



Appeal Decision

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 June 2020

Appeal Ref: APP/Z5060/X/19/3226671
79 Westfield Road, Dagenham RM9 5BP

- 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 Petru Cinca against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 18/01969/CLU_E, dated 14 November 2018, was refused by notice dated 21 January 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 Conversion of single dwelling house to two separate dwelling houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In response to travel restrictions and social distancing requirements currently in place, due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available. Neither the appellant nor the Council have objected to the appeal proceeding on this basis.
3. I have taken the description of the development from the Council's decision notice, as agreed on the appeal form.

Reasons

4. Uses are lawful at any time if 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 (s191(2)(a)). In this case, the appellant seeks to rely on the passage of time. The proviso to this is that the use must not contravene the requirements of any enforcement notice then in force (s191(2)(b)).
5. It is necessary to consider whether the conversion of the single dwelling and subsequent use as two separate dwellings, occurred and has been continuous for a period of four years or more prior to the date of the application, that is from at least 14 November 2014, so as to be immune from enforcement. The

- onus is on the appellant to demonstrate that, on the balance of probability, the use has continued for the aforementioned four-year period.
6. 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."*
 7. As part of his evidence the appellant has referred to an enforcement appeal in relation to the same property. The alleged breach of planning control in that case was the material change of use of the property into two units of residential accommodation. That appeal was decided on 8 February 2020, with the enforcement notice being upheld by the Inspector. The notice required, amongst other things, that the use of the property as two independent residential units must cease¹.
 8. Because the date on which the enforcement notice appeal was decided (8 February 2020) was after the date of the LDC application (14 November 2018), the LDC sought in this case would not be certifying a use in contravention of the requirements of an enforcement notice then in force. Accordingly, conflict with s191(2)(b) of the Act would not be a reason, in its own right, for the use being unlawful.
 9. Turning to the evidence submitted, the appellant has provided various documents in support of the case. These include purported statutory declarations, dated 1 November 2018, shortly prior to the LDC application date.
 10. The first of these declarations is from the owner of No 79, the appellant Mr Cinca, stating that the property was purchased in 2007; was converted to two flats following the completion of an extension in May 2012, with 79A let to tenants since being constructed at that time. He also says that a Ms Maigut occupied No 79A between May 2012 and May 2018.
 11. A second declaration is provided by Ms Maigut which confirms the aforementioned address and duration of her tenancy and that her landlord was Mr Cinca of No 79. Further and more recent declarations have been provided which serve to corroborate Ms Maigut's account of her tenancy. A declaration made by a Mrs Maftai confirms she has lived at No 79A with her family since May 2018.
 12. However each of these declarations purport to be made by virtue of the provisions of the 'Stationary Declaration Act 1935'. However, in reality there is no such Act, the relevant legislation being the 'Statutory Declarations Act 1835'. I therefore find that they are not properly constituted statutory declarations. Accordingly the normal sanctions of significant fines or time in prison, if convicted of perjury for providing false information, and which would therefore serve to strengthen the credibility of this type of evidence, may not be applied. I therefore give limited weight to these documents.
 13. A sequence of tenancy agreements is provided, each 12 months in duration and covering the period May 2012 to May 2018. The agreements identify Ms

¹ Ref APP/Z5060/C/19/3226668

Maigut as the tenant of No 79A Westfield Road, although there is an anomaly in that the 2014 agreement indicates that she was the tenant of No 79.

14. Further supporting documentation provided includes annual service records in relation to the boiler for No 79A, for the period 2012 – 2018; the driving licence of Ms Maigut which refers to her address as No 79; invoices and receipts relating to various products and services; electrical certification and various financial information.
15. The Council makes the points that the property is registered for Council tax purposes as a single dwelling; also that a pre-application enquiry² dating from July 2017, indicated that the property was a 4-bedroom house, at the time, and had not been separated.
16. I have had regard to the Inspector's decision in relation to the aforementioned enforcement appeal. Reference is made, by that Inspector, to electrical certification evidence demonstrating that in late 2014 there was an intention to let out the site as two properties; also to financial documentation provided with the aim of showing that Ms Capraru's address was 79 Westfield Road between July 2014 and June 2017 and that Mrs Petronela Adam was living at No 79 between December 2016 and March 2018.
17. The Inspector has referred to inconsistencies in the information provided, including the statement by Mrs Abageru (nee Capraru) that she lived with Ms Maigut at No 79A and also that Ms Maigut's address is given on her driving licence as No 79. This latter document, together with the anomaly in the tenancy agreement record, referred to above, is also inconsistent with other purported statutory declaration information. I agree that this indicates a lack of clarity with regard to occupation.
18. The previous Inspector found that the lack of information in the form of separate billing for energy supplies to indicate the existence of two self-contained dwellings served to distinguish the case from a separate appeal decision that had been referred to by the appellant³. I have no reason to take issue with this finding.
19. In addition I also concur with the Inspector, who found in relation to the recent enforcement case, that the photographs of birthday celebrations do not provide evidence of occupation of the site as two separate dwellings.
20. Despite evidence of the building having been previously extended, there is no dispute that as part of a pre-application enquiry to the Council, in 2017, it was declared to be a four-bedroom house, in relation to which two separate dwellings were proposed. The suggestion that the reference to a single dwelling was made on the basis that the appellant was not professionally represented at the time, is not a compelling explanation.
21. Furthermore, the Council's representation that it received an email in February 2013, stating that there was no longer an intention to convert the extension into a separate dwelling and that this is at odds with the appellant's present claim that the property had been converted and occupied by the first tenant some nine months earlier, has not been satisfactorily explained by the appellant.

² 17/01244/PRE

³ Ref APP/N5660/X/12/2186548

22. When also taking into account the limited weight that I give to the purported statutory declarations, for the above reasons the various evidence provided is not sufficiently precise and unambiguous or uncontradicted to allow me to conclude, on the balance of probability, that the two separate dwellinghouses were created and brought into continuous residential use for the requisite immunity period.
23. Therefore for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Conversion of single dwelling house to two separate dwelling houses at 79 Westfield Road, Dagenham RM9 5BP 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