



Appeal Decision

Site visit made on 9 February 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Ref: APP/U5930/X/20/3264462

1A Flempton Road, Leyton E10 7NH

- 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 M Oksuzoglu against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 202891, dated 22 September 2020, was refused by notice dated 13 November 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 described as: Two residential dwellings on the first floor.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development in the heading above from section 5 of the application form, omitting superfluous words. I am satisfied this is clear and consistent with the description used in the Council's decision notice.
3. Planning Practice Guidance¹ is clear that planning merits are not relevant at any stage in a lawful development certificate application or the appeal process for such an application. Therefore I cannot take them into account. Planning merits include matters such as whether sufficient space for residential use has been provided and whether there is any loss of privacy or overlooking to neighbouring properties.

Main Issue

4. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

5. Under section 191(1) of the 1990 Act, if any person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application for the purpose to the local planning authority specifying the land and describing the use.

¹ Lawful development certificates, paragraph: 009 Reference ID: 17c-009-20140306

6. Section 191(2) of the same Act states that for the purposes of this Act uses are lawful at any time if (a) no enforcement action may then 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 (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
7. Section 191(4) provides that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
8. The Planning Practice Guidance states that the applicant is responsible for providing sufficient information to support an application². In the case of applications for existing use, it states that 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, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
9. Section 171B(2) of the 1990 Act states that where there has been a breach of planning control consisting in the change of use of any building³ to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
10. It has been established in case law that a use can only become lawful if it continued throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time.
11. So based on the evidence provided, I must consider whether any part of the appeal building changed to use as a single dwellinghouse and was used as such continuously for at least 4 years after the date of the change and before the date of the application.
12. According to the appellant, the use began on 1 March 2009. That being the case, the use would have become lawful on 1 March 2013.
13. The appellant states "numerous documentary evidence including affidavits have been obtained to support the application to confirm continuous use for over 4 years." However, the only documentary evidence provided by the appellant to support their case, is a Summons for Non / Late payment of Council Tax, addressed to Mr Gokhan Oksuzoglu for Flat 1A, 1 Flempton Road and a Summons for Non / Late payment of Council Tax, addressed to Mr Gokhan Oksuzoglu for Flat 1B, 1 Flempton Road.
14. Both summons concern a period of liability from 26 June 2009 to 31 March 2010. As such, neither of the documents provided reflect continuous use of either unit as a single dwellinghouse for 4 years.

² Lawful development certificates, Paragraph: 006 Reference ID: 17c-006-20140306

³ Under section 336 of the 1990 Act "building" includes any part of a building

15. On their application form, the appellant has indicated that the use consists of 2 dwellings, each containing 2 bedrooms. Floor plans provided show a layout where each flat has 2 rooms annotated as bedrooms. However, the Council states that a site visit as part of a previously refused LDC application confirmed that the use of the rooms did not correspond with the submitted floor plans and that it appeared that both flats are being used as a House in Multiple Occupation (HMO). This reflects my observations at my site visit.
16. At my site visit I found that the rear unit contained a single bedroom, a double bedroom, a twin bedroom and no living room. This does not reflect what is shown on the floor plan provided. Each bedroom was behind a locked door and contained a fridge.
17. I found the front unit contained 2 double bedrooms facing the road, either side of a room laid out with a table, chairs and cupboards. A room at the rear of the front unit was subdivided into 2 parts with a double bed in the front part and a single bed in the rear part. Again, each bedroom was behind a locked door and contained a fridge. There was no room recognisable as a living room and the layout did not reflect that shown on the floor plan provided.
18. What I saw on site strongly indicates that occupants of each unit do not live together as a single household and instead share basic amenities which in this case includes a kitchen, bathroom and toilet facilities. My impression reflects that of the Council's earlier site visit, ie that the existing use of each unit appears to be an HMO rather than a single dwellinghouse. This contradicts the appellant's case that the use is as they have described in their application.
19. Whilst I do not know the date of the Council's earlier visit, from the information provided it most likely took place in early 2020 before the Council decided the previous LDC application. This was prior to the date of the application which is now before me. There is no evidence the use of the appeal site has materially changed since the day of the Council's visit.
20. Whilst I appreciate the relevant date for ascertaining whether the existing use is lawful is the date of the application, there is no evidence the use of the appeal site has materially changed since the date the appellant has said the use applied for began, either.
21. Taking into account all of the above, I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to demonstrate on the balance of probability that any part of the appeal building changed to use as a single dwellinghouse and was used as such continuously for at least 4 years after the date of the change and before the date of the application.

Conclusion

22. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'Two residential dwellings on the first floor' 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.

L Perkins

INSPECTOR