



Appeal Decision

Site visit made on 19 December 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2023

Appeal Ref: APP/C5690/X/21/3286579

Flat 1, 2 and 3, 25A Dartmouth Road, Forest Hill, London SE23 3HN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kam Wah Wong against the decision of London Borough of Lewisham.
 - The application ref DC/21/120658, dated 24 February 2021, was refused by notice dated 30 April 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 "Conversion of a 2 bed flat into 1 x studio flat, 1 x 1 bed flat and 1 x 2 bed flat (C3 use) Conversion started/completed in 2013".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is no dispute between the main parties that the appeal relates to what are currently 3 self-contained flats. I have taken this as meaning that each flat is a dwellinghouse for the purposes of the Act. Section 171B(2) of the Act states that where there has been a change of use of any building to use as a dwellinghouse, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.
3. Section 191(2) of the Act then confirms that, amongst other things, uses are lawful 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.

Main Issue

4. The main issue is whether the Council's decision was well founded. As part of that, it is necessary to consider whether the application was made after the end of the period of 4 years beginning with the date the breach commenced, therefore by 24 February 2017. The onus in these proceedings is on the appellant to prove their case on the balance of probabilities.

Reasons

5. The 3 flats are on the first, second and third floors above street-facing commercial premises on the ground floor. The entrance door to the side of the

- 'shop' front is signed as '25A' and there is a remote button entry intercom system for each flat.
6. The appellant states that in 2002 there was one flat 'upstairs' but in 2014, the lease-holder altered the upstairs to 3 flats without their permission or planning permission from the Council. The Council accepts that Council Tax records support the appellant's case and provides evidence that the property was subdivided into 3 self-contained units, they say since 2013. The photographs of the meter cupboard with a date of installation of March 2014 indicates that the electricity supplies were installed by that time. I saw those at my site visit. These factors indicate that the single flat had been physically altered to enable use as potentially 3 flats by 2014. This is supported further to a degree by the unsigned invoices from 'P Y Builder' from 2015, 2016 and 2017 along with that from 'Yi Da Trading Limited' with each of these referring to '3 flats'. However, the documents make no reference to what the people carrying out the inspections saw such as any obvious signs of residential occupation.
 7. The submitted evidence has not provided any assurance that each of the flats was occupied continuously or therefore that the breach of planning control had been continuous over the necessary 4 year period. Until such time as a continuous breach for 4 years has occurred, any material break in the continuity of occupation may have been sufficient to interrupt the 4 year period referred to in s171B(2). Other documents such as the valuation report from 2019 does not assist either and merely demonstrates that there is potential for each of the individual units to be occupied as flats.
 8. There is no indication that the 3 flats have been used for purposes other than residential occupation. However, it has been held that whilst the physical conversion is a factor to take into account, in order for a change of use to occur, there has to be a change in the actual activity going on.
 9. I have considered this matter in the round but even if there has been some residential use of each of the units there is no evidence to indicate that each of the flats has been occupied continuously for any period of 4 years prior to the date of the application. The evidence is not therefore sufficiently clear in itself to lead me to a view that the flats have probably been occupied continuously for the necessary period.

Conclusion

10. 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 "conversion of a 2 bed flat into 1 x studio flat, 1 x 1 bed flat and 1 x 2 bed flat (C3 use) Conversion started/completed in 2013", 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.

Andy Harwood

INSPECTOR