Appeal Decisions

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 July 2020

Appeal A Ref: APP/E5330/X/17/3168610
Flat 1, 137 Greenwich South Street, Greenwich SE10 8PP

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Bickley Investments Limited against Royal Borough of Greenwich Council.
- The application (Ref. 16/2070/CE) is dated 24 June 2016.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which an LDC is sought is use of basement area known as Flat 1 as a dwellinghouse (Use Class C3).

Appeal B Ref: APP/E5330/X/17/3168612
Flat 5, 137 Greenwich South Street, Greenwich SE10 8PP

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Bickley Investments Limited against Royal Borough of Greenwich Council.
- The application (Ref. 16/2738/CE) is dated 17 August 2016.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which an LDC is sought is use of part of ground floor (Flat 5) as a dwellinghouse (Use Class C3).

Appeal C Ref: APP/E5330/X/17/3168614
Flat 2, 137 Greenwich South Street, Greenwich SE10 8PP

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Bickley Investments Limited against Royal Borough of Greenwich Council.
- The application (Ref. 16/2717/CE) is dated 17 August 2016.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which an LDC is sought is use of part of ground floor (Flat 2) as a dwellinghouse (Use Class C3).

Decisions

Appeal A Ref: APP/E5330/X/17/3168610

1. The appeal is dismissed.

Appeal B Ref: APP/E5330/X/17/3168612

2. The appeal is allowed and attached to this decision is an LDC describing the existing use which is considered to be lawful.

Appeal C Ref: APP/E5330/X/17/3168614

3. The appeal is allowed and attached to this decision is an LDC describing the existing use which is considered to be lawful.

Application for costs

4. An application for costs has been made by SAS Management against the Royal Borough of Greenwich Council. This application is the subject of a separate Decision.

Background information

5. 137 Greenwich South Street is a mid-terraced three storey plus basement property. It has a single flat at each of its four floor levels and a flat in a single storey ground floor rear extension. An LDC for 'a 1-bed second floor flat', Flat 4, was granted by the Council on 3 April 2017 and an LDC for 'a 1-bed first floor flat', Flat 3, was granted on 31 March 2017. Flat 1 is at basement level (Appeal A), Flat 5 is the ground floor extension (Appeal B), and Flat 2 is at ground level (Appeal C). Flats 1, 2 and 5 were sold to the Appellant company by Candy Homes Ltd in 2014.

6. The Appellant, to be successful in each appeal, must demonstrate, on the balance of probabilities, that residential occupation of the flat commenced more than four years before the date of the application and that the use was continuous up to that date. The critical date for Flat 1 is 24 June 2012, and for Flats 2 and 5 is 17 August 2012.

7. The onus of proof falls on the Appellant but their evidence does not need to be corroborated by independent evidence. Furthermore, provided the Appellant's evidence is sufficiently precise and unambiguous there shall be no reason, in each case, to withhold an LDC.

8. It is clear from evidence submitted by the Appellant that occupation of Flats 1, 2 and 5 commenced before 24 June 2012. In fact, the Council does not, in each case, maintain that occupation of the flat did not commence more than four years before the date of the application. It is their contention, in each case, that occupation through the four-year period was not continuous.

9. The appeals were originally to be considered at an Inquiry but it was later agreed by the main parties that they could be considered by the exchange of written representations. It was also agreed by the main parties, given the nature of the LDC appeals, that a site visit was not necessary.

Reasons

10. The main issue in each case is whether residential occupation of the flat was continuous through the four-year period prior to the date of the application.

Matters specific to Appeal A – Flat 1

11. A tenancy agreement indicates that Flat 1 was let to James Owen from 3 August 2015 to 2 August 2016. But another tenancy agreement indicates that the flat was let to Radoslaw Szafraniec from 1 April 2016 to 31 March 2017, though the Appellant claims that this tenant left on 11 November 2016. The tenancy periods overlap and are, generally consistent with other tenancy agreements, for a one year less one day period. A tenancy agreement gives a clear indication of when a tenancy starts but is not indicative of when it ends. James Owen, in fact, must have vacated the flat before his tenancy ended.

12. This is significant because the Council issued a Prohibition Order, made under Section 20 of the Housing Act 2004, on 10 November 2015. The Order became operative on 7 December 2015 and it is an offence to occupy a property for which such an Order has been issued. It is noted on page 10 of the Order that "Emergency remedial action is not appropriate as the dwelling is vacant at the present time". So James Owen must have vacated Flat 1 sometime before the inspection that led to the Order took place on 28 October 2015. The Order was revoked, under Section 25 of the Housing Act 2004, on 9 February 2016 and became available for occupation after that date.

13. The first tenancy after revocation of the Order was that by Radoslaw Szafraniec, which commenced on 1 April 2016. Evidence therefore indicates that Flat 1 was unoccupied from before 28 October 2015 until 1 April 2016; a period of at least five months. This was a significant break in residential occupation of Flat 1 and during this period the Council could not have taken enforcement action against unauthorised use of the flat. For this reason, it must be concluded that residential occupation of Flat 1 was not continuous through the four-year period prior to the date of the application.

