



Appeal Decision

Site visit made on 30 January 2020

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/19/3230271

393 North Circular Road, Stonebridge, London NW10 0HS

- 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 Claudiu Foamete against the decision of the Council of the London Borough of Brent.
 - The application Ref 19/0065, dated 8 January 2019, was refused by notice dated 5 March 2019.
 - 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 existing use of property as 7 self-contained units comprising 5x1 bed flats and 2x1 studio flats.
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Decision

1. The appeal is dismissed.

Preliminary Matter and Main Issue

2. The appeal property is a semi-detached dwelling with a two-storey side extension. The main dwelling now comprises five self-contained flats (nos. 1 to 5) of varying size. Flats 6 and 7 are found on the ground and first/loft floors respectively of the side extension and are considerably larger. Both the main dwelling and the side extension have separate external doors which give onto communal lobbies and stairways. I was not shown any means of internal access from the main dwelling to the side extension.
3. The Council carried out a full site inspection of the property on 22 February 2019. On the basis of what the officers saw, the Council concluded that flats 6 and 7 (in other words, the side extension) were arranged as two houses in multiple occupation. The Council therefore took the view that the accommodation was not arranged as described in the LDC application.
4. I cannot and do not comment on the Council's interpretation of the accommodation it found almost a year before my own site inspection. However, first, my interpretation of the accommodation that I observed is that it was arranged as seven self-contained flats as described. Second, even if the Council's interpretation was correct at the time, its visit (obviously) post-dated the application. An LDC application is seeking nothing more than a certificate of lawfulness at the date of the application. The situation at a later date is not determinative of that although it may be material to the credibility of the applicant's/appellant's evidence.

5. 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 8 January 2015 (the material date) and continued substantially uninterrupted thereafter.

Reasons

6. The evidence provided by the appellant is quite confusing. It appears that the purpose of the application is to contest the refusal of an earlier LDC application¹ for the same use which was refused by the Council. Neither party has provided the refusal certificate so I have no information about the date of the application, the date when it was refused or the reason(s) why.
7. I note that the Planning Inspectorate had to request from the Council a copy of the LDC application that is the subject of this appeal since the appellant failed to send it with the appeal documents. While the application form was provided, none of the supporting documents (if indeed there were any) appear to have been sent. What is clear however from the Council's delegated report is that the evidence that it took into account for each flat is somewhat different to that provided with the appeal statement.
8. The appellant has provided the following evidence at appeal stage for each flat. This is the evidence upon which I have determined the appeal. It is set out below with my observations upon it.
9. **Flat 1** is occupied by the appellant, Mr Claudiu Foamete. Provided with the appeal statement are water bills, Council Tax bills and numerous pages from bank statements. The first date is either April or August 2014 but all are addressed to the appellant at 393 North Circular Road. They do not relate to Flat 1 only and therefore say nothing about its occupation as a self-contained dwelling.
10. The summary sheet for **Flat 2** confirms the evidence as a letter from an estate agent; a tenancy agreement (Andrei Ciocan); a sole trader registration; a letter from HMRC and personal bank statements addressing Mr Ciocan. However, none of these documents have been provided and therefore no weight can be given to their contents.
11. Evidence for **Flat 3** includes a letter from FMJ Property Services (FMJ) confirming that this first floor flat (which it is) was rented through FMJ to Valeriu Botan from June 2014 until he moved out in December 2017 and an Assured Shorthold Tenancy Agreement (AST) showing him as the tenant for the period 13 June 2014 to 12 June 2015. The landlord is shown as the appellant with Flat 1 as his address and a monthly rent of £650 inclusive. At clause 1.2 it is confirmed that outgoings such as Council Tax, water, electricity and gas are included in the rent. A further AST for Nicolae Ciorascu has been submitted. Again, FMJ was the agent and the term was 6 December 2017 to 5 December 2018. An image of his driving license and bank statements for both him and Mr Botan have been provided.
12. The ASTs cover a period of four years from June 2014 which is before the material date. There is however no corroborating evidence. The letter from

¹ 18/3106

FMJ relates only to the tenancy of Mr Botan; there is no equivalent for Mr Ciorascu. I believe the driving license and bank statements have been provided to confirm the address at which both live. This is given as 393 North Circular Road but not the flat number. Of equal interest is that neither show any form of direct debit or other regular payment of £650 around the due date each month for the rent. There are some cash withdrawals in the amount of £300 by Mr Botan around the 12th and 13th of each month during the early part of the tenancy but this is not the only time in the month that such amounts are withdrawn. There is therefore no positive evidence that rent payments have been made. However, the bank statements for Mr Botan are dated from June 2014, the date of his AST.

