The Planning Inspectorate

Appeal Decision

by Anthony J Wharton BArch RIBA RIASI

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

Decision date: 5 August 2020

Appeal Ref: APP/N5090/X/19/3236514
31 Oak Grove, London NW2 3LS

- 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 Eddy Reaidy against the decision of the Council of the London Borough of Barnet.
- The application Ref 19/2701/191, dated 13 May 2019, was refused by notice dated 28 June 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: Existing use as 5 No self-contained flats.

Decision

1. The appeal is allowed and a Lawful Development Certificate is issued.

Matters of clarification

2. Further to the case officer's letters to the parties, including my requests for further comments, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the initial submissions, supplemented by additional information being supplied. The appellant and the Council have agreed to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice is caused.

3. The LPA initially based its decision on the information submitted at the time of the LDC application and had informed the appellant's agent that the information submitted was not sufficient. Further evidential information was compiled on behalf of the appellant but before this was submitted the LPA refused the application. This information was submitted in relation to this appeal and I have taken it into account in accordance with the findings of the Court in the case of *'Cottrell v SSE and Tonbridge and Malling BC [1982] JPL 443'.* In that case it was held that for a LPA to argue that the only evidence to be considered was that placed before them as part of the application, denies the purpose of the LDC procedure.

4. Furthermore, the LDC procedure is aimed at the decision-maker arriving at an objective decision (on the balance of probability) based upon the best facts and evidence available. It is also the case that if subsequent information is available it is always open to an applicant to re-apply. In this case and in the light of the above case law, I consider it appropriate to take all of the submitted information into account and I am satisfied that this does not cause any injustice. The LPA was given the opportunity to comment on these submissions. By e-mail dated 21 July

2020 and on the basis of the additional submissions and Council Tax (CT) records, the Council has accepted that, on the balance of probabilities, the property has been occupied as 5 separate flats for the relevant 4 year period. Nevertheless I must still reach my own decision.

Background information

5. The appeal property is a two storey terraced property on the north-west side of Oak Grove, which runs parallel to the railway to the east and to Cricklewood Broadway to the west. The overall site measures 5m in width and 22.5m in length. The house is typical of the late Victorian dwellings in this predominantly residential part of the Borough. There are nearby parks, schools and retail facilities. It does not lie within a conservation area and is not a listed building.

6. In 1988 planning permission was refused (CO9949) for a two storey rear extension and conversion into two self-contained flats. In 2016 planning permission was also refused (16/1495/FUL) for conversion of the house into 3 No self-contained flats, including a loft conversion with a new rear dormer window and Juliette balcony and 3 rooflights to the front roofslope and the first floor rear extension.

7. The property is currently split into five units. These are shown on the submitted LDC application plan (CEA/19/OG/003) as Flat 1 (Ground Floor Front); Flat 2, (Ground Floor Rear); Flat 3 (First Floor Rear); Flat 4 (First Floor Front) and Flat 5 (First Floor Middle and Second Floor). The plan layouts for Flats 1, 2, 3 and 5 all show separate bedrooms, kitchens and shower rooms. On the initial drawing the Flat 4 layout simply showed a bedroom. However, an updated plan has been submitted which together with the photographs, show a bedroom, bathroom and kitchen within this first floor space to the front of the house. It appears, therefore, that all of the 5 units have all of the facilities necessary for separate day to day living. It is on this basis that I have dealt with the appeal. The LPA was copied into all of the additional submissions including the up-dated plan.

8. The Council indicates (in the officer delegated report–19/2701/191) that pre-application advice was given in December 2016. It is stated that the officer noted that at the time the property appeared to be in use as a single family dwellinghouse. There is, however, no record of a site visit at that time. The Council indicates that The Planning Statement and the pre-application request confirmed that the use at that time was as a HMO for five occupants. This would have put it into a Class C4 use. However, the officer also stated that, with regard to the previous application (presumably 16/1495/FUL), it had been noted that a search of Council Tax (CT) records indicated that the property was being used as five separate units and that this had been confirmed during a site visit. The CT information now submitted shows that all 5 units were separately registered in 2014.

