The Planning Inspectorate

Appeal Decision

Site visit made on 22 January 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2020

Appeal Ref: APP/C5690/X/19/3221298
132 New Cross Road, London SE14 5BA

- 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 Ms C Rook against the decision of the Council of the London Borough of Lewisham.
- The application Ref DC/18/106852, dated 28 September 2017, was refused by notice dated 20 November 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 use of the basement, first and second floors as 3 x self-contained flats (C3).

Decision

1. The appeal is dismissed.

Reasons

2. The use is lawful if no enforcement action can be taken in respect of it and provided it does not contravene the requirements of any enforcement notice then in force (s191(2)). I have not been told that there was any extant enforcement notice relating to the property at the time of this application. Accordingly it is necessary to consider whether, on the balance of probability, the use of the building for three flats has continued for a period of four years or more prior to the date of the application, therefore from or before 28 September 2013, so as to be immune from enforcement.

3. The onus is on the appellant to demonstrate that, on the balance of probability, the use has continued, without any material break in occupation, for the aforementioned four-year period.

4. The property comprises a three-storey terraced building, as well as a basement. The ground floor of the premises, which comprises an office, is excluded from the application. The appellant has provided various evidence in support of the application for each of the residential units, which is accordingly considered below.

The basement flat

5. The information provided includes Council tax bills dating from 2011 and 2012; tenancy agreements, dated October 2012 and May 2016, each spanning 12-

month periods, and a communication between a tenant and the Council, dated 14 May 2015 regarding housing benefits. The information provided would tend to indicate that the basement was converted to provide a flat several years ago. There is, however, an absence of information relating to the use of the basement in 2014 and throughout significant parts of 2015 and 2016. Accordingly, when considering the earliest records submitted in relation to this unit, the documents provided, even if taken to indicate that the basement has been occupied, fail to demonstrate that it has continued to be used, without any material interruption to its occupation, over the relevant four-year immunity period.

The first floor and second floor flats

6. The information provided includes Council tax bills and tenancy agreements. The appellant confirmed in a response to a Planning Contravention Notice (PCN), issued by the Council, that work to create the upper floor flats commenced in 2010. However, there is an absence of information in relation to both flats, over the period between the end of the tenancy agreement for the second floor flat in May 2013 and the Council tax bill 2014 /2015 and also in the period between the housing benefit claim information in May 2016 and the Council tax bill in March 2017 pertaining to the first floor flat.

7. In addition the Council has made the point that some of the documentation provided appears to classify the first and second floors of the property as a single unit. For example, a letter provided by the Valuation Office (March 2011), refers to a new entry being made in their records to reflect the first and second floors comprising a maisonette. Furthermore, Council tax related documents in the period 2012 – 2016 also make reference to the first and second floors as a single property. Besides this, a tenancy agreement for the second floor flat, dated November 2012, appears to be at odds with the Council tax documentation classifying both properties as empty between August 2012 and January 2013.

8. Despite the submission of tenancy agreements dated 2010, 2012 and from 2017, differentiating the second floor flat; layout drawings provided showing separate units; and housing benefit claim information (October 2014 – May 2016), which refers to a tenant of the first floor flat separately, overall the information, nevertheless, presents an ambiguous picture in terms of whether the use of the first and second floors as separate, self-contained flats has been consistent.

9. Within the aforementioned PCN response, the statement is made that until May 2018 the kitchen serving the second floor flat remained on the first floor. On this basis, and given that it would appear from the drawings provided[1] that the first floor kitchen could only have been reached from the main part of the second floor flat via a communal area, I am not persuaded that the second floor flat could be said to be self-contained, and therefore a separate planning unit, until this time. However, even if I am wrong on this specific point, it does not overcome the above findings with regard to gaps in document records and therefore potential gaps in the continuity of use and with regard to whether two separate flats have existed consistently.

[1] Drawing 17116-X-101 Rev C

10. Drawing the above considerations together, even if the submitted documents were to be accepted as indicating that the units have been occupied, I am unable to conclude, on the balance of probability, that both flats have been occupied and therefore in continuous use, and as self-contained units over the required 4-year immunity period.

General

11. It is apparent that the Revenues division of the Council provided a letter to the appellant, dated 11 December 2018, acknowledging that the property is sub-divided into three flats and that those flats have been tenanted during a five-year period (therefore going back to 26 November 2013). The statement, however, is somewhat vague and does not confirm that the flats have been tenanted, or indeed occupied, continuously over that period. In any event, even if this was the case, which is uncertain from the information before me, the period referred to would not incorporate all of the information gaps, identified above, in relation to the first and second floor units.

Conclusion

12. I am mindful that planning practice guidance states *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."* Despite the Council not providing any different, detailed information to contradict the appellant's own evidence, for the above reasons I am not persuaded that the appellant's evidence is sufficiently precise and unambiguous.

13. Therefore for the reasons given above, and having considered all of the documentation provided by the appellant, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the basement, first and second floors as 3 x self-contained flats (C3) at 132 New Cross Road, London SE14 5BA was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Roy Merrett

INSPECTOR