



Appeal Decision

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2020

Appeal Ref: APP/X5210/X/19/3231158

42 Fordwych Road, London NW2 3TG

- 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 Joshua Goodman against the decision of the Council of the London Borough of Camden.
 - The application Ref 2018/5135/P, dated 21 October 2018, was refused by notice dated 25 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 ground floor 2 bedroom flat, 1st floor (front) 1 bedroom flat, 2nd floor 1 bedroom flat.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Planning Inspectorate initially made arrangements for this appeal to be determined following a site visit. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance.
3. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans and documentary evidence to understand the nature of the site given the grounds of appeal and points in dispute. The parties were contacted on 27 May 2020 and subject to the agreement of both parties, the appellant was invited to submit photographs of the site. Neither of the parties raised any objection to this approach and photographs have been submitted.
4. The description of the existing use for which the LDC was sought is as set out in the banner above. The Council's decision notice relates to a revised description, as follows: -

 'Use of part of the property (excluding the first-floor rear flat) as three self-contained dwellings comprising; a two-bedroom flat at ground floor, a one-bedroom flat at first floor (to the front of the property), and a one-bedroom flat on the second (top) floor.'

5. The appellant has used this revised description on his appeal form and as it clarifies the use in the context of the building as a whole, I have relied on the revised description in my determination of the appeal.
6. For the avoidance of doubt, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 (the Act), as amended, which relates to an application for a LDC. My decision rests on the facts of the case and on relevant planning law and judicial authority. The burden of proving relevant facts rests on the appellant and the test of evidence is made on the balance of probability.

Main Issue

7. The main issue is whether the Council's decision to refuse the application for a LDC was well-founded.

Reasons

8. The appellant has set out in his application form that he is seeking a certificate for an existing use and that that use falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended).
9. Under the terms of section 171B(2) of the Act where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. It is on this basis that a certificate has been sought. It is for the appellant to establish that each of the flats referred to in his application and as laid out on the plans submitted with it has been in use as a single dwelling house at least since 21 October 2014, that being the date four years before the application for the LDC was made.
10. The appellant has submitted evidence in a variety of forms including Council Tax records, invoices for works carried out and utility bills. The majority of this evidence relates to the period after 21 October 2014 and therefore does not demonstrate the use of the flats as described in the application at that date.
11. There is some evidence in the form of Tenancy Agreements, gas safety records and Valuation Office rent registers to suggest that parts of the building have been in use as self-contained flats in the period running up to 21 October 2014. However, this evidence is contradicted by other evidence/circumstances as I have set out below.

Ground Floor Flat

12. The appellant refers to the ground floor flat including part of the first floor of the building between March 2010 and November 2016. The Council Tax bills issued on 12 November 2016 and 28 December 2016 reference the change in banding and the change in property address which in November 2016 included '1st floor R', that was subsequently omitted from the address in December 2016.
13. It follows that the ground floor two-bedroom flat to which the application for the LDC relates did not exist in the period running up to 21 October 2014 because at that time it incorporated part of the first floor.

First Floor (front) Flat

14. The rent review document refers to the registration of a self-contained converted flat in May 2015 and that a previous registration related to the period 25 March to 9 May 2013. It does not clarify how this part of the building was used in 2013 and there is no further evidence relating to the period running up to 21 October 2014.

Second Floor Flat

15. There is a copy of a Memorandum of Renewal Agreement relating to the extension of the tenancy of the second floor flat for a period of one year from 10 August 2013 and 9 August 2014. However, this document is not signed by the tenants. A similar document signed by the tenants relating to the period from 10 August 2014 to 9 August 2015 is not signed by the landlord.
16. Furthermore, neither document specifies the degree to which the second floor flat is self-contained. A self-contained flat would also be at odds with the copy of the Rent Register for the second floor flat which refers to it being a non-self-contained flat albeit that this dates from 2006.

Statutory Declaration (SD)

17. In the SD from Allan Myers he confirms that the two-bedroom flat on the ground floor and the one-bedroom flats on the first and second floors have existed for at least 4 years. However, while he says that the property is currently laid out as self-contained flats, he does not state that this was the case in terms of the flats which he refers to as having existed for 4 years. This undermines the value of the SD in terms of demonstrating that the use for which the certificate is sought has been in existence since 21 October 2014.

Conclusion

18. The evidence which was submitted in support of the application does not demonstrate that part of the property (excluding the first-floor rear flat) has been used as three self-contained dwellings comprising; a two-bedroom flat at ground floor, a one-bedroom flat at first floor (to the front of the property), and a one-bedroom flat on the second (top) floor for the required minimum 4-year period. Whilst there is very limited evidence to contradict or otherwise undermine the appellant's version of the events, nevertheless, the evidence before me from the appellant is not sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of part of the building as three self-contained dwellings 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.

Sarah Dyer

Inspector