9. At the time of writing the delegated report, the Valuation Office Agency's Council Tax Band Search (VOA CTBS) and the Council's GIS web mapping software both indicated that the property was in use as 5 No self-contained flats. At the time of the LDC application the submitted evidence was limited and had not included all of that now submitted in support of this appeal (see above).

Reasons

Introduction

10. An appeal relating to a LDC refusal is confined to the narrow remit of reviewing the LPA's reason for refusal. The planning merits of the case do not fall to be considered. This LDC was applied for in order to establish whether the existing 5

units or flats were lawful for planning purposes under section 191(1)(a) of the Town and Country Planning Act 1990 on the date of the application, 13 May 2019.

11. The LPA refused the application on the basis that there was insufficient, precise and unambiguous evidence submitted to demonstrate, on the balance of probabilities, that the 5 flats had been lawful as a Class C3 residential unit for a continuous four year period prior to the date of the LDC application. It made its decision on the limited application submissions.

12. National Planning Practice Guidance (PPG) indicates that an applicant for an LDC is responsible for providing sufficient information to support an application and that, without sufficient or precise information, a LPA may be justified in refusing a certificate. However, PPG also indicates that a refusal is not necessarily conclusive that something is not lawful because insufficient evidence has been presented. On appeal it is regularly the case that additional information submitted at appeal stage, as opposed to application stage, is taken into account (see above). This is the case in this appeal.

The Main Issue

13. The main issue is whether or not the appellant has demonstrated, on the balance of probabilities, that the property at No 31 Oak Grove has been in continuous use as 5 separate self-contained flats, as indicated on the application plans, for a continuous period of 4 years commencing on or before 13 May 2015.

Summary of the evidence for each flat

14. **Flat 1 (Ground Floor Front Right** Occupancy of this flat is first recorded on 23 November 2015 (1-year Assured Shorthold Tenancy Agreement-ASTA). The tenant is named as Abdirazak Abdulle. Housing Benefit records show this same tenant to be in residence during this period and again for the most part of 2017 and 2018. A letter signed by this tenant also confirms residency from 23rd November 2015 until 28th June 2019. There is a gap in the evidence, therefore, of just over 6 months from the relevant date of 13 May 2015. However, CT records indicate CT being paid from August 2014.

15. **Flat 2 (Ground Floor Rear)** Occupancy of this flat is first recorded on 15 August 2014 (1-year ASTA). The tenant is named as Shukria Jama Barre. A statement from UK Property Agents shows this tenant to have moved out of the property on 14th April 2019. Other evidence for this period shows another occupant residing in this same flat. Mr R Chahoud (Flat Ground Floor Rear) is recorded to be in receipt of benefits for the most part of 2016 and for the first three months of 2017. A second ASTA, dated 15 April 2019, shows the flat with a new tenant, Mr Alaa Khattab, and a signed letter confirms his residency up to 28th June 2019. CT records indicate CT being paid from August 2014.

16. **Flat 3 (First Floor Rear)** Occupancy of this flat is first recorded on 11 May 2015 (1-year ASTA). The tenant is named as Mohamed Sharif Abdisamed. A letter dated 28th June 2019 and signed by this same tenant confirms his residency since 11th May 2015. Further evidence in the form of Housing Benefit records, also confirms that this same tenant was in continuous residency at Flat 3 throughout 2016, 2017 and 2018. CT records indicate CT being paid from August 2014.

17. **Flat 4 (First Floor Front)** Occupancy of this flat is first recorded on 15 August 2014 (1-year ASTA). The tenant is named as Amina Daher Mohamed. A statement from UK Property Agents shows this resident to have moved out of the property on 14th April 2019. Housing Benefit Records place this same tenant (Mrs A D Mohammed) in the flat during the early months of 2018 - 1 January to 27 May.

The Housing Benefit Records place Mr A Mezzodji in this flat periodically from 1st August 2016 to 26th November of 2017. From 21 May until 2 December 2018 the Housing Benefits Records name the occupant as Mr K. Hamid, confirming an overlap with Mrs A D Mohammed. A new 1-year ASTA, dated 15 April 2019, shows a tenancy under the name of Mr Muhana Abdul Jabar Jaris. CT records indicate CT being paid from August 2014.

