The Planning Inspectorate

Appeal Decision

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 12 February 2020

Appeal Ref: APP/T5150/X/18/3216947
16 Greenhill Road, London NW10 8UE

- 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 Richard Hennessy against the decision of the Council of the London Borough of Brent.
- The application Ref 18/3403, dated 30 August 2018, was refused by notice dated 12 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 4 self-contained flats.

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.

Main Issue

2. Where, as here, a residential property has been converted without planning permission into a number of self-contained flats, a local planning authority has a period of four years from when the breach of planning control first took place to take enforcement action. The main issue therefore is whether the development for which the LDC is sought first occurred not later than 30 August 2014 (the material date) and continued substantially uninterrupted thereafter.

Reasons

The evidence

The appellant

3. The appellant supplied a comprehensive set of evidence at application stage. This comprised several documents applicable to all the flats and a series of documents relating to each flat. At appeal stage a detailed response to the Council's delegated report on the application was also included.

4. The owner of the property is Desmond Bishop. He has provided a solemnly and sincerely declared statutory declaration under the provisions of the Statutory Declarations Act of 1835[1]. It was declared before and witnessed by a solicitor and commissioner for oaths.

[1] In fact, the date given is 1853 but, on the balance of probabilities, I have taken this to be a typographic error.

5. It confirms that he bought the property in 2002 and used it as the family home. In 2008 he moved out and the property was converted, without planning permission or building regulation approval, into the four flats that are there today. These comprise a two-bed flat on the ground floor (flat A), a one-bed flat on the first floor (flat B), a three-bed flat on the upper first floor (flat C) and a one-bed flat in the loft (flat D). The flats have been used continuously and without interruption as self-contained dwellings since 2008. They have each been separately rated for Council Tax since 2009 and flats B, C and D have been let on Assured Shorthold Tenancies (AST). Flat A has been occupied by his estranged wife as a licensee, rent free.

6. There is a considerable body of evidence to corroborate this sworn statement. In respect of the property as a whole this includes:

   (a) A properly sworn statutory declaration by Peter McAndrew confirming that the property was laid out as stated in early 2009. Mr McAndrew owns several properties in the road including No 14. The loft conversion carried out required a Party Wall Agreement.

   (b) A Completion Notice issued by the Council in respect of the second floor flat C dated 11 March 2009. It confirms that the work can reasonably be expected to be complete within three months. It is addressed to Mr Bishop at '2nd Floor, Flat C' at the appeal property.

   (c) A properly sworn statutory declaration by Mr Steven John confirming his continuous residence at flat D since May 2013 and the continuous occupation of the other three flats since that date.

   (d) An email from a Council Revenues Officer in the Council Tax department confirming that the four flats have been registered on the system for Council Tax from 2009/2010.

   (e) An email from the Council's Revenues and IT Client Manager confirming that Council Tax has been due and payable since 5 January 2009 for flats A (Band B), B (Band C) and C (Band C) and since 15 August 2010 for flat D (Band B). The email further explains that details of the occupiers, charges and payments made cannot be released but it is suggested that 'planning' contact the Client Manager direct if they require any further information.

   (f) A separate, but later, email reply from the Council's Council Tax billing and recovery officer to the same request explained that 'the new GDPR data rules' prevented the Council divulging the requested information.

7. In respect of **flat A** it comprises:

   (g) The explanation of occupation given by Mr Bishop at paragraph 5 above.

   (h) A properly sworn statutory declaration by Mrs Bishop confirming her residence in flat A since January 2009.

   (i) A letter to Mr Andri Bishop dated 20 April 2015 from Thames Water in respect of the ground floor flat. It explains that, on examination of their records, it has been discovered that billing for water and waste water services has not taken place. As there is a legal entitlement to backdate charges for a period of two years an account was opened from 1 April 2014 and a bill to 31 March 2016 set out.

   (j) An email from the Council's Council Tax Officer to Mrs Bishop dated 1 May 2018 confirming that Mrs Bishop has been registered for Council

Tax purposes at 16a Greenhill Road from 21 June 2011. A Council Tax bill for 2011 to 2012 gives the address as 'Flat GRD FLR, 16A Greenhill Road'. It is addressed to Mr Bishop at a different address.

