The Planning Inspectorate

# Appeal Decision

Site visit made on 27 January 2020

**by B M Campbell BA(Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 3rd February 2020**

**Appeal Ref: APP/L5240/X/19/3225357**
**Rear garden flat at 76 Green Lane, Thornton Heath CR7 8BE**

- 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 Mr Bobby Sandhu against the decision of the Council of the London Borough of Croydon.
- The application Ref 18/00369/LE, dated 23 January 2018, was refused by notice dated 3 April 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 as a self-contained flat (Use Class C3).

## Decision

1. The appeal is dismissed.

## Reasons

2. The Council's decision notice appears confused in that it says it refuses to certify that "the operations described in the First Schedule" were lawful and yet the reason for refusal refers to "use". In addition, the description on the notice of the development for which a certificate is sought is described as "retention of outbuilding as self-contained dwelling". Neither the "retention" of a building nor the "continuation" of a use involves development requiring planning permission. Rather it is the erection of a building or the making of a material change of use that amounts to development requiring planning permission.

3. In this case, the application form is clear that what is being applied for is a LDC for the existing use. Notwithstanding the confusion in the Council's decision notice, that is what has been addressed in the Council's appeal statement.

4. Section 191(2) of the Act says a use is lawful at any time if (a) no enforcement action may then be taken in respect of it and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force. The Council's questionnaire confirms that there was no enforcement notice in force at the date of the application so s191(2)(b) is satisfied.

5. With regard to s191(2)(a), s171B(2) of the Act says that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. For s191(2)(a) to be satisfied, therefore, the use of the outbuilding as a

self-contained dwelling would have had to have continued for a period of four years from commencement with no material change thereafter. Section 191(4) of the Act indicates that the time to establish lawfulness is at the time of the application. To succeed in this appeal, therefore, the latest date that the use could have started would be four years before the date of the application – that is 23 January 2014.

6. The application form, at section 10, says the use began on 20 December 2017. That is not four years before the date of the application. Submitted with the application was a letter from the Council to Mr Nikola Yordanov Arnaudov recording a request to split the rear garden flat from the main house for Council Tax purposes. But as that was dated 16 January 2017, it only indicates a separate dwelling for just over a year before the date of the application. The accompanying Council Tax bill addressed to Mr Aleks Arnaudov has a similar commencement date for charges of 12 January 2017. The Council Tax information provided points to the use commencing in January 2017, again less than four years before the date of the application.

7. A one page extract from a tenancy agreement for the rear garden flat has been submitted. However, this appears not to have been witnessed as would normally be expected. Furthermore, it is only for a six-month period commencing on 13 September 2014. Whilst it might be that the named tenant Mr Aleks Arnaudov remained in the property from that date until the Council Tax bill was issued to him on 7 July 2017, there is nothing whatsoever to indicate that he did so. Furthermore, even if additional evidence had been presented to demonstrate continuous use throughout that period, such that the Council could have taken action at any time, it would not demonstrate four years use before the date of the application but rather some three years and four months.

8. In appeals against a refusal to issue a LDC the onus is on the appellant to make out his case. The Appellant in this case has failed to do so. On what is before me, there is insufficient clear and unambiguous evidence to be able to conclude on the balance of probability that the use commenced and continued for a period of four years prior to the date of the application.

9. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the rear garden flat at 76 Green Lane, Thornton Heath as a self-contained dwelling was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*B M Campbell*

Inspector