



Appeal Decision

Site Visit made on 20 September 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Appeal Ref: APP/N5660/X/20/3254174

89 Lewin Road, London SW16 6JX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Khan against the decision of London Borough of Lambeth.
 - The application ref 20/00909/LDCE, dated 5 March 2020, was refused by notice dated 11 May 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 use of the second floor as a separate self-contained flat.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I shall refer to the subject of this appeal as 'the flat'. This is not an indication that I have made up my mind but is for ease of reference and to enable a distinction to be made between the second floor and the rest of the property.

Reasons

3. An application under section 191(1)(a) of the Act seeks to establish whether any existing use of buildings or other land was lawful at the time of the application. Section 191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii) They do not constitute a contravention of any enforcement notice then in force.
4. The main thrust of the appellant's case is that the use of the flat began more than 4 years before the date of the application. Case law has established that it is for the appellant to make their case on the balance of probabilities. As set out in Planning Practice Guidance (PPG), the appellant's evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
5. To determine the date of a change of use of a building dwellinghouse, caselaw has established that regard should be had to two factors, neither of which is decisive: when the building provided viable facilities for living; and when the use actually commenced. Case law has also established, it is appropriate to

look at the matter in the round and to ask what the building has or of what use it is.

6. A statutory declaration, signed by the manager of the second floor flat, dated 10 September 2019, states that he has been managing the flat since April 2010 and that the property has been converted into two self-contained flats in excess of 4 years. Although this evidence points towards the premises having been converted, it does not provide any detail as to how it has been occupied or by whom.
7. The appellant has also provided an extract from Zoopla, which shows the flat had a kitchen, bedroom and bathroom, however, it does not show how the top floor was used, by whom or over what period.
8. In *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 it was established that a use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. There is a difference between an established dwellinghouse, when an occupier does not have to be continuously or even regularly present in order for the building to remain in use as a dwellinghouse, and where there is no established use.
9. The appellant has provided a statutory declaration, signed by an individual who occupied the flat between 22 of July 2010 to 28 January 2013. Tenancy agreements dated 22 July 2010, for a 12 month period, and 25 July 2011, for a 24 month period, support the evidence provided. This is perhaps, the most significant evidence which supports the occupation of the property as a self-contained flat, however, it falls significantly short of the 4 years necessary.
10. A tenancy agreement, beginning on 20 January 2007, identifies the property as 'Flat 2'. However, it is for a limited period and does not demonstrate how the flat was used.
11. The appellant has also provided a copy of a lodger agreement, dated 24 March 2018. It is not clear from the document, which room the agreement relates to, although I have no reason to doubt the appellant that the occupants lived on the top floor. However, the agreement is for a limited period and relates to a room in a furnished house, not a self-contained flat and does not therefore, support the appellant's contention that it was being used as a self-contained flat.
12. The Council has provided Council Tax band details, which show the second floor property was banded as a flat with effect from 1 April 2019. Although such evidence is not decisive as to how a property has been used, it does point towards the use of the premises as a flat commencing around April 2019, less than four years before the date of the LDC application.
13. The Council points out that users of the flat would have to pass through the remainder of the building. I saw that occupants of the flat would pass through hallways which are shared with the remainder of the property. While I note the Council's comment that the remainder of the building has no planning permission to be used other than a single family dwellinghouse, this does not necessarily, in my view, prevent the flat itself from being self-contained.
14. Although the appellant has provided tenancy agreements which cover a period between January 2007 and 2018, the agreements do not cover a consecutive

period of at least four years. The documentation provided does not demonstrate how the flat has been used and whilst there are references to 'flat' and 'self-contained flat' in some of the documentation, in my experience, such labels are not determinative of use.

15. Thus, I consider the appellant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the use of the second floor as a self-contained flat began on or before 5 March 2016, nor has it been demonstrated that it continued without significant interruption for at least 4 years thereafter.

Conclusion

16. 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 the second floor as a separate self-contained flat 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.

M Savage

INSPECTOR