



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: 18 January 2023

Appeal Ref: APP/N5660/X/22/3291522

7 Mackie Road, LONDON, SW2 2ED

- 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 Hammant Patel against the decision of the Council for the London Borough of Lambeth.
 - The application ref 21/00434/LDCE, dated 15 January 2021, was refused by notice dated 22 September 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: "Self contained flat on ground floor of property 7 Mackie Road. This are is an existing part of the building and has not had any extension work or structural changes. Comprises of 2 main rooms used as a bedroom & lounge also a small kitchen, shower/wc, externally an entrance yard and a rear yard. Prior to purchase this area was a garage."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of the development above from the application form. The Council re-phrased this more succinctly on their decision as "Application for a Certificate of Lawful Development (Proposed) with respect to the conversion of the garage as a self-contained flat." However, it is clear from the context of the application and subsequent appeal documents that reference to 'proposed' is erroneous. What was applied for was an existing use of the building that was formerly a garage attached to the side of the dwelling, as a self-contained ground floor flat which the application form (at section 4) confirms is considered to be within Use Class¹ C3. That is the basis upon which I have considered the appeal. In my conclusion below I have simply referred to the development being a "Self-contained flat on ground floor of property 7 Mackie Road".
3. Reference on the application form to breaches of condition is also erroneous and contradicts what the Council has included on its returned appeal questionnaire. The quoted number in part 6 of the LDC application form appears to relate to the enforcement investigation reference rather than any previous planning permission.

¹ The Town and Country Planning (Use Classes) Order 1987 (as amended), Schedule 1, Part C

4. The date of the application is stated by the Council on its decision and by the appellant on the appeal form as 8 June 2021. However, I am obliged to use the date of 15 January 2021 as declared on the application form and it is the lawfulness of what existed at that date that I need to consider.

Main Issue

5. Section 191(2) of the Act states 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. Section 191(2)(b) goes on to confirm that for a use to be lawful, it must not constitute a contravention of any of the requirements of any enforcement notice then in force. Correspondence dated 22 January 2022 from the Council confirms that enforcement action has been authorised against the use but the appeal questionnaire states that no enforcement notice was in force at the time of the application. Section 171B of the Act defines the time limit for taking enforcement action in relation to a change of use of any building to use as a single dwellinghouse, as 4 years.
6. The main issue is whether the Council's decision was well founded. As part of that, it is necessary to consider whether firstly the use involved development requiring planning permission and secondly, if it did, whether the application was made after the end of the period of 4 years beginning with the date the breach commenced. The onus in these proceedings is on the appellant to prove their case on the balance of probabilities.

Reasons

7. The former garage has been physically altered at some point by the insertion of a domestic front-door and window making it clearly unusable to store vehicles. The accommodation now consists of a lounge, bedroom and small kitchen and utility area including a shower and a toilet. It also has its own access to the rear garden and has a separate address, No 7A.
8. There is no statutory definition of a 'dwellinghouse'. It has however been held in well-settled case-law that the characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. I am satisfied that the converted garage is now a self-contained dwellinghouse and there is no dispute about that between the main parties.
9. Section 55(3)(a) of the Act confirms for the avoidance of doubt that "the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building as a whole and each part of it so used." At the point when the garage was altered to contain the present level of facilities along with the level of self-contained and then occupation, its use was therefore materially changed to a dwellinghouse which would require planning permission. The appellant needs to demonstrate that this took place at least 4 years prior to the submission of the application, therefore by 15 January 2017.
10. Tenancy account statements for 3 possible occupiers of the overall property at No 7 date from May 2015. Even if those people named in that or a subsequent tenancy account statement from August 2015 did occupy the property, there is

no indication in which part of the property they were living or whether this included the former garage at 7A. Subsequent utility bills do not assist in defining whether there was separate occupation of 7A as long ago as the material date. In June 2019, a House in Multiple Occupation (HMO) licence was issued with the Council's officers requiring a change to provide a rear exit to the garden. Later still that year in October, Building Control Officers stated that the accommodation was "now a self-contained flat". Whilst none of these facts definitively explain what accommodation was available during the relevant period or who was living where, this lack of precision does not assist the appellant's case. The view of the Building Control officer is not definitive that there had been a material change of use only by that time but it does weigh against the case the appellant needs to make to succeed in this appeal.

11. Whilst it seems likely that there was residential occupation of the former garage taking place before the material date for this application, it is not demonstrated by the evidence submitted, that this was for more than 4 years before the application in the form of a self-contained dwellinghouse. Even though a separate front-door has been in existence for more than 4 years, it appears probable that the self-containment of the former garage as a separate dwellinghouse, as a matter of fact and degree, occurred when the internal door was closed off which the appellant confirms as being "recent" within the letter dated 3 February 2021. At that point, as now, the internal arrangement would not allow for any day to day shared use of the facilities within No 7 by the occupiers of No 7A and vice versa. That self-containment and resultant material change of use appears on the balance of probabilities to have occurred within the 4 years prior to the submission of the application.

Conclusion

12. 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 "Self-contained flat on ground floor of property 7 Mackie Road", 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