The Planning Inspectorate

Appeal Decision

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 March 2022

Appeal Ref: APP/A5270/X/21/3266925
319 Ruislip Road East, Greenford, Middlesex UB6 9BG

- 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 Jonathan Wright against the decision of the Council of the London Borough of Ealing.
- The application Ref 203576CPE, dated 27 August 2020, was refused by notice dated 10 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 use of part of the first floor (Flat 319) as a self-contained dwelling.

Decision

1. The appeal is refused.

Preliminary Matters

2. The issue of an LDC depends entirely on factual evidence about the history and planning status of the building or land in question and the interpretation of any relevant planning law or judicial authority. The burden of proof regarding decisive matters of fact rests on the appellant. As the determination of this appeal turns on matters of law, it was not necessary for me to carry out a site inspection.

3. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council 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 dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous. The relevant test of the evidence is 'the balance of probabilities'.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

Background

5. The appeal site is a first floor one bedroom flat located in a three storey building. Before the appellant's company purchased it, 319 Ruislip Road East

was a two storey building in use as a bank at ground floor and a flat at first floor level. An employee of the bank occupied the flat, and the address for both the bank and the flat was 319 Ruislip Road East.

6. The building was bought by the appellant's company in 2007. The first floor was converted into two self-contained flats which were numbered as 319A and 319B. The appellant assumes that it was at this time that the council tax record for Flat 319 was deleted.

7. Subsequently, in May 2009, planning permission ref: P/2008/4705 was granted for the erection of the second floor, which provided two further self-contained flats. This development was carried out in 2009-2010. At the same time, Flat 319A on the first floor was sub-divided into Flats 319 and 319A. Following the completion of the development, the building contained a total of six flats, one at the rear of the ground floor, three at first floor level and two at second floor level. According to the appellant, it was let as six flats from that date onwards.

8. An LDC application ref: 201970CPE was made seeking to establish the lawfulness of six flats, which was refused by the Council. The Council accepted that all six flats had tenancy agreements for a period of four years prior to the submission of the application. However, because only five of the flats appeared on council tax records, the Council considered that the lawfulness of Flat 319 as an independent dwelling had not been demonstrated. Nonetheless, they did agree that the use of the remaining five flats was lawful.

9. Accordingly, a further LDC application ref: 203356CPE was made seeking a certificate of lawful use of the property as five self-contained flats. The disputed dwelling, Flat 319, was omitted from the application. The LDC was granted on 15th October 2020.

Assessment

10. The appellant now seeks to establish the lawfulness of the use of Flat 319. For the appeal to succeed, the appellant needs to submit sufficient precise and unambiguous evidence to show that the appeal site has been in continuous use as a self-contained residential unit for four years or more prior to 27 August 2020, which is the date of the LDC application. The unit therefore needs to have been in occupation on or before 27 August 2016.

11. The Council's case largely turns on the deletion of the council tax band for 319 Ruislip Road East and the lack of a council tax record for Flat 319. They also point to the lack of additional evidence such as utility bills. I note the appellant's contention that the Council made no attempt to verify the submitted floor plan layout, which showed a total of six flats at the property.

12. In support of his case, the appellant submits a number of tenancy agreements. The first tenancy agreement commenced on 8th August 2015 for a period of 12 months. The Gas Safety Record of 28 July 2015 is in keeping with this time scale as it would make sense for such a check to be done before the tenants moved in. The same tenants renewed the 12 month agreement on 8 August 2016 and signed a further agreement on 8 August 2018. As a result, there is a gap of one year from August 2017 to August 2018 that is not accounted for.

13. The next agreement is signed by new tenants on 6 March 2019 for 12 months, which accounts for the period up to the expiry date of 5 March 2020. I note the Gas Safety Record of July 2019, but this does not add significantly to the

evidence of the agreement covering that time. However, there is no evidence in the form of a new tenancy agreement relating to the period between March 2020 and 27 August 2020, which is the date of the LDC application.

14. Turning to the matter of the utility bills, the appellant points out that it is usual for these to be paid by tenants, and so the letting body would not have access to such documents. Nonetheless, it is usual for landlords and tenants to agree meter readings at the beginning and end of tenancies, which the company would usually hold records of.

15. The appellant also provides a statutory declaration from Mr Karimi, director of Newvale Greenford Ltd. In it, Mr Karimi says that the works to create the flat were carried out in July 2015 and that it was first let in August 2015. He also states that the flat has been occupied without interruption until the present time.

16. However, whilst the statutory declaration is to be given substantial weight, it does not outweigh these material gaps in the evidence amounting to one year from 2017-2018, and then four or five months in the period up to August 2020. No explanation is given for these discrepancies. The continuous use of the flat for the requisite four year period has therefore not been established.

17. The lack of council tax records is not in itself determinative in cases of this kind. However, the absence of any form of primary documentation relating directly to residential occupation is a matter of concern. For example, copies of gas, electricity, water or other bills could have been requested from the tenants, or accounts to show that the rent was paid on the specified dates could have been provided. However, as the evidence stands, there is little to corroborate the assertion that the flat was continually inhabited for the time scale in question.

Conclusion

18. On the main issue, I conclude that the appellant has failed to produce enough precise and unambiguous evidence to show, on the balance of probabilities, that the continuous use of the appeal site as a residence subsisted for the requisite four year period.

19. For the above reasons, I am satisfied that the Council's refusal to grant an LDC in the terms that were applied for was well founded. The appeal fails and I shall exercise the powers transferred to me in section 195(3) of the Act.

Elaine Gray

INSPECTOR