
Appeal Decision

Site visit made on 12 October 2020

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 3 November 2020

Appeal Ref: APP/G3110/X/19/3238552

Flat 6, North Parade Mews, 12-13 North Parade Avenue, Summertown, Oxford, Oxfordshire OX2 6LX

- 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 Derrick Hall against the decision of Oxford City Council.
 - The application Ref 19/01469/CEU, dated 31 May 2019, was refused by notice dated 9 August 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 described as 'a studio flat'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have included in my banner heading above the building number for North Parade Avenue as this was not detailed on the application form.

Main Issue

3. The main issue is whether or not the Council's decision to refuse to grant a lawful development certificate (LDC) was well-founded. This will turn on whether the use as a studio flat was lawful at the time of the application. For the avoidance of doubt, my determination is based upon the facts of the case and judicial authority - planning merits are not relevant.

Reasons

4. A use is lawful at any time if no enforcement action may be taken in respect of the use, due to the passage of time. In the case of a 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 4 years beginning with the date of the breach¹.
5. The date of the LDC application appears to be 31 May 2019. Thus, for the studio flat to be lawful, the onus is firmly upon the appellant to show, on the balance of probabilities, that the studio flat has been in use as a self-contained residential unit since on, or before, 31 May 2015. The appellant states that

¹ Sections 191(1)(2) and 171B of the Town and Country Planning Act 1990 (the Act)

the Council incorrectly used the criminal standard of proof in its assessment. However, the Officer's report explicitly refers to the balance of probability.

6. The Courts have established that, in order to become lawful, a use has to continue throughout the 'relevant period' (being a period of four years prior to the date of the LDC application) such that any periods of non-occupation were *de minimis*, and to the extent that enforcement action would be open to the Council at any time throughout the relevant period. Where a dwelling is lawful, the occupiers do not need to be continuously or even regularly present but, prior to that, the use must be affirmatively established.
7. Evidence has been put forward on behalf of the appellant seeking to show that this is the case, which has been disputed by the LPA. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided that the appellant's evidence alone is sufficiently precise and unambiguous.
8. As regards the additional evidence submitted with the appeal, Section 195 of the Town and Country Planning Act 1990 requires me to assess whether or not the Council's refusal was well-founded – that is the decision itself and not the reasons for it. As such, it is proper that I consider the best available evidence, and not only that which was previously available to the Council.
9. Looking then at all of the evidence submitted by the appellant, the statutory declaration of the appellant refers to Flat 6 as having 'existed' since 2011, and that it was connected to power and water from that date. An email from an energy supplier, along with electricity bills confirm that an electrical meter was installed in 2011 and that electricity bills were sent after that date, with supplier history given also. However, none of these documents provide clear evidence that Flat 6 was in residential use from that date. A flat being in 'existence' suggests that it was merely available/suitable for use, and connection to/use of services is not enough in my view to make residential use more probable than not.
10. The appellant submitted with the application the front page of a lease dated 6 September 2011. However, the property let is referred to as 'ground floor premises known as 12 North Parade Avenue' and so does not clearly relate to Flat 6. Similarly, an email dated 19 March 2015 from a firm of solicitors acting for a 'prospective new tenant' is submitted, which references an exchange of contracts. I note that this is intended to show when the appellant 'regained possession of the flat'. However, again this does not provide any clear evidence as to the residential occupation of Flat 6 as it refers only to '12 North Parade'.
11. The appellant's statutory declaration goes on to state that he 'believes' Flat 6 was 'occupied by different people associated with the owner of Shop 12 North Parade Avenue' between September 2011 and October 2016. However, I note that this is a 'belief' and no basis is stated for that belief. Further, whilst I note difficulties related to personal data, other than the services documentation referred to above, there is no other documentary evidence such as correspondence/other bills received by tenants or tenancy agreements specifically related to Flat 6 covering this period such as to point to a probability of continuous residential use.

12. A letter from the occupant of Flat 1, North Parade Mews states that, since the date of her first occupation in 2014, she has been aware 'that people have been staying in Flat 6' and refers to a child and their mother, and a single person. A former occupant of Flat 4, North Parade Mews between the period August 2015 to September 2018 refers in her letter to Flat 6 being 'inhabited on several occasions for periods of 3 months or more'. This former occupant explains that she had no reason to record dates of tenant movements and provides some detailed descriptions of the occupants that she noted.
13. In the absence of any evidence from the Council to the contrary, these details given regarding former occupants of Flat 6 point to a probability of some residential occupation over the periods stated. However, the language used in letters from the occupant of Flat 1 and former occupant of Flat 4, are suggestive of a fairly sporadic occupancy of Flat 6 over the periods referred to. In view of there being no additional documentary or other evidence giving clarity as to the dates of occupation over this period, I find as a matter of fact and degree that it is more likely than not that there were significant periods of inactivity, beyond a *de minimis* level.
14. As such, I accept that the tenancy agreements of 30 September 2017 and 29 June 2018, as supported by the 2018 electrical installation condition report indicate a strong likelihood of continuous use over the terms of those tenancies. However, in view of my assessment above, the appellant has not proved on the balance of probability that the studio flat has been used as a self-contained residential unit since on or before 31 May 2015 and continued for 4 years after the date of change without any significant interruption. I cannot thus find on the evidence before me that the use has continued throughout the relevant period without any significant interruption. The stated need for and quality of this development does not affect my assessment.

Conclusion

15. I acknowledge the appellant's difficulties in contacting the previous tenant of the shop who originally let the property and has returned overseas. However, on the evidence before me, it has not been demonstrated by the appellant that the use as a studio flat was immune from enforcement action and so lawful at the time of the application. Accordingly, the Council's decision to refuse to grant a lawful development certificate was well-founded and I dismiss the appeal.

V Bond

INSPECTOR