
Appeal Decision

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2020

Appeal Ref: APP/Z4310/X/18/3217552

16 Greenfield Road, Liverpool L13 3BN

- 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 Paschal McCrumlish against the decision of Liverpool City Council.
 - The application Ref 18LE/0463, dated 16 January 2018, was refused by notice dated 2 July 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 use as 3 x separate residential units.
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Decision

1. The appeal is dismissed.

Costs Application

2. An application for costs was made by Paschal McCrumlish against Liverpool City Council. This application is the subject of a separate Decision.

Preliminary Matter

3. I have taken the description of the development from the application form, but it is clear to me that the use for which the certificate of lawful use is sought relates to the Garden Annex as a separate self-contained residential unit.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well founded. The question of whether the refusal of an LDC was well founded will turn on whether the appellant has proved on the balance of probabilities that the use of the property changed to use as a single dwellinghouse on or before 16 January 2014 and that the use then continued without significant interruption for 4 years after the date of the change.

Reasons

5. In an appeal relating to a lawful development certificate the onus of proving the relevant facts rests with the appellant and the standard of evidence is the balance of probabilities. The appellant's own evidence does not need to be corroborated with independent evidence, and if there is no evidence to contradict or otherwise make the appellant's version of events less than

- probable, the appellant's evidence alone may be sufficient to justify the grant of a certificate provided that it is sufficiently precise and unambiguous.
6. The appeal property is a mid-terraced residential property with front and rear garden areas. To the rear of the back garden is a two storey building known as the 'Garden Annex' which contains a kitchen, a bathroom, lounge and two bedrooms. It is understood that the upper floor is used as a study. The appellant is the legal owner of the residential site comprising 'The Main House', the 'Basement Flat' and the 'Garden Annex'. The LDC to which this appeal relates is for the use of the Garden Flat as a separate residential use.
 7. The evidence shows that the appellant purchased the property in 2007 and it was occupied by him, his wife and his son between December 2007 and June 2009 when they moved to live in Ireland. Since 2009 the Main House and Basement Flat have been rented out to various occupants and the appellant and his family have occupied the Garden Annex intermittently as they continue to have business interests in Liverpool. The property does not have to be occupied continuously for it to be in use as a dwellinghouse and the appellant, family members and his business partner have occupied the Garden Annex intermittently for the period up to December 2017.
 8. Statutory declarations submitted by the appellant, his wife, his father and his business partner set out the periods of their occupancy between March 2011 and December 2017. The property has clearly been used by them on a regular basis as a convenient place for them to stay when in Liverpool. In addition, the appellant states that a new kitchen and bathroom were installed in January 2015 when the insulation, smoke detectors and fire doors were also updated. However, this is not evidence of the occupation of the property as a separate unit of residential accommodation. Furthermore, details submitted with reference to the Main House and the Basement Flat do not demonstrate independent occupation of the Garden Annex which is the relevant property in this case.
 9. The appellant has confirmed that the Garden Annex is only in the process of being registered for Council Tax and to date there has been no separate payment of Council Tax even though the Council has confirmed that 16 Greenfield Road (The Main House) and the Basement Flat 16 Greenfield Road, are separately registered. In addition, although the three units have their own utility meters, electricity and gas services are not registered separately for the payment of bills. Water and heating are on separate supplies according to the appellant's evidence.
 10. Although the appellant argues that there is sufficient evidence to show that the Garden Annex for the material period of four years, it is my view and a crucial consideration that during the material period the Council could not have taken enforcement action against the use of the Garden Annex as an independent unit of residential accommodation because it was not registered separately for Council Tax purposes, nor was there separate billing of utilities. At any time during that period the appellant could quite easily have contended that the Garden Annex was a residential part of the property as a whole, rather than being occupied as a separate residential unit. Furthermore, the evidence does not suggest the whole property has been sub-divided and therefore it seems that it remains as a single planning unit in residential use.

11. The appellant has sought to strengthen his case since the submission of the previous LDC and I understand that case law¹ indicates that this evidence does not have to be corroborated by independent evidence in order to be accepted. I do not dispute the appellant's evidence provided in statutory declarations but they show how the unit in question has been intermittently occupied by the appellant and others rather than showing on the balance of probabilities that the Garden Annex has been occupied during the material period as a separate residential unit. Consequently, there is insufficient evidence for me to conclude otherwise than my colleague Inspector who dealt with the previous appeal.

Conclusion

12. In this case I find that the appellant has not shown, on the balance of probabilities, that the use of the property changed to use as a single dwellinghouse on or before 16 January 2014 and that the use continued without significant interruption for 4 years after the date of the change. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single dwellinghouse 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.

A A Phillips

INSPECTOR

¹ Gabbittas v SE & Newham LBC [1985] JPL 630