



Appeal Decision

Site visit made on 9 March 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2020

Appeal Ref: APP/T5150/X/19/3221173

Ground Floor Flat, 75A Willesden Lane, Kilburn, London NW6 7RR

- 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 Wa Hock Lee against the decision of the Council of the London Borough of Brent.
 - The application Ref 18/3526, dated 4 September 2018, 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: Existing retention or [sic] rear ground floor space as residential use for use as a self contained unit.
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Decision

1. The appeal is dismissed.

Reasons

2. The appellant applied for a Lawful Development Certificate (LDC) to establish if the existing use or development has become 'lawful' through the passage of time. To succeed on this appeal, the appellant must prove on the balance of probability that the refusal of an LDC was not well founded. This will turn on:
(i) whether the use of the property changed to use as a self-contained residential unit on or before 4 September 2014¹; and if so (ii) whether that use then continued without significant interruption for at least 4 years thereafter; and if so (iii) whether, on 4 September 2018, the use constituted contravention of an enforcement notice then in force.
3. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
4. The appellant asserts that following completion of refurbishment work to the residential section of the building in October 2013, the rear of the ground floor has been used as a separate residential unit, initially for use by the appellant and subsequently let out on Assured Short Hold Tenancy from August 2014 to February 2018. The appellant has submitted various documentary evidence in support of this claim.

¹ This being the date 4 years prior to the date of the LDC application.

5. An enforcement notice, dated 14 July 2017, alleged without planning permission, the material change of use of the ground floor of the premises to two flats. The period for compliance is identified as 6 months after the notice takes effect, and requires Step 1: Cease the use of the ground floor of the premises to two flats; and Step 2 Remove all kitchens, bathrooms, items, equipment and materials associated with residential use from the premises.
6. The appellant's case is that between October 2013 and 4 September 2018 the rear of the ground floor has been used as a separate residential unit. However, the Council's Statement makes reference to a site visit conducted on 26 February 2017 which states that the actual flat in use at the rear has now ceased and the kitchens have been removed. However, it is likely that this is a typographical error since photographs provided by the Council, dated 26 February 2018, show the kitchen units to have been removed and the sink unit in the bathroom removed.
7. During my visit I saw that the kitchen units, including cooking facilities, had been removed and the sink unit in the bathroom, as well as the shower head and connecting pipe, had been removed, as shown in the Council's photographs dated 26 February 2018. In my view, the unit was unlikely to have contained the facilities required for day to day domestic existence on 26 February 2018.
8. The Planning Practice Guidance (PPG) advises that an enforcement notice is not in force where an enforcement appeal is outstanding or an appeal has been upheld and the decision has been remitted to the Secretary of State for redetermination, but that redetermination is still outstanding. I have no evidence that the enforcement notice has been withdrawn and the appellant confirmed within the appeal form that there are no other appeals for this site which have not yet been decided. Consequently, I have no reason to believe that the enforcement notice is not in force. Whilst the appellant suggests that the enforcement notice was technically incorrect, because the ground floor shop was never used as a flat, he did not appeal against the notice on that basis, or at all, and it is now too late to challenge the notice.
9. Even if the appellant were able to show that the property was used as self-contained residential accommodation for 4 years up to 4 September 2018, but that there was only 1 flat on the ground floor, retaining the facilities which enabled day to day domestic existence in that 1 flat would nevertheless have constituted contravention of the enforcement notice in force on 4 September 2018. Accordingly, on the balance of probability, I find that the use of the rear ground floor space as a self-contained studio flat had not become lawful through the passage of time at the date of the LDP application.

Conclusion

10. 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 rear ground floor space as residential use for use as a self contained unit 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.

M Savage

INSPECTOR