



Appeal Decision

Site visit made on 17 June 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 July 2021

Appeal Ref: APP/V5570/X/20/3255908

143 Junction Road, Islington, London N19 5PX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the Act) 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 Berliand of Caraselle Ltd against the decision of the Council of the London Borough of Islington.
 - The application Ref P2019/3501/COL, dated 16 March 2020, was refused by notice dated 20 May 2020.
 - 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 "self-contained dwelling at basement, ground floor (rear), first floor and second floor".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I am obliged to include above, the date and description of the refused application as it was submitted to the Council. I have taken the clearer description used by the Council on its decision notice which is not disputed. The application was not registered until the submission of a replacement plan.
3. The appellant has raised a number of issues regarding the way in which the Council dealt with the application which are not for me to adjudicate upon in this decision.

Main Issue

4. This is an appeal that relates to the refusal of an application for a LDC and turns on matters of law rather than any planning merits. The onus of proof is upon the appellant. The main issue is whether the Council's decision to refuse the LDC was well-founded.

Reasons

5. The appeal site includes a building with 4 floors. This incorporates a small self-contained barbers' shop at ground floor level with an entrance onto the street along with living accommodation within the remainder of the building. The appellant states that the residential element of the building is a single dwellinghouse. Section 191(2)(a) includes within the definition of what is

lawful for the purposes of the act, that the time for enforcement action has expired.

6. With respect to s171B(2) of the Act, the relevant time limit for taking enforcement action against a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, is 4 years beginning with the date of the breach. A dwellinghouse has been held to be a building that affords to those who use it the facilities required for day-to-day private domestic existence. If there has been residential occupation in a broader sense, that does not fall within this well-established definition, the period for immunity would be 10 years.
7. The evidence provided by the appellant is very limited. It includes a brief statement which is described as a "statement of truth" (SOT). It is not a sworn statutory declaration under the provisions of the Statutory Declarations Act 1835 or a formal affidavit. Where a case turns on such evidence, the lack of legal sanctions, as would apply to more formalised documents, can reduce the weight that can be attributed to them. However, as set out in the *Gabbitas*¹ case, the appellant's evidence should not be rejected simply because it is not corroborated.
8. The Planning Practice Guidance (PPG) also provides advice on the submission of LDCs. The PPG states that an application needs to describe precisely what is being applied for and the land to which the application relates.
9. The signatory to the SOT clearly has had detailed knowledge of the building for many years and throughout the material period, whether that is 4 or 10 years. The Council has not presented evidence to dispute that the basement and upper floors were entirely residential and were never used for commercial purposes. There is no dispute that business rates have only applied to the ground floor shop.
10. The SOT is however lacking precision in a number of respects. It refers to the residential element being let to the Council on an assured shorthold tenancy "for around 2 to 3 years" and "subsequently" let out as a 7 room maisonette. No copies of documents are provided to confirm the dates or give any reasonable degree of accuracy about the periods, whether there was continuity to each occupation or about the way in which the building was occupied.
11. Precision about the dates of occupancy and the continuity of the unlawful use is necessary as it has been held that a use can only become lawful if it continues throughout the relevant immunity period, such that the LPA could have taken enforcement action at any time. If, for instance, there were any periods of non-occupancy, the Council may not have been able to consider taking enforcement action at those times. If a use that is taking place in breach of planning control has not achieved immunity and has ceased, the immunity 'clock' may start again each time a new occupant took-up residency.
12. The SOT is also not precise in describing the nature of the residential use that has taken place or what facilities have existed over time. The first and second floors of the building as shown on the submitted drawings, which are not cross referred to within the SOT, have a strong degree of separation from the rest of the building. I saw at my site visit that the access door to the first and second

¹ *Gabbitas v SSE & Newham LBC* (1985) JPL 630

floor accommodation from the ground floor corridor was lockable and appeared capable of self-containment, not reliant upon the other floors. Use of the ground and basement level accommodation would appear to require a degree of sharing of facilities although the doors linking those parts of the building also have locks.

13. It not clear whether the residential accommodation has been provided within a single dwellinghouse. Use as "separate rooms" until 2019, within the 4 years prior to the submission of the application, could indicate that the building has been used in a broader manner or it may be imprecise language. However, based upon the submitted evidence, it has not been demonstrated that any residential occupation has been a continual breach of planning control for 4 or 10 years.

Conclusion

14. Given the lack of contradictory evidence, I can take the SOT at face value. However, the document is not precise or unambiguous. It does not clearly demonstrate on the balance of probability that the residential use of the parts of the building to which the application relates have been used as a single dwellinghouse for any continuous period of 4 years prior to the submission of the application. Furthermore, I am also not persuaded that any broader residential use has continued for a period of 10 years to enable the issuing of a LDC on that alternative basis.
15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the "self-contained dwelling at basement, ground floor (rear), first floor and second floor", 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.

A Harwood

INSPECTOR