18. **Flat 5 (First Floor Middle and Second Floor)** The first 1-year ASTA for this flat is in the name of Mr Jabir Al-Anaizi, with a start date of 8th August 2016. A Statement from UK Property Agents shows this tenant to have moved out on 1st April 2019. Housing Benefit Records confirm this tenant to be in residence from 8th August 2016 and periodically throughout 2017 and 2018. Prior to this, there are periodic Housing Benefit Records for Ms F M Daher starting from 14th September 2015 and ending with payments for the period 1st August 2016 to 28th August 2016. This shows two occupants overlapping for a month. A new 1-year ASTA, dated 2 April 2019, shows a tenancy under the name of Mr Al Aneizi Ahmed Abdullah Asmir. CT records indicate CT being paid from August 2014.

My assessment

19. In relation to the above summaries for each flat, the Council has not provided any evidence to refute that submitted on behalf of the appellant. In fact, from the delegated report, the Council accepts that VOA and CT records indicated that the house had been split into 5 separate flats. CT records now provided indicate that all 5 units commenced with CT payments in August 2014.

20. The ASTAs indicate that the tenants were responsible for CT payments as well as other utility services. In my view the evidence relating to Flats 2, 3 and 4 clearly indicates, on the balance of probabilities, that they were occupied continuously for a 4-year period commencing from 13 May 2015.

21. The earlier Council references to the house being in use as a HMO, initially casted some doubt on whether or not the layouts as shown on the 2019 LDC application drawings had existed for the relevant 4 year period. However, the Council did not provide any evidence of a HMO use.

22. With regard to Flats 1 and 5, the evidence that the units were occupied continuously for the relevant 4-year period is not as clear as for the other 3 flats. The occupancy of Flat 1 is first recorded in November 2015, some 6 months after the relevant date of 13 May 2015. Similarly, for Flat 5, there is also a shortfall in recorded occupancy. The first submitted ASTA for this flat has a start date of August 2016, some 15 months after the relevant date. However, CT records for both commenced in 2014. It is not exactly clear as to when the two parts of Flat 5 were combined to provide a single and separate unit but the CT records clearly indicate that there was a separate account for this flat dating back to 2014. If the property had been in use as a HMO this could not have been the case.

23. The evidence clearly indicates that the property has not been in existence as a single dwellinghouse since at least 2014 which was the same year that the CT records commenced for each unit. Thus, although there are some small gaps in the evidence, it is my view that on the balance of probabilities, the 5 units have existed for the 4-year relevant period. There is no evidence from the LPA to indicate that the appellant's submissions, on the balance of probabilities, are insufficient to demonstrate the necessary 4-year occupation of the 5 separate units. It follows that I consider that a LDC should be issued on the basis of the application as submitted and the appeal, therefore, succeeds.

Other Matters

24. Clearly there is sufficient evidence to demonstrate that the house has not been occupied as a single dwelling house since at least 2014 and that the CT payments for each of the 5 separate flats commenced in August of that year.

25. Although there are some gaps in documentary evidence, such as ASTAs for each flat, and utility bills are lacking, I consider that, on the balance of probabilities, the 5 flats have been continuously occupied for the relevant period.

26. In reaching my conclusions in this appeal I have taken into account all of the submissions made on behalf of the appellant and by the Council. These include the planning history of the property; the initial submissions; the delegated report; the detailed statements and appendices and the additional evidence (including photographs) as submitted. However, none of these carries sufficient weight to alter my decision that the appeal should succeed and that a LDC should be issued.

Formal Decision

27. The appeal is allowed, and a Lawful Development Certificate is issued.

Anthony J Wharton

Inspector

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 13 May 2019 the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken in respect of the development.

Signed

Anthony J Wharton
Inspector

Date: 5 August 2020
Appeal Reference: APP/N5090/X/19/3236514

First Schedule

Use as 5 No self-contained flats.

Second Schedule

31 Oak Grove , London NW2 3LS

Notes:

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

It certifies that the development described in the First Schedule, at the property 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 development described in the First Schedule; to the property specified in the Second Schedule and to the plan submitted with the LDC application, reference 19/2701/191, and plan No CEA/19/OG/003 as up-dated.

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.