



Appeal Decision

Site visit made on 24 September 2019

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

an Inspector appointed by the Secretary of State

Decision date: 4 October 2019

Appeal Ref: APP/L5240/X/18/3211040

254 Holmesdale Road, South Norwood, London SE25 6HX.

- 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 Raymond Johnson of Europa Gold Limited against the decision of the Council of the London Borough of Croydon.
 - The application Ref 18/01148/LE, dated 6 March 2018, was refused by notice dated 9 April 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 two self-contained flats - 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 use are not relevant, and they are not a matter for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. Therefore, issues such as the suitability and need for the development in this location, the impact on the occupants, or any precedent set by other similar developments which may have been approved in the vicinity cannot be taken into account.
4. Similarly, the alleged conduct of the Council in failing to engage with the appellant prior to issuing the decision is not relevant. Neither is it within my powers to consider the expediency of the enforcement action and content of the original notice.

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

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.
6. It is necessary to consider whether the appellant has shown, on the balance of probability, that the use of the premises as two self-contained flats was lawful at the date of the application.

Reasons

Background

7. The property is subject to an enforcement notice issued on 3 October 2008 alleging the unauthorised use of the property as two flats. The notice took effect on 14 November 2008. It required (i) cease the use of the property as two self-contained flats; (ii) remove the internal door situated at the bottom of the stairs; (iii) remove all partition walls which facilitate the separation of the ground and first floors; (iv) remove the upstairs kitchen; and (v) remove any resultant debris from the land. The time for compliance was six calendar months after the notice took effect.
8. The Council advises that an inspection of the property in May 2009 showed the premises to be empty, although it appears that the other requirements had not been carried out. Notwithstanding the enforcement notice, I understand that the unauthorised use resumed sometime after the Council's inspection.
9. The appellant claims that the Council did not ensure compliance with the requirements of the notice. As such, it is argued that the notice has expired or is defunct.

Analysis

10. The appellant's case is that the Council's failure to take further enforcement action ten years after the notice was served demonstrates a lack of concern for the breach. It is indicated that the use has become lawful due to the Council's lack of follow up action.
11. Section 191(2) of the 1990 Act as amended states that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. Time limits for enforcement action are provided in section 171B as follows - (2) where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
12. There is no definition of "dwellinghouse" in the Act, but the Courts² have ruled that the distinctive characteristic of a dwellinghouse is its ability to afford to those that used it the facilities required for day-to-day private domestic existence. In this case, each unit in the building satisfies that test and hence, the four year rule applies to each of the flats.

² *Gravesham BC v SSE and O'Brien* [1983] JPL 306.

13. The appellant has provided evidence which seeks to show that a material change of use of the building to two self-contained flats occurred on or before 6 March 2014 and has continued after the date of change without significant interruption. This includes tenancy agreements, a statutory declaration and Council Tax information.
14. Nonetheless, section 181(1) of the 1990 Act provides that compliance with any of the requirements contained in an enforcement notice shall not discharge the notice. Section 181(2) further provides, without prejudice to the generality of s181(1), that the resumption of a use which has been discontinued in compliance with an enforcement notice shall be a contravention of the notice. Therefore, the requirements of a notice are not discharged as of the deadline for compliance but have enduring effect. Moreover, the Courts have ruled that if the notice is complied with but the development is subsequently resumed, then there is a contravention of the notice³. Whether or not the enforcement action remains appropriate is not relevant.
15. The legislation is clear in respect of the appellant's claim. The use for which an LDC is sought constitutes a contravention of the requirements of the enforcement notice which remains in force. Lack of monitoring by the Council does not alter this. Therefore, under s191(2)(b) the development cannot be lawful.
16. The appellant argues that the notice is unenforceable, but there is very limited evidence to support this claim. In any event, there was no appeal against the notice, as far as I aware, when such matters could have been considered. The enforcement notice endures and has a continuing effect.
17. In view of the above, it is not necessary for me to consider whether the appellant has shown that the time for enforcement action has expired.
18. I acknowledge the thorough submissions on behalf of the appellant. However, the appellant has not shown on the balance of probability that the use of the premises as two self-contained flats was lawful at the date of the application.

Conclusion

19. 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 two self-contained flats 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

³ *Klein v Whitstable UDC* [1958] 10 P&CR 60.