The Planning Inspectorate

Appeal Decision

Site visit made on 21 June 2021

by J Moss BSc (Hons) DipTP MRTPI

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

Decision date: 08/11/2021

Appeal Ref: APP/Z0116/X/20/3260369
Land at 31 West Mall, Clifton, Bristol BS8 4BG

- 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 Josh Brown against the decision of Bristol City Council.
- The application Ref 20/02107/CE, dated 14 May 2020, was refused by notice dated 28 August 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 the use of the first floor of the property, including the first floor of the rear annexe, as a dwellinghouse.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the existing matters which are found to be lawful.

Procedural Matters

2. The description of the use for which the LDC is sought in the header above is one that I have drafted. I have not used the description given in the application forms as this is long and not particularly precise in identifying the nature of the use or the parts of the property to which the application relates. For similar reasons I have not used the Council's description provided in the decision notice. The reasons for drafting the description as I have are as follows.

3. Whilst the address of the site is given on the LDC application form as 31 West Mall, it is clear from the evidence that the LDC is only sought for part of this building. The decision notice refers to a single maisonette in the description, but refers to 2 units of 'residential dwellings' in the reasons. I note that the application form makes reference to the second and third floor, however the description of the existing use provided at part 5 of the form is aimed at the first floor, together with the first floor of the rear annexe. It states that there is a need to 'formalise the dwelling as an independent unit'. For this reason, I have altered the description of the use to only make reference to the first floor of the property. This is consistent with the address of the appeal site given in the appeal forms as the first floor flat, 31 West Mall.

4. In addition to the above, the application forms confirm that the LDC is sought for an existing use, described as a 'dwelling as an independent unit'. The form states that this is a use falling within Class C3 (dwellinghouses) of Part C,

schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended. Accordingly, I have included reference to a 'use as a dwellinghouse' in the description, rather than a use as self-contained maisonette, which is the description used in the decision notice. Maisonette is not a term used by the appellant in the application form. Use as a dwellinghouse is more precise and consistent with the relevant legislation, referred to below.

Main Issue

5. Section 191(4) of The Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application was lawful at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the development (a use of the building in this case) are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded.

6. There is no dispute that the use of the first floor of No 31 is as a dwellinghouse. The matter in dispute, as confirmed in the Council's decision notice, is whether this use is continuous. The main consideration in this case is whether, on the balance of probabilities, the use has been continuous for a period of four years. The burden of proof is on the appellant. If the Council has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal and refuse to grant the LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.

Reasons

7. I note that the layout of the first floor accommodation is somewhat unusual. There is a large open plan room to the front of the first floor which has full kitchen facilities and an area laid out as a dining and living area. There is also a fully furnished bathroom and bedroom on the first floor of the rear annexe. However, the kitchen, dining and living room is separated from the bedroom and bathroom by a landing and stairs that are also used to provide access to the accommodation on the second and third floor. I cannot, therefore, describe the first floor as a whole as self-contained, as the appellant acknowledges.

8. Nevertheless, it is not suggested that the bathroom and kitchen facilities, as well as the bedroom and living space in the first floor rooms is shared with any other occupier of the building, as might be the case in other forms of residential properties (houses in multiple occupation, for example). The appellant's evidence is that these rooms are only used by the occupier of the first floor, which up until recently was the appellant's mother. In this regard, the rooms used at first floor for accommodation are themselves self-contained. Furthermore, as I observed it the landing and stairs is only used by the occupiers of the second and third floor as a means to access their accommodation. I cannot regard this area as being occupied by these individuals. Rather, this is a shared space akin to a stairwell found in a block of flats.

9. Having regard to the particular circumstances of this case, I find as a matter of fact and degree that the first floor as a whole is a single unit of occupation; that it is used in a way that is physically separate and distinct from the other parts of the building; and that it is not occupied in a way that makes its use incidental or ancillary to the use of other parts of the building.

10. The appellant states that in 1996 five leases were issued for each floor of the property. The appellant holds the lease for the ground and lower ground floors, the appellant's sister holds the lease for the second and third floors, leaving the first floor lease, which was held by the appellant's mother. Four statutory declarations have been provided, one of which is from the occupier of the accommodation on the second and third floor. She states that she has lived in these top two floors with her family from August 2000. She also dates the commencement of the use of the first floor as a dwellinghouse from August 2000, when she commenced works of renovation to the upper floors. She states that her mother lived on the first floor in a separate dwelling with her own living room, kitchen, bathroom and bedroom.

11. The appellant and his wife have also provided statutory declarations which both date the commencement of the use as 2001 and the early 2000s respectively. A third declaration is from an individual who states that she has no interest in the property, but has been a visitor many times. She says that the use of the top three floors of the property as two dwellings dates back many years, but that she has known of it since 2008. All declarations are corroborative with regard to the commencement and nature of the use, and all state that the use continued uninterrupted.

12. The appellant has also provided some 11 bills or correspondence from utility companies with at least one for each year dating from October 2015 to January 2019. All are addressed to the person referred to as the occupier of the dwelling in the statutory declarations and most refer to the first floor flat.

13. Whilst I acknowledge that the first of these is dated some 15 years after the use is suggested to have commenced, these documents spread over a 4 year period shortly before the application was submitted. I do not consider this evidence to be piecemeal, rather it supports the evidence given in the statutory declarations, that the use continued uninterrupted after its commencement.

14. The tenancy agreement is for the second and third floor of No 31 and is for the period August 2016 to August 2017. Whilst there may be only one agreement provided, this again corroborates the declarations with regard to the use of the top two floors as separate from the first floor.

