



Appeal Decision

Site visit made on 12 July 2022

by D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 22nd July 2022

Appeal Ref: APP/P4605/X/22/3295884

107 Minstead Road, Birmingham B24 8PR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Craig Evans against the decision of Birmingham City Council.
 - The application ref 2021/09637/PA, dated 10 November 2021, was refused by notice dated 21 March 2022.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a certificate of lawful use or development is sought is self-contained living unit in Annex attached to 107 Minstead Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters and Background

2. The description of the use for which an LDC is sought is taken from section 5 of the application form. However, the Council amended this to '*existing use of the annexe as a self-contained studio flat*' and this has been adopted by the appellant when completing his appeal form. That amended description is more accurate in respect of the use that has been applied for and therefore I have dealt with the appeal on this basis. I am not determining whether the operational development that forms the annexe building nor any existing use of the remainder of the appeal property is/are lawful.
3. The evidence before me from a number of the parties relates to planning merits, including noise and litter/rubbish. Nevertheless, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority.
4. The main part of the appeal property is a terraced house in a row of similar properties in a residential street. To the rear of that main part is a single storey, flat roofed annexe. Entry to the annexe is from a yard/garden area and it does not have internal access to the main property. A gated passageway between 107 and 109 Minstead Road provides access to the yard/garden area and the annexe.

Reasons

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. In order for an LDC to be granted under section 191 of the 1990 Act, the burden of proof is with the appellant and the appropriate test of the

evidence is the balance of probabilities. The onus is firmly on the appellant to show that the use of the annexe as a self-contained studio flat was lawful at the time the application was made. 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.

6. Section 191(2) of the 1990 Act states that '*For the purposes of this Act uses and operations 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.*' Subsection 191(2)(b) is met in this case as there is no evidence before me to indicate that there was an enforcement notice in force at the date of the LDC application.
7. With regard to subsection (a), section 171B(2) of the 1990 Act says 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 that breach. The date of the LDC application is the 10 November 2021 therefore the appellant needs to show, on the balance of probability, that the change of use of the annexe to a self-contained studio flat began on or before 10 November 2017 and continued for at least 4 years thereafter without significant interruption.
8. The appellant's case is that the use is lawful because it has been in place since 2009. This is based on an email from ESN Solicitors to Howell Solicitors dated 16 May 2018. Within that email it is stated that:

'(2) The outbuilding was a shell. It had a toilet and water supply and was used as a storage area. Our client converted it into a self-contained studio. The HMO inspector inspected and classed it as self-contained studio and not as part of the building. Our client is unsure as to whether it was part of original construction. When our client applied for the HMO Licence in 2009 it was inspected and the HMO inspector was happy with the standard and advised our client did not need a certificate for the same.'
9. The appellant's agent has stated, during the appeal process, that '*the client also had a contract in place with a care company and up until October, when the council inspected the property, and beyond, there was a tenant living in that part of the property*'.
10. There is no reason to doubt the facts as they are stated within the email exchange between the solicitors. Those facts are that prior to the annexe being converted into a self-contained studio it was a shell and used as a storage area, the previous owner undertook that work, in 2009 it was inspected by a HMO Inspector who advised the owner at that time that a certificate was not needed for that part of the building as it was classed by them as a self-contained studio.

11. Those facts do not precisely specify a date when the change of use began, they only indicate that on the day that the inspection took place it was classed as a self-contained studio by that HMO Inspector. They are ambiguous as to whether the annexe was in use and occupied at that time and if it was whether the use of the annexe as a self-contained studio flat had continued from 2009 until the date of the email without significant interruption.
12. The appellant's agent's statement is not in the form of a statutory declaration and the contract cited is not before me. Moreover, it is not clear in which year the agent is referring to when he cites the month October. There is no evidence, such as bank statements, before me to indicate that the appellant has received any rental payments from individual tenants or the care company since he purchased the property. There are no statutory declarations from the previous owner or tenants indicating how it was used and when it was occupied. Nor is there one from the appellant explaining how the property has been used since he purchased it and the dates tenants have occupied it.
13. Taking into account all of the above, there is insufficient precise and unambiguous evidence before me to show when the change of use began and that it continued for at least 4 years thereafter without significant interruption. As with all LDC applications, it is open for fresh applications to be made if, for example, other evidence comes to light.

Conclusion

14. 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 existing use of the annexe as a self-contained studio flat 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.

D Boffin

INSPECTOR