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: 8 October 2019

Appeal Ref: APP/C5690/X/18/3214738
Flat 1, The Old Post Office, 61 Devonshire Road, London SE23 3EW[1]

- 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 Jonathan Chattey of J & K Group against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/18/107101, dated 10 May 2018, was refused by notice dated 21 September 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 residential unit - Class C3 dwellinghouses[2].

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by J & K Group against the Council of the London Borough of Lewisham. This application is the subject of a separate Decision.

Preliminary Matters

3. 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.

4. 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.

[1] I have used the address as given on the appeal form, noting that this differs slightly from the application form.
[2] This refers to Class C3 of The Town and Country Planning (Use Classes) Order 1987, as amended.

Main Issue

5. I consider that 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 a material change of use of the unit to a self-contained flat occurred on or before 10 May 2014 and has continued after the date of change without significant interruption.

Background

7. The appeal property comprises one unit within a relatively large three-storey (including basement) building that was formerly used as a postal sorting office. Planning permission was granted on 2 April 2010 for the redevelopment of the site to provide for a mixed use comprising residential and business units. The permission included the conversion of the former postal sorting office building to five self-contained flats, three artist studios and a photographic studio. However, the building has been laid out as seven flats. The appeal relates to a three-bedroom flat, known as Flat 1.

8. I understand that the Council has issued LDCs for Flats 2 and 5, while Flats 3 and 4 are the subject of separate appeals. I am not aware of any enforcement action taken in respect of Flat 1.

Reasons

9. The Council refused to issue an LDC for Flat 1 on the basis that the appellant had failed to provide sufficient evidence to show the flat had been occupied for a continuous period of four years. It is argued that Council Tax had not been paid for 2017 or 2018, and for only part of 2016. No utilities bills had been provided to demonstrate occupancy.

10. The appellant maintains that the residential use of Flat 1 commenced on 26 April 2014. Assured Shorthold Tenancy Agreements (ASTs) and an associated supplementary agreement have been provided covering the period 26/04/2014 to 04/03/2019. A Council Tax valuation letter confirms registration of the property from 27 March 2014.

11. In addition, a Statutory Declaration[3], pursuant to the provisions of the Statutory Declarations Act 1835, has been submitted by the Director of Ailbe Properties Limited. This states that Flats 1 to 5 were available and occupied continuously for residential purposes from April 2014. It is acknowledged that there have been some limited void periods, amounting to a few days, between tenancies for repairs and redecoration.

12. A further Statutory Declaration[4] by a representative of Leaders Estate Agents confirms that Flats 1 to 5 have been let and occupied as individual residential properties from April 2014. In relation to Council Tax, the appellant explains that this was an oversight on behalf of the tenant, which has since been rectified[5].

[3] Dated 10 October 2018.
[4] Dated 10 October 2018.
[5] Letter dated 10 October 2018 from A Venus.

13. The Council accepts that additional, relevant information has been submitted as part of the appeal. However, it is pointed out that the letter from A Venus is not a Statutory Declaration and there is no supporting information from the Council Tax office or evidence of payment. I am invited to make a judgement on whether this information is sufficient.

14. While the Council has queried some of the additional evidence submitted, it has not provided any evidence of its own to contradict or otherwise make the appellant's version of events less than probable. In this case, the Statutory Declarations carry due weight which, alongside the other evidence submitted, is sufficiently precise and unambiguous. Therefore, I am satisfied that the appellant has shown on the balance of probability, that a material change of use of the unit to a self-contained flat occurred on or before 10 May 2014, and the use has continued after the date of change without significant interruption for a period of four years.

Conclusion

15. 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 a self-contained residential unit was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Debbie Moore

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 10 May 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The appellant has shown on the balance of probability, that a material change of use of the unit to a self-contained flat occurred on or before 10 May 2014 and has continued after the date of change without significant interruption for a period of four years.

Signed

Debbie Moore
Inspector

Date 8 October 2019
Reference: APP/C5690/X/18/3214738

First Schedule

Self-contained residential unit - Class C3 dwellinghouses

Second Schedule

Land at Flat 1, The Old Post Office, 61 Devonshire Road, London SE23 3EW

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 October 2019

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Land at:

Flat 1, The Old Post Office, 61 Devonshire Road, London SE23 3EW

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Scale: NTS