
Appeal Decision

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2022

Appeal Ref: APP/A5270/X/21/3281897
5A Craneswater Park, Southall UB2 5RW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Harjinder Singh against the decision of the Council of the London Borough of Ealing.
- The application Ref 213537CPE, dated 9 May 2021, was refused by notice dated 3 August 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 was described as "the property converted in 2015 to provide a separate self-contained unit 5A and comprises of a bedsit of apprx. 13.2m², living/dining 10.5m² adjoining kitchen/cooking facilities 3.75m² and an attached shower/wc".

Summary Decision: The appeal is dismissed.

Background and Main Issue

1. The LDC seeks to ascertain whether the bedsit within 5A Craneswater Park is lawful as a separate dwelling to the main house. Section 191 of the Act states that uses would be lawful if no enforcement action may be taken in respect of them. In this case, the appellant suggests that no enforcement action may be taken because the time for enforcement action has expired.
2. Section 171B of the Act relates to time limits for taking enforcement action. In relation to the use of a building as a single dwellinghouse, no enforcement action may be taken after the end of the period four years beginning with the date of the breach (the relevant period). The Council suggests that insufficient evidence has been submitted to demonstrate the use of the bedsit for the relevant period. The relevant date for determining the LDC was the date of application, 9 May 2021.
3. The burden of proof is on the appellant, with the relevant test of the evidence being on the balance of probability. In accordance with section 195 of the Act, the main issue is whether the Council's decision to refuse the LDC was well-founded.

Reasons

4. Evidence submitted with the application included tenancy agreements and Council Tax Bills. I understand the tenancy agreements cover the period from 14 June 2015 to 14 June 2016 and there is then a gap until 1 November 2017

- with new agreements every year thereafter. The reasons for the gap between 14 June 2016 and 1 November 2017 aren't explained.
5. The Council Tax Bill dated 30 August 2017 states that the property was unoccupied from 30 June 2017 to 31 March 2018. The bill dated 20 December 2017 shows an unoccupied period of 30 June 2017 to 31 October 2017. That is consistent with the evidence from the tenancy agreements that there was a gap in occupation before the tenancy agreement that started on 1 November 2017.
 6. I note that additional documents were submitted, including letter from a broker, receipt for payment of pest control, electrical certificates, Design and Access Statement and floor plan. However, these do not demonstrate occupation of the bedsit during the gap in occupation set out above.
 7. The gap in occupancy of the bedsit is significant and, in the absence of evidence to the contrary, suggests the use as a separate dwellinghouse was not taking place at that time. It appears that it would not have been possible for the Council to take enforcement action during that period. Even if the bedsit had been used as a single dwellinghouse prior to that gap in occupation, it is likely to have ceased during that period. It would then have re-commenced on 1 November 2017.
 8. On the balance of probability, therefore, I conclude that occupation of the bedsit at 5A Craneswater Park commenced on 1 November 2017. As the relevant date in relation to the application is 9 May 2021 the period of four years beginning with the date of the breach had not been complete at that date.
 9. 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 bedsit within 5A Craneswater Park as a separate dwelling to the main house 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.

Formal Decision

10. The appeal is dismissed.

AJ Steen

INSPECTOR