



Appeal Decision

Site visit made on 2 December 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/U5360/X/20/3252653

35-37 Blackstock Road, Hackney, London N4 2JF

- 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 K Olaoye (South Bank Enterprise Trust Ltd) against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2019/4131, dated 25 November 2019, was refused by notice dated 21 January 2020.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act).
 - The use for which a certificate of lawful use or development is sought is two self-contained flats.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr K Olaoye (South Bank Enterprise Trust Ltd) against the Council of the London Borough of Hackney. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is whether or not the Council's decision to refuse the LDC application was well-founded.

Reasons

4. Section 191(2) of the Act says that uses are lawful at any time if no enforcement action may be taken in respect of them, including due to the time for enforcement action having expired. Section 171B(2) of the Act provides that, where there has been a change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
5. The appellant's case is supported by his sworn statement that the lower ground floor of the appeal property has been in use continuously as 2 self-contained studio flats since the middle of 2012, notwithstanding their being vacant since January 2019. If this is correct then the use would be lawful, as lawfulness accrued over the passage of time will not be extinguished by inactivity or dormancy on the ground short of abandonment. The affidavit was sworn in the presence of a solicitor/commissioner for oaths and I give it some weight.

6. The Council has not submitted evidence of the appeal site's use which contradicts the appellant's version of events, and therefore in accordance with well-established planning principles I shall accept what the appellant has said in his affidavit if his evidence as a whole is sufficiently precise and unambiguous.
7. Flats 1 and 2 have Energy Performance Certificates (EPCs) dated 24 September 2012 and 25 June 2012 respectively, indicating that they were laid out as self-contained dwellings on those dates broadly consistent with the affidavit.
8. The appellant has submitted a significant amount of tenancy management records and agreements for Flat 2 relevant to the period July 2012 to July 2017 together with a benefit form, property condition form and records of a domestic electrical installation check and landlord/homeowner gas safety check within the same period. While this evidence taken together is of moderate weight, the precision of the appellant's case is undermined in that tenants do not necessarily reside for the term indicated in agreements and significantly he has only submitted council tax records for the periods 1 April 2014 to 31 March 2016 (2 years).
9. There is less tenancy documentation in respect of Flat 1, and notwithstanding electrical and gas safety checks in 2016 and 2017, the terms of the supplied tenancy agreements cover only around 2 years (20 September 2013 to 19 September 2014; 9 November 2016 to 30 November 2017). Again, the precision of the appellant's case is undermined in that council tax records supplied cover less than 4 years and are not continuous (28 July 2013 to 31 March 2014 and 1 June 2015 to 31 March 2017).
10. For these reasons the evidence submitted by the appellant is not sufficiently precise and unambiguous and I am not persuaded to find on the balance of probabilities that the lower ground floor was in continuous use as 2 single dwellings for a period of at least 4 years.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of two self-contained flats was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

Andrew Walker

INSPECTOR