



Appeal Decision

Site visit made on 9 November 2022

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07 February 2023

Appeal Ref: APP/W5780/X/21/3276131

Flat Rear of 363 Ley Street, Ilford, IG1 4AA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Kameron Saleh against the decision of the Council of the London Borough of Redbridge.
 - The application Ref. 4005/20, dated 21 November 2020, was refused by notice dated 11 January 2021.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a LDC is sought is a self-contained flat.
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Appeal Site

1. The appeal site comprises a ground floor flat located at the rear of commercial premises at 363 Ley Street.

Procedural Matters and Main Issue

2. I am required to determine the appeal solely on matters of fact, planning law, and application of any judicial authority.
3. The Council object to the appellant's additional evidence that was not seen by them when they determined the application. However, sections 195(2) and (3) of the Act provide that my decision is to be made on the basis of whether or not the authority's "refusal" was well founded; meaning its decision rather than its reasons for the decision. This underlines the purpose of the LDC provisions, which is to enable the making of an objective decision based on the best facts and evidence available at the point when a decision is taken. I have therefore included the appellant's additional evidence in my assessment.
4. The Council have been able to consider and comment on the appellant's additional evidence. I have taken their comments into account in reaching my decision.
5. The approach to be taken in LDC applications (and appeals) is set out in the PPG¹ which reflects long established Court judgments². Appellants must provide sufficient evidence in making their case. If a local planning authority has no

¹ Planning Practice Guidance Reference ID: 17c-006-20140306 (MHCLG)

² *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)
Thrasyvoulou v SSE & Hackney LBC (No1) [1984] JPL 732
Gabbitts v SSE & Newham LBC [1985] JPL 630

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 probabilities.

6. The **main issue** in this appeal is whether the Council's decision to refuse a LDC was well founded.

Reasons

7. The provisions of s191(2) of the Act include (a) that a use is lawful at any time if no enforcement action can be taken in respect of it, whether because it did not involve development or require planning permission, or because the time for enforcement action has expired, or for any other reason, and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force. Since no enforcement notice was in force at the date of the application it is clear that s191(2)(b) is satisfied.
8. Turning to the requirement at s192(a) of the Act, the burden of proof is on the appellant to establish, on the balance of probabilities, that use of the rear ground floor of the property as a self-contained flat commenced 4 years before the date of the application (hence before 21 November 2016) and continued for a period of 4 years without any significant interruption.
9. The appellant's submitted documentary evidence is summarised below:

Tenancy Agreements (TA)

- TA1 - (Hamad) - from 15.07.2016 to 15.01.2017
- TA2 - (Hamad) - from 15.01.2017 to 15.01.2018
- TA3 - (Hamad) - from 15.01.2018 to 15.01.2019
- TA4 - (Hamad) - from 15.01.2019 to 15.01.2020
- TA5 - (Kayinda)
- TA6 - (Marku)

Affidavits (A)

- A1 - Saleh (appellant) - dated 19.05.2021
- A2 - Hafeez - dated 24.05.2021
- A3 - Khan - dated 24.05.2021

Letters (L)

L1 to L4 below are not sworn affidavits as purported. I will treat them as statements and consider them on that basis.

- L1 - Saleh (appellant) - dated 19.11.2020
- L2 - Hafeez - undated
- L3 - Taj - undated
- L4 - Occupier 361 Ley Street - undated

Miscellaneous

- Carpet Express invoice dated 27.07.2016
- Ebay screenshot - dated 03.10.2016
- Valuation Office Agency (VOA) letter - dated 11.11.2020

Assessment

10. The key question to be answered is whether there has been continuous **actual/physical** use as a self-contained flat, without significant interruption, for the relevant period of time.
11. With regard to the TAs, and with the above question in mind, it should be noted that a completed TA in general terms is simply a written document which, by its existence, evidences that a conditional contract was entered into on a specified date, between landlord and tenant, in respect of provision of tenancy in exchange for an agreed amount and rate of rent. Consequently, since a TA is completed at commencement, any subsequent break in actual/physical occupancy during the life of the TA, or a final departure of the tenant earlier than the TA end date, will not be apparent from the TA itself.
12. Hence, while a completed TA may have some limited evidential weight, by virtue of its commencement and termination dates corresponding with the relevant 4 year immunity period, it does not by itself provide evidence that a property was actually/physically lived in, continuously and without significant interruption, throughout the life of the TA.
13. Turning to the TAs in this appeal, they purport in combination to cover the period from 15 July 2016 to 15 April 2021.
14. However, only TA1 is a fully completed (signed, dated and witnessed) document with all its pages produced covering the period from 15 July 2016 to 15 January 2017. The remaining TAs (2-6) comprise only single one page extracts. Both TA5 and TA6 comprise only a Section 21 notice³. Both of these have been edited by way of handwritten alterations to the property address, and neither of them have any tenant signatures. Consequently, there is some doubt in my mind as to the location of the flat they reference, and indeed whether there was in fact a fully completed TA.
15. Additionally, the claimed commencement date for TA5 (7 February 2020) is taken from the document's heading "(4)", whereas on the identical template for TA6 there is no date given in heading "(4)", the claimed commencement date (16 October 2020) is taken from heading "(5)". As such, there is considerable ambiguity and lack of clarity as to relevant dates for TA5 and TA6.
16. The appellant asserts there was continuous occupancy throughout the time when renovations took place during two periods of time⁴. However, the submitted TAs are inconsistent with that claim since they do not cover these two renovation periods.
17. Turning to the submitted affidavits, the appellant's (A1) states use as a self-contained flat "for more than 4 years". While I appreciate it may have been intended as a more robust replacement for the letter of similar content (L1), I note that it was sworn on 19 May 2021. