
Appeal Decision

Site visit made on 8 October 2019

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Housing Communities and Local Government

Decision date: 17 October 2019

Appeal Ref: APP/Y5420/X/18/3210065

15 Bromley Road, London N17 0AR

- 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 Mrs A Fernandez against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2018/1896 dated 21 May 2018 was refused by notice dated 14 August 2018
 - 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 retention of existing 2 No residential flats.
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Decision

1. The appeal is dismissed. See formal decision below.

Matter of clarification

2. The site visit was timed for 12.30 and Council did not turn up at the appointed time. I therefore carried out an 'Access Required Site Visit' (ARSV) and was able to inspect both 'flats' at the property. These were occupied and the tenants gave me access. As I was leaving the site for my next appointment a Case Officer at the Planning Inspectorate informed me that the Council Officer had been severely delayed en route. Due to the other appointment I was unable to await the Council Officer's arrival and left the property at about 12.55. However, I saw all that I needed to see and I am satisfied that, in carrying out the ARSV, no injustice has been caused.

Background information

3. The two-storey appeal building is located close to the Bromley Road cul-de-sac and there is a large paved area to the frontage. The property is clearly being used as two separate flats, with one on the ground floor and one on the first floor. There is a rear garden which is seemingly shared by the tenants of the two flats.

4. The entrance to the ground floor flat was from the side, western elevation. It comprised a large kitchen/living area with three bedrooms and two bathrooms. The upper flat was accessed from the front northern elevation and the door opened onto a straight flight staircase leading to the first floor. This first floor flat comprised a living/kitchen area, two bedrooms and a bathroom.

5. There were two gas meters sited at the front of the property. One was a standard wall-mounted white cabinet type and the other an older floor mounted timber box unit. Both flats had separate doorbells and the conversion works to form the two flats appeared to have been carried out professionally.

6. It was also evident that the conversion works had been carried out some time ago. This was clear from the materials and construction of the partitions, ceilings and fixtures within the flats. The staircase up to the first floor was also of some age. Overall the works carried out to convert the property were perceived as having been in place for some time.

7. In 2012 an application (HGY 2012/0959) for use of the property as two flats was refused. In 2017 a prior approval application (HGY 2017/3397) was submitted for a single storey rear extension. This was approved on 8 January 2018. Other applications for extensions and an access had been submitted in 2008 but these were either not required in the first instance or were withdrawn.

The LDC application

8. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA's) reason for refusal and then deciding whether the reasons are well founded. The planning merits of the case do not fall to be considered. The onus is on the appellant to precisely and unambiguously show that the use applied for (in this case two separate flats) was lawful for planning purposes on the date of the LDC application. The relevant test, relating to submitted evidence, is '*the balance of probability*'.

9. The question to be asked in this LDC appeal is whether or not the Appellant has shown, '*on the balance of probability*', that the proposed use of No 15 Bromley Road has been as two separate flats for a continuous period of 4 years dating back from the LDC application which was made on 21 May 2018. The use as two flats must be shown to have commenced, therefore, on or before 21 May 2014 and must have continued without a break for the relevant 4 year period.

The gist of the case for the appellant

10. The appellant's case is based on two statutory declarations. These are made by Maria Gonclaves who resides at No 34 Bromley Road and Juan Gonclaves of the same address. These both state that the property at No 15 has been in use as two self-contained flats for over 10 years.

11. There is no further evidence provided other than a short statement indicating, amongst other things, that the proposal provides '*a mixed tenure to an area saturated with dwelling houses and release the potential of the land to supply affordable housing*'. The statement goes on to indicate that sufficient evidence has been provided to prove that the use was established beyond 4 years ago; that the design provides generous living space; addresses concerns on sustainable design and construction and offers substantial off-street parking. It is contended that the use complies with national planning policies as well as with relevant policies of the London Plan 2011.

12. I have noted all of the above points but, as indicated above, the merits of the use cannot be considered. I am not empowered to consider whether planning permission should be granted for the use of the property as two flats. I can only consider whether or not it has been conclusively shown that the use as two flats was lawful for planning purposes on 21 May 2017 and whether or not the Council's decision to refuse the LDC application was sound.

