The Planning Inspectorate

Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 February 2022

Appeal Ref: APP/A5270/X/21/3273989
7 Lyndhurst Avenue, Southall, Middlesex, UB1 3DU

- 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 B DHAMI against the decision of London Borough of Ealing.
- The application ref 203826CPE, dated 1 April 2020, was refused by notice dated 12 March 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 described as 'Existing 3 bedroom house where the double-storey side extension has been converted and contains a separate unit which has been in continuous use for over 5 years tenancy agreements attached to support application'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form for the LDC is dated 1 April 2020, but the Council's decision notice states that the application was received 18 January 2021. The appellants appeal form also states that the date of the application was 18 January 2021. Given these dates, and because the Council's decision was made on 12 March 2021, it seems more likely to me that the date of the application was 18 January 2021. I shall proceed accordingly.

3. The outcome of the appeal involves considering legal grounds based on facts and evidence only. I am also examining evidence about use going back in time and both sides have submitted information that enables me to conclude on the appeal. Consequently, there was no need to visit the properties.

Main Issue

4. Under s191(2)(a) of the 1990 Act, uses are lawful at any time if no enforcement action may be taken against them because the time limit for enforcement action has expired. The relevant time limit in this case under s171B(2) of the 1990 Act is four years beginning with the date of the breach. The appellant must therefore show, on the balance of probability, that the residential unit applied for was created and occupied for a substantially uninterrupted basis for at least four years by the date of the LDC application. The breach must therefore have started no later than 18 January 2017.

5. The appellant has submitted evidence asserting that the breach started in 2015, so that will be my starting point. Consequently, bearing in mind what I have set out above regarding the date of the application, even if it was made on 1 April 2020 this would have made no difference to my conclusions.

Reasons

6. The appeal property is a semi-detached house that has been previously extended by a two-storey side extension. The existing floor plans show that a self-contained dwelling has been created in the side extension that is now separate from the dwelling in the main part of the property. The original part of the property is No.7. The dwellinghouse in the side extension is No.7a.

7. For No.7a there is a series of fixed term 12 months tenancy agreements covering from 21 March 2015 to 20 March 2019. However, these do not show when tenants moved into 7a to start the use. For various reasons, tenants might not move into a property straight away. Nor do they show that there were no gaps in the occupation. The name of the tenant changes between the agreements dated 21 March 2016 and 21 March 2017 and there could have been a gap between one tenant moving out and the other moving in which might have amounted to occasions when the Council was not able to take enforcement action against the unauthorised use because it was not occurring.

8. Sworn statements from the tenants showing the time lived at the property or bank statements showing rent received/copies of rent books for example might have shed more light on the continuity of the use, but there is nothing along these lines. A Council Tax bill for 7a covering 1 April 2021 to 31 March 2022 and a letter from the current tenants who say they moved in on 12 May 2021 are very little assistance in showing a residential use over the relevant period.

9. As for No.7, the tenancy agreements appear to show that the tenant has been the same person from 2015. However, bearing in mind that this side of the property was the original part of the main dwelling, the evidence does not show that this person was occupying only the reduced half. The letter from the same tenant dated 11 June 2021 also states that they have lived at No.7 since May 2010. On the basis that it is claimed that five years before the date of the LDC application the two-storey side extension was converted into a separate self-contained dwelling, the tenant does not refer to this major change to their accommodation in 2015. Water bills in this tenant's name for No.7 also do not show the extent of the property which they were paying bills for. Furthermore, for both properties there is no supporting evidence to demonstrate when the physical works to split the house into two was substantially completed to then enable the use of 7a as a self-contained dwellinghouse to start.

10. All in all, as a matter of fact and degree, the appellant's evidence is not sufficiently precise and unambiguous to discharge the burden on them to show that the use applied for is probably now immune from enforcement action and has thus become lawful. Therefore, the Council's refusal to grant a certificate of lawful use or development in respect of the development described in the banner heading above was well-founded and I conclude that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Gareth Symons

INSPECTOR