Appeal Decision

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 August 2022

Appeal Ref: APP/D1590/X/21/3287100
4C and 4B Clifton Terrace, Southend-On-Sea SS1 1DT

- 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 Mrs Gemma Steffensen against the decision of Southend-on-Sea Borough Council.
- The application Ref 21/01365/CLE, dated 30 June 2021, was refused by a notice dated 27 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 is the use of 4B and 4C Clifton Terrace as a single family dwelling.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Considering the matters at appeal it was not necessary to visit the appeal premises. The main parties agreed that I can reach a decision based on the representations and supporting information submitted by them as a matter of course as part of the application and appeal process.

3. Section 191(4) of the Town and Country Planning Act 1990, as amended (1990 Act) indicates 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, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a certificate of existing lawful use or development (LDC) was well founded. That turns on whether the appellant can demonstrate, on the balance of probability, that a change of use of Flats 4B and 4C to a single dwellinghouse took place more than four years before the date of the application and continued without significant interruption thereafter, so as to be immune from enforcement action. The burden of providing facts in this appeal rests on the appellant. If there is no evidence to contradict or make the appellant's version of events

less than probable, and the appellant's evidence alone is sufficiently precise and unambiguous, a LDC should be granted.

Reasons

5. The relevant date in this instance is 30 June 2017. It is the appellant's case that the conversion works were completed in July 2010. The works undertaken are stated to have included removing one of the flats front doors and remodelling to provide a single entrance. In addition, the interior layout was altered, a new staircase installed together with a new kitchen, a utility room in the old kitchen and a new bathroom.

6. The application is supported by architect drawings of the new staircase and entrance alterations dated March 2010. A copy of the invoice for the new staircase, dated July 2010 and a final balance statement for the kitchen and bathroom works, dated April 2010 have also been provided. In addition, a signed affidavit from the contractor has also been provided which states that his business undertook renovation works at Flats 4B and 4C in 2010 and the works were completed in July 2010. Photographs of the conversion works have also been provided as well as Council Tax and Water Rate bills for both flats.

7. The evidence provided in relation to the building works undertaken, including the letter from the contractor, indicate that works to the staircase, entrance and interior were undertaken in 2010. However, the submitted Council Tax Statements and Water Bills show that Flats 4C and 4B have been charged separately for these utilities between 2010 and 2021. In the absence of any explanation from the appellant, it is difficult to reconcile why the appellant would continue to pay Council Tax and Water Supply charges for a property she says has not been in existence for the past 10years?

8. The Council Tax and Water Supply bills, without explanation, cast significant doubt on the appellant's claim that the property has been occupied as a single dwellinghouse since 2010. The appellant's evidence alone is not sufficiently precise and unambiguous to demonstrate, on the balance of probability, that the use of the property as a single dwellinghouse is lawful.

Conclusion

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 use as a single 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.

Elizabeth Pleasant

INSPECTOR