necessary to establish when the use commenced and that the use continued without significant interruption after the date of change.
17. The tenancy agreement between the appellant and S Singh is informal and basic in terms of its content. The address of the premises to be occupied is not specified and there is no indication of the term of the tenancy. Moreover, it is dated 22 June 2014, some five months after the relevant date. In addition, there is no information from the tenant corroborating his residence and no record of any utility payments, although I understand the bills were included in the rent.
18. The basement flat has only been banded for Council Tax purposes from 30 June 2014. In any event, the Council Tax invoices do not evidence occupation, especially as they are directed to the landlord. The information from the managing agent, in relation to the named tenants, contradicts the Council Tax records provided by the Council. It appears that the property was sub-let to Yasir and Co for a relatively long period in 2017/18, which partly explains the contradiction.
19. The Council pointed out that there are extensive periods when the flat was empty, as evidenced by the site visits. The appellant accepted the flat was vacant for a period of five to six months from August 2015 to January 2016 and for a further one and a half months in 2016. He said he was not seeking a tenant at this time because this was when S Singh was the occupant and he only moved out temporarily. While I understand the appellant was seeking to comply with what he understood to be the Council's request in respect of the

alleged breach of planning control, the breaks in occupancy are not consistent with a finding of continuous use.

20. The utilities bills all show the appellant as the account holder as opposed to individual tenants. The gas and electricity bills either indicate no usage, due to no consumption charges during the period when the flat was empty or are based on estimated readings. The water bills show that consumption was billed on a standard rate as opposed to actual usage. I have considered the property licences but these do not show occupation as tenants names are not provided. In addition, the first application post-dates the relevant date.
21. The appellant argued that it would be perverse for him to pay Council Tax and utility bills, or apply for licences, if the property was empty. Nonetheless, it has been established that the property was empty for a significant length of time. As such, there has been a break in occupancy and residential use. It is accepted that this was not simply a void period when a tenant was being sought. Crucially, the break in occupancy would have prevented the Council from taking enforcement action at that time.
22. Overall, the evidence presented in support of the appellant's claim is incomplete and ambiguous, and at times contradictory.

Conclusion

23. I appreciate the appellant has sought to regularise the use through the planning process. However, the totality of the evidence presented does not show, on the balance of probabilities, when the material change of use occurred and how the premises has been used for a continuous period of at least four years.
24. For the reasons given above, I conclude on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of Class C3 dwellinghouses was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

Debbie Moore

Inspector

APPEARANCES

FOR THE APPELLANT:
Mr Riaz Patel

He called:
Mr Farhan Merchant

FOR THE LOCAL PLANNING AUTHORITY:
Ms Isabella Crowdy of Counsel instructed by the London Borough of Newham

She called:
Ms Hannah Richardson

DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Letter from Letting Agent dated 13 August 2019