



Appeal Decision

Site visit made on 19 October 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11/11/2021

Appeal Ref: APP/N4720/X/21/3276291

11 Anderson Mount, Leeds LS8 5EQ

- 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 James Mulkeen against the decision of Leeds City Council.
 - The application Ref 20/08343/CLE, dated 9 December 2020, was refused by notice dated 23 April 2021.
 - 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 use of basement as a self-contained residential flat (C3 use).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The site plan (drawing number: 2020335.02 Rev A1) shows both the building and front yard edged in red. However, the site location plan (drawing number: 2020335.01 Rev. A1) only shows the front yard of the property edged in red. The appeal parties agreed at my site visit that there was no dispute that the LDC relates to the building and I shall proceed on this basis.

Reasons

3. The **main issue** is whether the Council's refusal to issue an LDC is well founded. This turns on whether the appellant can show that the use of the basement as a self-contained residential flat was lawful at the date of the application. The onus of proof is on the appellant to show, on the balance of probability, that the use of the basement as a self-contained flat began on or before 14 December 2016, which is the material date. The use also has to be shown to have continued for a period of 4 years without significant interruption. Any continuous 4-year period is relevant.
4. The courts held in *Gabbitts v SSE & Newham LBC [1985] JPL 630* that if the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse to grant an LDC, provided the appellant's evidence alone is sufficiently precise and unambiguous.
5. The appellant purchased the property with vacant possession approximately 2 years ago. Supporting information includes emails from Northern Powergrid and Northern Gas, and an extract from the electoral register showing the names of residents of 11 Anderson Mount between 2002 and 2019. Other

information provided by the applicant claims that kitchen appliances were manufactured in 2006 and that the gas boiler is 15 to 20 years old.

6. The emails from Northern Power Grid and Northern Gas state that an electricity supply was installed for No 11 from or before 1999 and installed for No 11a from or before 1997 and that separate gas supplies were installed for No 11 and No 11a on 25 March 1998. It would not be unreasonable to conclude from this that some form of sub-division of the building occurred from or before 1999. However, the provision of separate electricity and gas supplies does not show the use of No 11a as a self-contained residential flat. This evidence is therefore ambiguous.
7. The electoral roll information details who occupied "*11 Anderson Mount*" and this varies between 1 and 4 people throughout the 2002 – 2019 period. Given the limited amount of accommodation at No.11, it is difficult to see how 4 people could comfortably occupy the space. Therefore, I find it more likely that this information relates to the occupation of either No 11 and No 11a together or just to No 11a. This information therefore lacks precision.
8. The manufacture dates for appliances found at No 11 only confirm when they were manufactured, not the date when these appliances were installed at No 11. This evidence is therefore ambiguous.
9. The lack of council tax payments does not show that the basement was not in use as a self-contained flat. The Council therefore has no evidence of its own or from others to contradict or otherwise make the appellant's version of events less than probable. However, the appellant has limited personal knowledge of the property and the evidence that has been provided lacks precision and is ambiguous. I would have expected to see sworn evidence from former tenants, the former owner or neighbouring occupiers if other documentary evidence showing the division of the building and occupation of the self-contained basement flat could not be produced.
10. The onus of proof is on the appellant and he has failed to show, on the balance of probability, that the basement was first used as a self-contained flat on or before the material date. Furthermore, he has failed to show that the residential use continued without significant interruption for any 4-year period starting on or before the material date.
11. For these reasons, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the basement as a self-contained residential 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 Madge

INSPECTOR