15. In terms of contradictory evidence, the officer's report refers to the Council tax records for the property; the Council suggest that these record the first, second and third floors as a single dwelling. Whilst I note that the appellant sought to rectify this position in 2015, this evidence is not necessarily decisive in this matter. It has not been suggested that the property had been visited since the use commenced to ensure that the Council tax records were correct. Furthermore, in view of the family relationship between the occupier of the first floor and the occupier of the two top floors, I do not find it unusual that there was a single Council tax bill for the two households.

16. Having regard to all of the above, I find the appellant's evidence to be sufficiently precise and unambiguous. In particular, the statutory declarations

carry significant weight in this case, in view of the sanctions that could be imposed should these contain false or misleading evidence. There is no evidence before me that is sufficient to contradict or otherwise make the appellant's version of events less than probable. There is, therefore, no good reason to dismiss the appeal and refuse to grant the LDC. Accordingly, I conclude that the appellant has demonstrated that, on the balance of probability, the use of the first floor of No 31 as a dwellinghouse has been continuous for a period in excess of four years and was lawful on the date the application was made.

Conclusion

17. 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 first floor of the appeal site as a dwellinghouse was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act.

J Moss

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

APPEAL REFERENCE: APP/Z0116/X/20/3260369

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 14 May 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

It has been demonstrated that, on the balance of probability, the use of the first floor of the appeal site as a dwellinghouse has been continuous for a period in excess of four years and was lawful on the date the application was made.

Signed

J Moss

Date: 08/11/2021

First Schedule

The use of the first floor of the property, including the first floor of the rear annexe, as a dwellinghouse.

Second Schedule

Land at 31 West Mall, Clifton, Bristol BS8 4BG.

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 08/11/2021

by J Moss BSc (Hons) DipTP MRTPI

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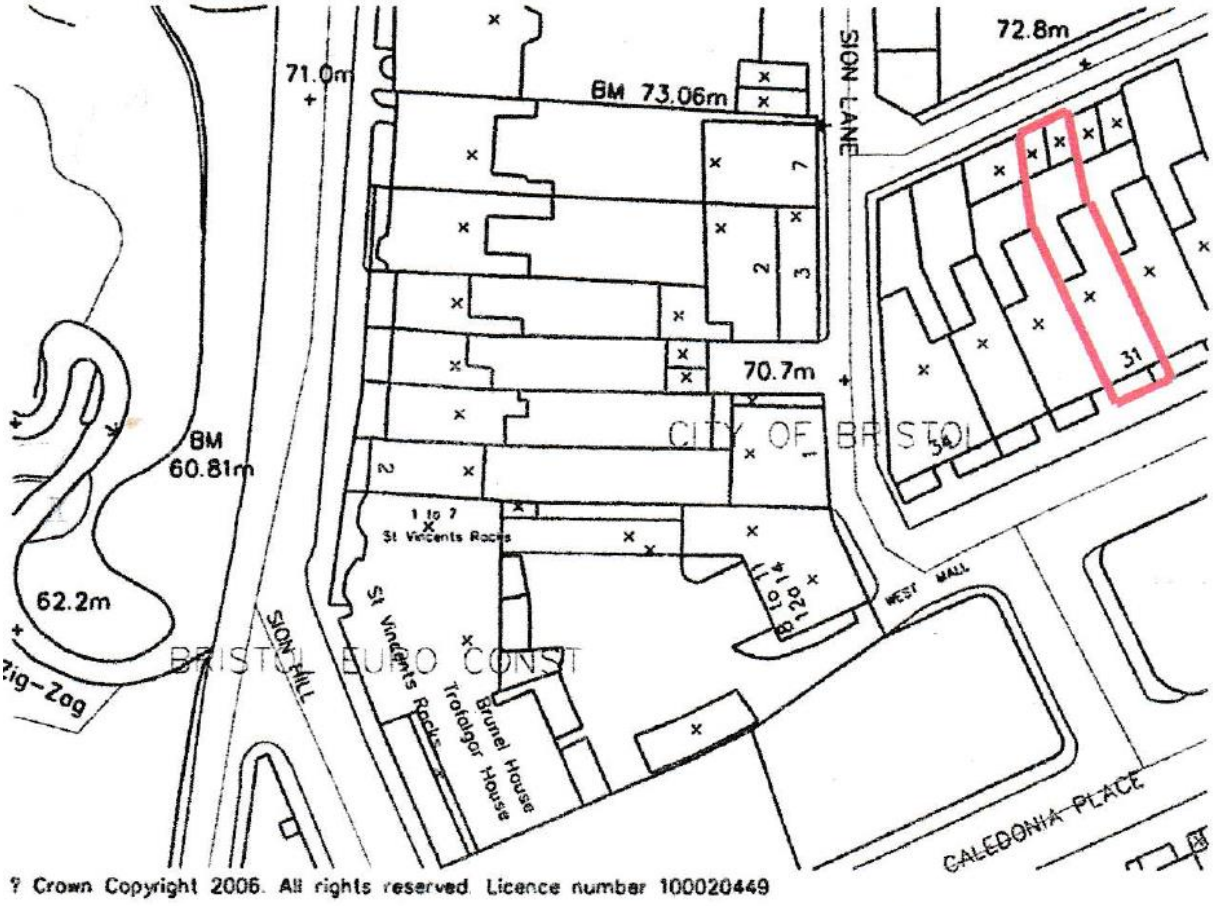
Reference: APP/Z0116/X/20/3260369

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