The Planning Inspectorate

Appeal Decision

Site visit made on 6 October 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 03 December 2020

Appeal Ref: APP/J1915/X/19/3225834
Nutwood Studio, Wormley West End, Broxbourne EN10 7QN

- 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 by Paul Barham against the decision of East Hertfordshire District Council.
- The application ref. 3/18/2273/CLE, dated 1 October 2018, was refused by notice dated 4 February 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- A certificate of lawful use or development is sought for use of the property as a Use Class C3 dwellinghouse.

Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that the planning merits of the existing development 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 as amended, which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Background matters

3. The appeal property – which I shall refer to as 'the Studio' for the purposes of my decision - is a single storey timber building standing in the south-western corner of the substantial site of Nutwood House – probably some 80 metres from the house itself. The main entrance door opens into an entrance space/dining area, off which are a kitchen and WC. To one side of the entrance space a door leads to a bedroom in which there is a screened-off bath, and beyond that a large bedroom. To the other side is a room labelled on the application plan as 'living', which I saw is used largely for storage and gym equipment, beyond that is another room used mainly for storage. There is a garage access from the living space, in which are stored mowers and other garden equipment.

4. The Studio has a separate vehicular access from Wormley West End. Furthermore, it has its own water, and electricity meters. The Council do not dispute there is physical separation of the Studio from Nutwood House..

5. I note that a previous application for change of use of the building from a studio/workshop to a residential dwelling was refused in 1990[1], subsequently dismissed at appeal. An LDC application for use of the building as a single dwellinghouse was refused in 2005[2].

Reasons

6. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the building has been in use as a Class C3 dwellinghouse for a continuous period of at least 4 years before the date of the LDC application – 1 October 2018. In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.

7. In applications for LDCs Government guidance advises that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability[3].

8. The appellant says that the Studio was originally occupied by Alex Kaytanskyy, who was carrying out renovation works to Nutwood House for the appellant soon after he had bought it in 2005. After completion of the works Alex Kaytanskyy's brother Roman Kaytanskyy came to live there.

9. I understand Nutwood Studio has its own metered water supply, separate from Nutwood House. Thames Water accounts for water services between July 2013 and February 2018 have been provided. These are all addressed to the appellant and refer to a supply to Nutwood House rather than the Studio and are paid by the appellant by direct debit. Although two meters are itemised, this does not demonstrate occupation of the Studio, continuous or otherwise, merely that Mr Barham has paid the water bills.

10. Documents from British Gas include electricity bills for the periods from October 2011 to December 2011 and from July 2012 to January 2013. They are all addressed to the appellant at Nutwood House, as are electricity bills from EDF Energy for the period from March 2016 to January 2019. Neither of these series of bills show continuous 4-year occupation, and again they indicate little more than the fact that Mr Barham has paid the bills. It is also claimed there is a single electricity meter for the Nutwood House and the Studio but with separate readings. However, I can see no indication of this on the documents provided.

11. Also included are British Gas annual summaries of electricity use for the years from July 2013 to July 2018. The supply address is identified as Nutwood House. No explanation is provided of the apparent overlap in electricity supply by British Gas and EDF Energy after March 2016. Again, these annual summaries do not show who occupied or whether that occupation was continuous.

[1] Decision notice ref. 3/90/1485/FP. dated 1 November 1990.
[2] Decision notice ref. 3/04/2242/CL, dated 17 January 2005.
[3] Planning Practice Guidance – 'Lawful Development Certificates' Paragraph 006 Reference ID: 17c-006-20140306.

12. Documents addressed to Roman Kaytanskyy at the Studio comprise the following:
    - Council Tax Demands;
    - Statements from HM Revenue and Customs (HMRC) concerning tax credits, and HMRC P60 End of Year Tax Certificates;
    - Credit card statements;
    - Bank statements and other bank correspondence, and
    - Various communications concerning a Parking Charge Notice (PCN), the Construction Industry Training Board (CITB), the Construction Skills Certification Scheme (CSCS), and the Disclosure and Barring Service (DBS).

13. Council Tax Demands - submitted at appeal stage rather than application stage – cover the periods from April 2012 to mid-October 2014, and then from 1 April 2015 to 31 March 2019. However, given the gap of about five-and-a-half months from October 2014 to March 2015 these do not show continuous occupation for 4 years prior to the critical date of 1 October 2018. Furthermore, there is no evidence of Roman Kaytanskyy's payment of Council Tax apparent in his bank statements or elsewhere.

14. HMRC tax credit documents relate to the period from November 2012 to April 2015. However, these do not show continuous occupation of the premises for the requisite 4-year period. End of Year Tax Certificates, also addressed to Roman Kaytanskyy at the Studio cover the financial years from April 2013 to April 2016 – that is, starting from 6 April 2012. While this is a 4-year period overall, it does not conclusively show he was in occupation from as early as April 2012, nor after that time, and cannot be regarded as sufficiently precise.

15. Credit card statements are from various dates in 2014, but do not demonstrate 4 years of occupation. Similarly, bank statements only cover a single year from May 2012 to May 2013. Letters from the bank are annual summaries of account charges dated in each year from February 2014 to February 2017 – a 3-year period, and not continuous with other bank documentation.

16. The PCN and the CITB, CSCS and DBS documents relate to single events that occurred in September 2013, January 2014 and May 2015. They do not provide significant evidence of continuous occupation.

17. What appears to be the front page of a 12-month tenancy agreement between the appellant and Roman Kaytanskyy dated 27 November 2006 has been submitted. There are then signed and witnessed memoranda – all in identical format - dated late November for each year from 2007 to 2017 – each of which extend that original agreement up to November of the following year. The original agreement provided is a remarkably brief single page setting out the parties, the premises and the main terms – the latter being the tenancy period and the rent. No copy of any full agreement has been submitted.

18. I would expect a tenancy agreement to include clauses specifying responsibilities for such matters as utilities and Council Tax. I would also expect there to be some adjustment to be made in the amount of rent charged over this relatively long period of some 12 years. Mr Barham states that Roman Kaytanskyy only paid rent for his first year of occupation of the Studio, and thereafter has lived there rent-free. However, there is no evidence of

payment of rent at any time – which again, I would expect to see - or that utilities or Council Tax were paid by the tenant.

19. If Roman Kaytanskyy was occupying the Studio for the relevant period without making payments for rent, Council Tax and utilities as the appellant claims, then the documents relating to such payments – apparently made by the appellant - are of little value in establishing his continuous occupation.

20. I appreciate that the appellant considers the Studio is a building that is independent of Nutwood House in terms of the separating distance, separate road access and separate utility supplies. However, these are not relevant criteria in a case where the principal considerations are the length and continuity of residential occupation.

21. Overall, I find the evidence provided is not sufficiently precise or unambiguous to show that on the balance of probabilities Nutwood Studio has been occupied continuously as a Use Class C3 dwellinghouse for four or more years prior to the LDC application date of 1 October 2018. The appellant has not discharged his burden of proof, and the appeal must fail.

Conclusions

22. 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 Nutwood Studio, Wormley West End, Broxbourne EN10 7QN as a Use Class C3 dwellinghouse. 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.

Stephen Brown

INSPECTOR