The gist of the case for the Council

13. In support of their refusal the Council refers to the case of '*Gabbittas v SSE & Newham LBC (1985)*'. This indicates that an applicant's evidence for a LDC application need not be corroborated by 'independent' evidence in order to be accepted. However

it also refers to the Council having evidence of its own to refute an applicant's case and that an applicant's evidence must be precise and unambiguous.

14. The Council's evidence which questions the appellant's stance includes reference to a prior approval application for a rear extension (HGY2017/3397). This was dated 27 November 2017 and was approved in January 2018. In that application no mention had been made of the two flats and it had been dealt with on the basis that the use of the property at that time had been as a single dwelling house.

15. The Council also refers to the Electoral Register. In 2014/15 this only referred to a single occupant, Juan Vilarino and it was not until the 2015/2016 and the 2016/2017 registers that two others were added to the list. During these periods the Council's Council Tax records also indicate that the property was taxed as a single dwelling house. Building Control records for the property in 2009, 2010 and as late as 2017 all show the property being recorded as a single dwelling house and not as two separate flats. These records include the works carried out following the approval in 2017.

Assessment

16. The Statutory Declarations indicate that those making the declarations '*conscientiously believe*' that the property has been in use as two flats for over ten years. I accept that the those making the declarations do consider that No 15 has been used and occupied as two flats. However, that is not the same as precisely and unambiguously indicating, on the balance of probability, that the property has been continuously used as two flats between 21 May 2014 until the date of the LDC application on 21 May 2018. The onus is on the appellant to provide evidence that this is the case.

17. Having read all of the submissions I do not consider that the appellant has submitted sufficient evidence to indicate that the LPA was precluded from taking enforcement action. The Statutory Declarations in themselves do not, in my view, indicate that the property has continuously been in use as two flats for the whole of the required 4 year period. I have already indicated that I am not empowered to consider whether planning permission should be granted and the only evidence, other than the two declarations, relates to the merits of the case.

18. There is no evidence from the appellant to indicate that the 'two flat use' has been continuous for 4 years prior to the issue of the notice, let alone 10 years. One would normally expect evidence in the form of Tenancy Agreements; utility bills; rental payments and separate Council Tax accounts for each flat. None of these have been provided and, on the latter point, the evidence shows that for CT purposes the property has been taxed as a single dwelling house.

19. On the other hand, the Council has submitted evidence to indicate that, in relation to various planning applications relating to the property, it had not been declared that the property was being used as two flats; that it was treated as a single dwelling house in the 2017 prior approval application (for the rear extension) and that Building Regulation applications from 2008 (including the one in 2017) all record the property as being a single dwelling house. A prior approval application would not have been possible if the ground floor had comprised a separate flat at that time. In addition the Electoral Register only relates to one individual, as opposed to multiple occupants for the year 2014/2015.

20. The Council's evidence leads me to the view that there is considerable doubt that No 15 had been continuously in use as two separate flats for the required 4 year period. It may well have been occupied at various times over the last 10 years as two units, as opposed to it being in use as a single dwelling house. However, that is not

the same as being occupied as separate self-contained flats. I consider that on the basis of the evidence provided at this stage it has not been shown, on the balance of probability, that the property has been in use as two separate flats for the required 4 year period.

21. It follows that I find the Council's decision to refuse to grant a LDC was sound and that the appeal must fail. However, the appellant would not be precluded from submitting a further LDC application if additional and more conclusive evidence is available. The appellant is also not precluded from submitting a further planning application if it is considered that the two units comply with relevant local and national planning policies. The circumstances have changed since the 2012 application was refused and from my own inspections it would appear that the space standards set out in the London Plan and local policies could be met, especially as the ground floor was extended in 2017. However, any future applications are matters for the appellant in the first instance and the Council.

Other Matters

22. In reaching my conclusion I have taken into account all of the other submissions relating to this appeal. These include the planning history of the property; the initial appeal submissions; the appeal statement and the declarations; the Council's delegated report and the various plan documents submitted. However, none of these carries sufficient weight to alter my conclusions and nor is any other matter of such significance so as to change my view that the Council's decision not to approve the LDC application was sound.

Formal Decision

23. The appeal is dismissed and a Lawful Development Certificate for the use of '*existing 2 No residential flats*' at 15 Bromley Road, London N17 0AR cannot be issued on the basis of the application made on 21 May 2018.

Anthony J Wharton

Inspector