The Planning Inspectorate

Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12TH July 2021

Appeal Ref: APP/C5690/X/21/3267776
Bucklands Court, 4 Sydenham Hill, London SE26 6SJ

- 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 Mohammad Ghafar of ATJ Engineering Design & Building Services LTD against the decision of the Council of the London Borough of Lewisham.
- The application, Ref: DC/20/118835, dated 19 October 2020, was refused by notice dated 22 December 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 "A single storey dwelling house with surrounding piece of land at the rear end of the garden."

Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.[1]

3. The description of the use was queried by the Council.[2] The application form describes the existing use as 'a single storey dwelling house' and the appellant confirmed that he was seeking to establish the lawfulness of the building as "residential accommodation". Within his appeal statement he provides some further background information specifically that in 2018 the land 'changed hand' from Philips Electronics UK to Flatiron Property Maintenance and Development LTD. Then in 2019 the property was bought by London 13 LTD who 'made it its current business operations office'.

4. Notwithstanding that it appears the appeal building is currently used as offices, having regard to all of the appellant's submissions, I find it would be more accurate to describe the development sought as the use of an existing,

[1] The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

[2] Email dated 27 October 2020, Appendix 2, Council's Statement of Case

detached building as a self-contained residential unit. Section 191(4) of the Town and Country Planning Act 1990 (the Act) allows the Council (or an Inspector on appeal) to modify the terms of an application, so as to accord with the facts and evidence. As there would be no injustice to the parties, I shall therefore proceed on the basis of my revised wording.

Main Issue

5. The appeal is regarding the use of a detached building[3] within a small plot of land[4] accessed from alongside and across the rear garden of a block of flats known as Bucklands Court. The parties accept that the building was substantially complete more than four years before the date of the application and I see no reason to take a different view.

6. The main issue is therefore whether the Council's refusal to issue a certificate of lawfulness in respect of the self-contained residential use of the building was well-founded. That turns on whether the appellant can show, on the balance of probabilities, that firstly, the self-contained residential use began more than four years before the date of the application. Secondly, whether the appellant can show that the use has continued without material interruption thereafter so as to be immune from enforcement action.

Reasons

7. Section 191(2) of The Town and Country Planning Act 1990, as amended, indicates that uses and operational development are lawful at any time if (a) no enforcement action may then be taken in respect of them because, for instance, the time for enforcement action has expired and (b) they do not contravene the requirements of any enforcement notice in force. Lawfulness in this case is to be decided at the time of the application that, is 19 October 2020.

8. Subsection 191(2)(b) is met here as there is no enforcement notice in force. The Council investigated an allegation about the insertion of windows within the building in 2018 but it appears this case did not result in the issue of any enforcement notice.

9. With regard to subsection 191(2)(a), sections 171B (1) and (2) say that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, or operational development has taken place, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The relevant period for consideration in this instance is more than four years before the date of the application so 19 October 2016 is the relevant date.

The appellant's case

10. The appellant's evidence comprises:

- Plans of the building,
- London County Council planning decision notice dated 1964,

[3] The appellant states the GIA of the ground floor is 18.09sqm with a mezzanine of 7.8sqm and I note the Council do not disagree.
[4] The appellant states this is 53.5sqm and again I note the Council do not disagree.

- London borough of Lewisham established use certificate dated 1970,
- Land Registry documents relating to 4 Sydenham Hill and land lying to the east of Sydenham Hill,
- Electrical installation certificate dated 3 May 2018, and
- Business rates information 1 April 2010 to 31 March 2017 and 1 April 2017 to present.

Assessment

11. The drawings of the building show one open plan room on the ground floor with a single window and door. There is a spiral staircase in the middle of the room which provides access to a mezzanine. This has a very shallow ceiling height. To the side of the open plan room is a much smaller room with a single window. I find that these plans are of no assistance in determining the history of the use of the property, which is concerned with the residential use of a building.

12. The appellant states that the residential use began on 18 September 1970, though the basis for this date is unclear other than it is the date of the 1970 application. The 1964 document is a planning decision notice in respect of an application for 'The use as offices and for the development and testing of equipment of No 4 Sydenham Hill'. The application was made by Hudson Electronic Devices Limited. According to the informative attached to the decision notice, this use was already occurring at the time of the application. The development was refused as it did not accord with Council policy at the time to protect residential uses and limit office uses to particular areas.

13. The appellant appears to be relying on the reason for refusal to support his claim for a residential use of the detached building even though he states that the use began in 1970. However, there is no plan accompanying the document and it seems to me that the 1964 development was in respect of the former building known as 4 Sydenham Hill. The Land Registry documents show that this is the address of the building west of the appeal site, now rebuilt as a block of flats and known as Bucklands Court. I find therefore that the 1964 document does not assist the appellant's case.

14. The 1970 document is an established use certificate[5] for the use of land as an unmanned mobile radio base station. The site address refers to a 'semi-basement room situated at the rear of the premises' and two radio masts located on the roof of the property. The address provided is again 4 Sydenham Hill and the only plan accompanying the document is an Ordnance Survey (OS) extract. This shows the footprint of a building labelled '4' set in the middle of a rectangular parcel of land that includes the current appeal site.

15. It is not clear to me whether the semi-basement room is directly to the rear of the building known as 4 Sydenham Hill or whether it is at the bottom of the rear garden. If it is the latter, then it is not shown on the OS extract. In any event the description of the site refers to a semi-basement room whereas the appellant's plans show a building at ground level with a mezzanine. In the absence of any detailed plans I therefore find that it has not been

[5] A certificate issued by the local planning authority confirming that the use of premises is an 'established use' and therefore not open to challenge.

demonstrated that the 1970 document supports the claimed residential use of the appeal site.

16. In addition, whilst not mentioned by the Council, a third party advises that in 1982 the Council granted planning permission[6], which was subsequently implemented, for the erection of an equipment room at the appeal site with a 22.5m high aerial tower for radio communications.

17. Although there are no plans to accompany this submission, this appears to be consistent with the information shown in the Land Registry documents. Following the development of Bucklands Court, the appeal site was registered with its own title in 1986 and subsequently licenced to Philips Electronics UK. Another third party, who has lived at Bucklands Court since 1986, being 'the first person to move in after the block was built' states that originally there was no building on the appeal site and that the site was developed with a transmission mast and a single storey maintenance building after 1986.

18. The business rates information refers to the 'Arqiva Transmitter Mast' to the rear of Bucklands Court 4 Sydenham Hill but there is no mention of the appeal building.

19. Finally, the electrical installation certificate describes the appeal building as an ancillary building to the radio tower but otherwise makes no mention of the use of the building. There is a reference to a kitchen area, a water heater and a toilet in the inspection report but these by themselves are not evidence of the claimed use. It is more likely than not that the electrician's use of the phrase 'tea room' corroborates the statements from third parties that the building has never been used as a self-contained residential unit.

20. To summarise, the appellant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. The onus of proof however is firmly on him to provide evidence which is sufficiently precise and unambiguous to justify the grant of a certificate. I have had regard to all of the appellants submissions. My conclusion is that he has failed to show, on the balance of probabilities, that there has been any use of the detached building as a self-contained residential unit.

Conclusion

21. 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 use of an existing, detached building as a self-contained residential unit 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.

D Fleming

INSPECTOR

[6] Council reference LE/345/A/TP