13. Similar evidence is provided for **Flat 4**. FMJ confirm Flat 4 as being on the second floor which is where that numbered flat was situated at the time of my site visit. ASTs are provided for Birnoschi Calin-Dobrin (1 August 2014 to 31 July 2015) and Claudiu Daniel Tochila (6 September 2015 to 5 September 2016). Letters from FMJ confirm that period for Birnoschi Calin-Dobrin and the start date for Claudiu Daniel Tochila although it goes on to note that FMJ '...believe he is still the tenant at this property' at July 2018, the date of the letter. Bank statements have been provided for the account of Claudiu Daniel Tochila only. The first date shown is 28 September 2015. They give 393 North Circular Road but not the flat number as the address and, as with Flat 3, there is no consistent pattern of outgoings from the account around the due date for the rent which could be clearly identified as a rent payment. There is also a gap between the two tenancies of one month.
14. The tenant in **Flat 5** for the whole of the period since August 2014 is Mr Florin Foamete. Provided is the now familiar FMJ letter confirming the start date of the rental as July 2014 and the belief that he is still the tenant in July 2018, the date of the letter. Also provided are electricity bills. These all relate to 'ground floor flat' at 393 North Circular Road when the Flat 5 that I was shown is on the first floor. From October 2017 the bills are addressed to Mr F Foamete and Miss Foamete. A series of Virgin Media bills are addressed to Mr F Foamete at 393 North Circular Road. This tenant shares the same last name as the appellant. No evidence either way has been given about any family relationship. FMJ say that Flat 5 is on the second floor whereas, as already noted, the Flat 5 I was shown was on the first floor. It was a studio flat.
15. For **Flat 6** there is an AST for Radu-Marinela Dochia and a letter from FMJ dated July 2018 confirming the start date of August 2014 and a leaving date of April 2015. An AST for Raluca Elena Ionita began on 1 May 2015 and the FMJ letter dated July 2018 confirms the belief that she is still the tenant. Bank statements have been provided for her only; these confirm 393 North Circular Road as the address, but not the flat number. The first date shown is 1 May 2015. As with others, there is no evidence of any payment of rent around the due date of 1st of the month. This Flat is on the ground floor of the side extension, as stated in the FMJ letter.
16. Finally, for **Flat 7** ASTs have been provided for Alina Ioana Pacurar (1 August 2014 to 31 July 2015) and Aliona Babii (13 October 2015 to 12 October 2016). That represents a gap between tenancies of some two months or so. The July 2018 FMJ letter confirms their belief that Aliona Babii is still the tenant at that date. Bank account details are provided only for Aliona Babii. They date from 13 October 2015 and confirm 393 North Circular Road, but not Flat 7, as the

address and once more, there is no evidence of any significant outgoing from the account around the date when the rent is due to be paid. Flat 7 is across the first and loft floors of the side extension. The FMJ statement that it is on the first floor is consistent with that.

