



Appeal Decision

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 March 2022

Appeal Ref: APP/Q5300/X/20/3264954

61 King Edwards Road, London, N9 7RL

- 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 Kenan Erdogan against the decision of the Council of the London Borough of Enfield.
 - The application Ref. 20/03145/CEU, dated 28 September 2020, was refused by notice dated 24 November 2020.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a LDC is sought is "C3 dwellinghouse".
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Appeal Site

1. The building for which an LDC is sought is a separate outbuilding to the rear of the dwellinghouse at No. 61 King Edwards Road.

Main Issue

2. The main issue is whether the Council's decision to refuse a LDC was well founded.
3. The provisions of s191(2) of the Act include (a) that a use is lawful at any time if no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force. Since no enforcement notice was in force at the date of the application it is clear that s191(2)(b) is satisfied.
4. With regard to the requirement at s192(a) the burden of proof is on the appellant to establish, on the balance of probabilities, that the use of the outbuilding as a separate dwelling commenced at least 4 years¹ before the date of the application, hence before 28 September 2016, and continued for a period of 4 years without any significant interruption.
5. The appellant's submitted documentary evidence in respect of the use of the outbuilding comprises tenancy agreement documentation, 3 affidavits, and a letter from the appellant's accountant. These are summarised below.

¹ S171B(2) - Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

Tenancy agreements (TA)

6. TA1 – (Tasci) for a period of 12 months from 12 April 2016
7. TA2 – (Tasci) for a period of 12 months from 12 April 2017
8. TA3 – (Tasci) for a period of 12 months from 12 April 2018
9. TA4 – (Tasci) for a period of 12 months from 12 April 2019
10. TA5 – (Yesil) for a period of 12 months from 12 April 2020

Affidavits (A)

11. A1 – (Erdogan) states he is the owner of the property and that the outbuilding has been occupied by tenants since April 2015, firstly by Mr Tasci until April 2020 and then by Mr Yesil from April 2020.
12. A2 – (Dari) is from a neighbour who has lived at No. 65 King Edwards Road since 2006. She states that she confirms the outbuilding has been used as a self-contained studio flat for more than 4 years and corroborates the periods of occupation of Mr Tasci and Mr Yesil set out in Affidavit 1.
13. A3 – (Kara Kum) is from a neighbour who has lived at 84 King Edwards Road since 2000. Other than his personal details it replicates exactly the statements in Affidavit 2.

Accountant's Letter dated 10 December 2020

14. The letter states that the appellant's studio rental income has been declared on his self-assessment submission for the past five years.

Assessment

15. The TAs have been significantly edited. This includes on all of them, where the subject property is described, the addition of the hand-written word "studio" next to where the original typed word has been mostly obliterated. It is difficult to be certain but the obliterated word appears to say "dwellinghouse". As such, the TAs have the appearance of originally relating to the dwellinghouse at No. 61 King Edwards Road, with the later insertion of the word "studio". There may of course be an explanation as to why this is so, however such explanation is absent from the appellant's evidence. Additionally, although all the TAs have landlord and tenant signatures, none of the TAs are signed by witnesses as required. The TA5 signatures are not on the correct page. Taken together, I find that all of these factors result in a significant lack of precision and ambiguity in the evidence.
16. The appellant's affidavit (A1) states no more than the outbuilding has been occupied by tenants since April 2015, firstly by Mr Tasci until April 2020 and then by Mr Yesil from April 2020. However, it does not confirm that the actual physical occupation by tenants was continuous throughout the relevant period, and there is no other information which describes their residential occupation in more detail.
17. Affidavits A2 and A3 are both from neighbours who do not adjoin the site. Paragraph 3 in each affidavit seeks to corroborate the residential use of the outbuilding over the relevant period. However, given the distance of their properties away from the appeal building, it is very unclear to me how they

would have had sight or otherwise direct knowledge of the outbuilding's continuous occupation over the relevant 4 year period. If their knowledge is simply based on information they have been told that is not explained. Taken together I find these affidavits to be very sparse in detail and vague overall.

18. The tenants subject of the TAs would have been best placed to explain in detail the nature and duration of their occupation. However, there are no affidavits or other written submissions from them.
19. The letter from the appellant's accountants refers to rental income over a five year period declared on self-assessment submissions. However, no copies of those documents are before me, nor any other audited or unaudited financial data relating to the appeal building. This evidence is also vague and imprecise.

Conclusion

20. In weighing the evidence the approach to be taken has been established by the Court judgment in *Ravensdale*² in respect of sparse or patchy information, and by earlier Court judgments, reiterated in the PPG³. Hence, 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 probabilities.
21. There is little detailed contradictory evidence submitted by the Council. However, I find that the appellant's own submitted evidence is by itself far from being sufficiently precise and unambiguous in establishing, on the balance of probabilities, that the outbuilding has been continuously used as a separate dwelling for more than 4 years prior to the date of the application.

Formal Decision

22. For all the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the appeal building as a dwellinghouse 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.
23. The appeal is dismissed.

Thomas Shields

INSPECTOR

² *Ravensdale Ltd v SSCLG* [2016] EWHC 2374 (Admin)

³ Planning Practice Guidance Reference ID: 17c-006-20140306 (MHCLG)