8. In respect of **flat B**, three lease agreements (short-term leasing) have been provided. Each is between Mr Bishop and a different letting company. The first (11 October 2012-3-year term) is with Smart Renting Ltd, the second (11 October 2015-3-year term) is with Vesture Ltd while the third (3 June 2017-2-year term) is with County Private Client Ltd. Letters from Smart Renting and Vesture confirm that both have managed the first floor flat giving the date it was returned to the landlord. A backdated bill from Thames Water like that at (i) above relates to this flat.

9. Turning to **flat C** three ASTs have been provided covering the period 26 October 2012 to 26 October 2015. In each case, the tenant is Cleriston Aquiles Labaldi. Thereafter, a Company Let agreement in accordance with the Law of Property Act 1925 was entered into between Mr Bishop and Glocal Property Management Ltd. This is for the 3-year period 27 October 2015 to 26 October 2018.

10. Finally, there is a 1-year AST between Mr Bishop and Mr Steven John dated 2 May 2013 in respect of **flat D**. This is supported by the statutory declaration of Mr John (see (c) above) and a statutory declaration by Simon Field on behalf of Harlesden Heights Estate Agents. Also provided is a Benefit Decision Notice from the Council dated 10 March 2014 confirming a weekly benefit award for Mr John at 16D Greenhill Road. This is shown on the lettings invoices issued to Mr John. These show the address as 'second floor studio flat 16 Greenhill Road', Mr John as the tenant and Mr Bishop as the landlord. The amount payable to 'Harlesden Heights' is set out. A letter from Harlesden Heights dated 6 October 2017 confirms that Mr John has been resident in the second floor flat from 2 May 2013 to the 'present time'. The lettings invoices cover the period 2 July 2013 to 2 June 2018. Finally, there is a letter similar to that at (i) above addressed to Mr Bishop in respect of the loft flat at 16D Greenhill Road.

The Council

11. The Council's case is set out in the relatively brief delegated report. There is no dispute that the property is arranged in four self-contained flats. The Council does not regard tenancy agreements and lettings invoices as proof of occupation for a continuous period. It nevertheless accepts that the ASTs and tenancy agreements do cover a period of more than four years for flats B and C and acknowledges that the lettings invoices for flat D also cover a period longer than four years. However, no such evidence has been provided for flat A.

12. The Council does not consider that the statutory declarations corroborate the other information provided. It draws attention to what it believes are inconsistencies in the evidence for flat A. While the statutory declaration of Mr Bishop refers to Mrs Bishop as being the resident, the letter from Thames Water is to Mr Andri Bishop and emails from the Council about Council Tax are addressed to different named individuals. No other information, such as utility bills, has been submitted by or in respect of the named resident of flat A to show continuous occupation.

Appraisal

13. The Planning Practice Guidance confirms that in the case of applications for existing use or development, 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. That guidance is based on established case law.

14. There are significant consequences for someone solemnly and sincerely declaring under the 1835 Act something to be true knowing that it is not. Properly sworn statutory declarations therefore carry substantial weight in appeals such as this unless there is good reason to doubt what has been declared. Where there is none, other evidence to corroborate what is declared is helpful, but not essential.

15. In this case, the Council has no evidence of its own to contradict that of the appellant. To the extent that the report is clear, the Council does not appear to dispute that the evidence provided for flats B, C and D is sufficient to show the continuous use required for the lawfulness of those units to be established. The focus of the Council's concern, and thus with the application as a whole given the way the existing use is described, is flat A. I consider the evidence for flat A now.

16. There is no inconsistency between the statutory declarations of Mr and Mrs Bishop. He explains how their family home came to be converted into flats in 2008. In respect of the date, this account is also confirmed by the statutory declaration of Mr McAndrew who has a credible explanation for knowing this information to be correct.

17. Mr Bishop also explains how his by then estranged wife came to occupy the ground floor flat created from 2009. He confirms that she lives there rent free which would account for no record of rent payments. Her statutory declaration confirms residence.

18. The main focus of the Council's concern regarding continuous occupation of flat A seems to be to whom various organisations have addressed correspondence.

19. The Council itself has confirmed in May 2018 that Mrs Bishop has been registered at 16a Greenhill Road for the purposes of Council Tax since 21 June 2011. That is consistent with other information provided by the Council about Council Tax registrations (see (e) above). That 16a is the ground floor flat A is also strongly suggested by the Council's Council Tax bill (see (j) above). The fact that it is addressed to Mr Bishop at another address in Hayes seems to me entirely consistent with his account that he and Mrs Bishop were at different addresses by this time and that she was residing at the appeal property rent free. His Hayes address also appears on other documents produced where the agreement is between him and another party rather than between one of his agents and the other party.