Matters specific to Appeal C – Flat 2

14. A Prohibition Order was issued on 13 May 2016 for Flat 2, and became operative on 15 June 2016, when the flat was tenanted by Ejona Rexhepi. This tenant vacated the flat on 22 June 2016 when her six-month tenancy came to an end. The flat was then let to M Adeel, who may not have been aware of the Prohibition Order, on a six-month tenancy. It is likely that Flat 2 was occupied during the last few months of the four-year period prior to the date of the application even though occupation of the flat would have been an offence under the terms of the Prohibition Order.

General matters

15. Each of the three flats, up until they were sold to the Appellant company in 2014, were occupied for some periods by contract workers of Candy Homes Ltd. The longest of these periods was 10 months and the shortest was 31 days. The Council maintains that "…there were periods…during which the tenancies were not occupied by tenants…" and that "…these periods are considered to constitute periods where the site is not fully occupied as single, private residential dwellings". Whether or not there were tenancy agreements for these periods the contract workers were tenants of Candy Homes Ltd; rent either being paid by those tenants or, more likely, waived in exchange for labour provided. In this regard a tenant is a person in possession of property by any right or title.

16. Furthermore, a dwelling does not have to be fully occupied to maintain its lawful status as a dwelling; a four-bedroom dwelling remains a dwelling if it is occupied by a single person. In any event, the three flats are not large, they are either one or two bedrooms, and it is unlikely that the three flats were not fully utilised to accommodate workers. A tenancy agreement is a legal document that protects the rights of a landlord and a tenant. But a landlord and a tenant do not have to enter into a tenancy agreement; tenancy can, for instance, be a matter of trust. Also, money does not have to change hands for a tenant to be a tenant. Periods of occupation of the flats by contract workers of Candy Homes Ltd did not interrupt the continuity of occupation of the flats.

17. The Appellants accept that there have been gaps in occupation of each of the flats. But these gaps have been short and such gaps in occupation of rented flats are common and do not constitute a lack of continuity of residential occupation. A financial claim was made against the Council in relation to a revoked Prohibition Order made in July 2015. The claim included loss of rental income for the three flats for a four-month period. The tenancy agreements submitted on behalf the Appellants do not indicate that there was a four-month gap in occupation of the three flats, so the financial claim was wrongfully made.

18. Some of the tenancy agreements overlap, such as those for Flat 2 for Rajeev Bera and Cara Suarez/James Buckle between 23 April and 7 December 2012. But this can be explained by some tenants vacating a flat before the end of their tenancy. Council tax records are incomplete for the flats, but such records are inconclusive of occupation and do not outweigh the evidence of tenancy agreements. In this regard Council tax might be paid on a flat even if it is unoccupied, and Council tax might not be paid when a flat is occupied. There are no matters specific to Flat 5 that affect the conclusion to be reached.

19. All matters mentioned in support of, and in opposition to, the appeals have been taken into account but do not affect the conclusion to be reached in each appeal for the reasons given above.

Conclusions

Appeal A – Flat 1

20. Residential occupation of Flat 1 was not continuous through the four-year period prior to the date of the application. On the evidence now available the Council’s refusal to grant an LDC in respect of use of basement area known as Flat 1 as a dwellinghouse (Use Class C3) at Flat 1, 137 Greenwich South Street, Greenwich was well-founded and the appeal fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

Appeal B – Flat 5

21. Residential occupation of Flat 5 was continuous through the four-year period prior to the date of the application. On the evidence now available the Council’s refusal to grant an LDC in respect of use of part of ground floor known as Flat 5 as a dwellinghouse (Use Class C3) at Flat 5, 137 Greenwich South Street, Greenwich was not well-founded and the appeal succeeds. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

Appeal C – Flat 2

22. Residential occupation of Flat 2 was continuous through the four-year period prior to the date of the application. On the evidence now available the Council's refusal to grant an LDC in respect of use of part of ground floor known as Flat 2 as a dwellinghouse (Use Class C3) at Flat 2, 137 Greenwich South Street, Greenwich was not well-founded and the appeal succeeds. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 17 August 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Residential occupation of the flat was continuous for the four-year period prior to the date of the application.

Signed

John Braithwaite

Inspector

Date: 22 July 2020
Reference: APP/E5330/X/17/3168612

First Schedule

Use of part of ground floor (Flat 5) as a dwellinghouse (Use Class C3)

Second Schedule

Land at Flat 5, 137 Greenwich South Street, Greenwich SE10 8PP

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 22 July 2020

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at Flat 5, 137 Greenwich South Street, Greenwich SE10 8PP

Reference: APP/E5330/X/17/3168612

Scale: not to scale

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

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Residential occupation of the flat was continuous for the four-year period prior to the date of the application.

Signed

John Braithwaite

Inspector

Date: 22 July 2020
Reference: APP/E5330/X/17/3168614

First Schedule

Use of part of ground floor (Flat 2) as a dwellinghouse (Use Class C3)

Second Schedule

Land at Flat 2, 137 Greenwich South Street, Greenwich SE10 8PP

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

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Plan

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by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at Flat 2, 137 Greenwich South Street, Greenwich SE10 8PP

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Scale: not to scale