17. To summarise the appellant's evidence, all the ASTs are signed and dated. Flats 2 and 5 provide very small 'studio' accommodation for which the rent is £450 for Flat 5 (no evidence has been provided for Flat 2). The rent for the other five is £650. I regard the two short gaps in the occupancy of Flats 4 and 7 as too short to amount to a material break in the continuous use of the individual flat.
18. The purpose of the various bills and bank statements is to confirm the address of the persons to whom they relate. In all bar one case, this is the address of the property itself, not an individual flat within it. It does seem odd to me that where bank statements have been provided, accounts which appear to be the one into which monthly salaries (where appropriate) are paid, show no evidence of any obvious cash withdrawals, direct debits or other transfers that could amount to rent payments.
19. Of more importance is that the only bank statement where the first date shown is before the material date is that for Mr Botan in Flat 3. No other bank statements have been provided for tenants whose AST pre-dates the material date.
20. As letting agents, I would have expected FMJ to have a clearer understanding than is evident about the continuing occupation by a tenant residing under an AST FMJ is managing. I therefore give little weight to the common form letter from FMJ. I note too that there is no corroborating evidence from any of the current tenants in the form of sworn statements or statutory declarations.
21. Therefore, while the ASTs appear to suggest continuous occupation of each flat, there are some anomalies in the appellant's evidence.
22. Nevertheless, although in appeals of this nature the onus is on the appellant to show, on the balance of probabilities, that the development for which the LDC is sought began not later than the material date and continued substantially uninterrupted thereafter, if the Council has no evidence itself, nor any 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 and refuse to grant the LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.
23. In this case, the Council has very considerable evidence of that type provided by the appellant himself.
24. The Council reports on an LDC application²; the appellant does not refer to this. The development for which the LDC was sought was described as 'proposed erection of a single storey outbuilding in rear garden of dwellinghouse'. The application was refused on 21 April 2015. While this is after the material date, the application date has not been provided.
25. An appeal against this decision was dismissed on 2 February 2016.
Surprisingly, given its potential materiality to the determination of this appeal,

² 15/0762

the Council has not provided the appeal decision or reference. However, it does confirm that the Inspector carried out a site visit in December 2015. The Council records a footnote to the Inspector's decision as saying:

'According to the appellant's agent, the present occupants are the appellant (the owner), his wife and two children, the appellant's mother, the appellant's father-in-law and mother-in-law, and the appellant's brother, his wife and their two children.'

26. Both parties refer to another LDC application³ for the proposed erection of a single-storey outbuilding in the rear garden of the dwellinghouse. This therefore appears to be, in effect, a resubmission of the earlier LDC application described above. This time, the LDC was granted although the date of the application is not given. However, on the balance of probabilities, it would appear to me from the referencing convention of the Council and the decision date of 3 November 2015 to have been sometime in 2015 and therefore likely to have been after the material date. There was clearly some overlap between this submission and the determination of the appeal against the earlier LDC application refusal.
27. The explanation for the second application was that the dwelling was a single residential house occupied by the applicant's extended family; virtually the same circumstances as noted by the appeal Inspector. The outbuilding was required to provide space for the children and, as is often the case with such buildings, gym/exercise space for the adults.
28. Although the Council gives few details, it seems to me from those that are available that the LDC was granted as being development permitted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as amended. Such permitted development rights are available only for development meeting the requirements of the Class, the main one of which is that the development is within the curtilage of the dwellinghouse. For the purposes of the GPDO, a flat is not a dwellinghouse. If the property was arranged as it is now, that LDC should not have been granted.
29. On the evidence provided by the appellant to the Council in 2015 to secure an LDC for the desired outbuilding, the appeal property was a single dwellinghouse occupied by him and his extended family. His evidence then was that it was so arranged well after the material date. That evidence is seriously inconsistent with that put forward now to justify this LDC application for seven self-contained flats.
30. Clearly, both accounts cannot be right. Either the Council and the Inspector in the previous appeal were misled about the true nature of the accommodation in 2015 in order to secure the LDC for the outbuilding or some of the evidence put forward in this appeal, such as the early ASTs and the FMJ letters are not genuine.
31. Although the Council's evidence was available to the appellant when the appeal was made, there is simply no reference by the appellant to these clear and obvious inconsistencies and contradictions. On the balance of probabilities therefore I have no alternative but to conclude that the appellant's evidence is not sufficiently precise and unambiguous. The appeal must therefore fail.

³ 15/3908

Conclusion

32. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of existing use of property as 7 self-contained units comprising 5x1 bed flats and 2x1 studio flats 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.

Brian Cook

Inspector