20. The Council's best point by way of contradictory interpretation of the evidence, as opposed to contradictory evidence itself, seems to be that Thames Water addressed its letter to Mr Andri Bishop (see (i) above) rather than Mr Bishop's

wife, Mrs Andris Bishop (emphasis added). It seems to me far more likely than not that Thames Water has simply made a typographic error.

21. Taking the statutory declarations of both Mr and Mrs Bishop together with the Council's own Council Tax documents and emails I conclude on the balance of probabilities that at the application date flat A has been continuously occupied by Mrs Bishop since at least June 2011 and, in all likelihood, since 2009. Either is considerably before the material date and, certainly, amounts to more than four years by the application date.

22. I turn now briefly to the other three flats.

23. Mr Bishop has let flat B through different management companies. It is not clear from the various agreements who is responsible for utility bills since the residents are, in effect, sub tenants of Mr Bishop. The letters provided by the named companies (paragraph 8 above) are not in the form of statutory declarations and therefore carry less weight than if they were. Furthermore, while the Council has confirmed that the flat has been registered as such for Council Tax (see (e) above), the names of those registered have not been provided. However, why that is has been explained (see (e) and (f) above). The Council has provided no evidence of any enquiries made of the Council Tax team before determining the application.

24. There is therefore little evidence to corroborate that provided by the various statutory declarations. However, in the absence of contradictory evidence, that is not determinative. Moreover, for the required period of continuous occupation not to be established, it would have to be assumed that over the period since October 2012 three management companies who themselves were the head tenant paying monthly rent to Mr Bishop tolerated significant gaps in occupation and thus loss of revenue. In my judgement that is simply not likely.

25. I therefore conclude on the balance of probability that flat B has been continuously occupied since at least October 2012, well before the material date.

26. From the three ASTs for flat C, where Mr Bishop has entered into a direct agreement with the tenant, it is the tenant who is responsible for all utility bills, water rates and Council Tax. The tenant named in each AST may well be registered for Council Tax by the Council for those periods. However, that is not information that the Council can, by regulation, make available to the appellant. There is, in fact, no evidence in the form of bills, payments or other documents addressed to a named tenant of flat C to corroborate the statutory declarations of Mr Bishop and Mr John that the flat has been continuously occupied since at least May 2013; that is a weakness for this flat. However, the Council has no evidence to contradict the clear and unambiguous sworn statements referred to and I therefore conclude on the balance of probability that flat C has been continuously occupied since at least May 2013 and thus since before the material date.

27. Finally, the statutory declarations of Mr Bishop, Mr John and Mr Field together with the other evidence set out in paragraph 10 above lead me, in the absence of any contradictory evidence from the Council, to conclude on the balance of probability that flat D has been continuously occupied by Mr John since at least May 2013 and thus before the material date.

Conclusion

28. There is strong evidence that the property was converted into four flats in 2008/09. It has been registered as such by the Council for Council Tax purposes and tax has been payable for all four flats since at least 2010. The evidence for continuous occupation of each flat is provided mainly by the various statutory declarations referred to. Corroborating evidence is strongest for flat D and weakest for flat C in my view. Had the officers made enquiries of colleagues in the relevant teams or made known the outcomes of those enquiries if made, greater clarity may have been provided. However, as it stands, the Council has no evidence of its own to contradict that of the appellant. Having regard to the relevant case law, I therefore conclude on the balance of probability that each flat had been occupied for a substantially uninterrupted period of at least four years at the date of the application. The appeal therefore succeeds.

29. 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 4 self-contained flats 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.

Brian Cook

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 30 August 2018 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black 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:

Each flat and therefore the property as a whole had been occupied for a substantially uninterrupted period of at least four years by the 30 August 2018. The period during which the Council could have taken enforcement action as set out in s171B of the Act had therefore ended.

Signed

Brian Cook

Inspector

Date 12 February 2020

Reference: APP/T5150/X/18/3216947

First Schedule

4 self-contained flats.

Second Schedule

Land at 16 Greenhill Road, London NW10 8UE

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 February 2020

by Brian Cook BA (Hons) DipTP MRTPI

Land at: 16 Greenhill Road, London NW10 8UE

Reference: APP/T5150/X/18/3216947

Scale: not to scale