



Appeal Decision

Site visit made on 29 November 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2022

Appeal Ref: APP/N5090/X/21/3289295

57 Selborne Gardens, Hendon, London NW4 4SH

- 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 Miss Ahlia Hussain (Lev Properties Ltd) against the decision of London Borough of Barnet.
 - The application ref 21/5128/191, dated 21 September 2021, was refused by notice dated 2 December 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 described as a rented studio.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The use the appellant is trying to establish as lawful is described in various ways. The description in the application form is 'C3 – dwellinghouses'. Later in the form it says 'The space has been used a rented studio for the past few years and we would like to be able to continue using this now as part of the main property and included with the HMO'. The response to a question on the appeal form regarding the actual use of the site at the time of the application to the LPA is 'Used as a rentable studio in use for the past 4 years'. The Council's decision notice describes it as 'use as a studio flat'.
3. An application for an LDC needs to describe precisely what is being applied for. In this case, having considered the various ways the existing use claimed is described, it appears to me that a certificate is sought for use as a studio flat (Use Class C3). This indicates use as a self-contained dwelling, as opposed to any extension of the HMO use of the main house. While there is reference to using the property as part of the HMO in the future, proposed uses fall within the scope of s192 of the Act and are not relevant to determining the existing lawful use, which is the question posed by this application under s191 of the Act.

Main Issue

4. The main issue is whether the Council's decision to refuse to issue a certificate was well-founded. This turns on whether, on the date of the application, the

building had been in continuous use as a studio flat (Use Class C3) for 4 years or more.

Reasons

General approach to LDCs

5. Advice relating to LDCs is provided by the Government's Planning Practice Guidance (PPG). This establishes that the applicant is responsible for providing sufficient information to support an application. In the case of applications for existing use, 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. A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Planning merits are not relevant.

The requirements to establish lawfulness in this case

6. Section 191(2) of the 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.*
7. It does not appear that any enforcement notice was in force at the date when the application for the LDC was made. Accordingly, my decision hinges solely on s191(2)(a).
 8. The time limits for taking enforcement action are set out in s171B. Section 171B(2) establishes that 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. Thus, to be lawful in this case, the building would need to have been in use as a C3 dwellinghouse/studio flat for a continuous period of not less than 4 years prior to the date of the application for an LDC. Accordingly, the use would have to have commenced not later than 21 September 2017 (4 years before the application for an LDC was made).

The certificate sought

9. No 57 Selborne Gardens is a house, now in use as a house in multiple occupation (HMO). The application did not explicitly state which part of the property it relates to, but information submitted with the appeal indicates that it is the detached former garage building. The property was undergoing work when I visited it and the interior had been stripped out. Plans submitted by the appellant indicate that it was split to provide a toilet/shower room and what appears to have been a living area with kitchen units.

10. The building is situated to the rear of the main house and is very close to it. The main window of the appeal building looks onto the back garden (which was also caught up in the building works and was free from any garden features when I saw it). Doors in the rear of the main house provide access to the garden, which can also be reached from the driveway. The information before me does not establish who the garden is used by but the intimate relationship between the garden and both buildings suggests that it is likely to be a shared facility.
11. The appellant has provided some assured shorthold tenancy agreements (ASTs) which, it is said, show that the building was in use as a studio flat for more than 4 years prior to the LDC application. The ASTs show lettings for various 12 month periods between 1 April 2016 and 28 July 2020. Copies of Deposit Protection Certificates have also been provided.
12. However, these documents do not show that the building has been used as a C3 studio flat. Rather, the three most recent ASTs are headed 'Tenancy agreement for letting a room in a residential dwellinghouse'. This implies that the building may have been used as an additional room of the HMO rather than as a separate studio flat. Use as an HMO is different to use as a separate C3 dwellinghouse. Consequently, the fact that the ASTs do not establish clearly the basis on which the unit was occupied means that their value in demonstrating the particular use the appellant claims is limited.
13. Moreover, the LDC application indicates that the residential use claimed began on 19 November 2018. That aligns with the start date of one of the ASTs, but is less than 4 years before the LDC application was made. Consequently, if that date is correct, the use was not lawful when the application was made. There is no explanation of why that date was given and how it should be reconciled with the further information and ASTs submitted with the appeal.
14. Considering the information before me as a whole, it has not been shown, on the balance of probability, that the building was used as a studio flat for a continuous 4 year period prior to the application for an LDC. It has not, therefore, been demonstrated that the use was lawful on the date of the application.
15. I have considered the possibility that, despite the reference to a C3 studio flat, the appellant actually intended to demonstrate that the building was used as a seventh HMO room. However, for the reasons already given, the information before me is not sufficiently clear and unambiguous to demonstrate that either. In any event, the 4 year period specified in s171B(2) of the Act only applies where there has been a breach of planning control consisting of the change of use of any building to use as a single dwellinghouse. Use as an HMO, however, is not use as a single dwellinghouse and s171B(2) does not apply. Rather, s171B(3), which specifies a ten year period for 'any other breach of planning control', applies. Thus, the appellant would need to show that an HMO use had continued for at least 10 years. Since the evidence before me only relates to roughly a 4 year period, it clearly cannot demonstrate a lawful HMO use. Consequently, whether use as a C3 studio flat or an HMO is considered, the appeal cannot succeed.

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development 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 and dismiss the appeal.

Peter Willows

INSPECTOR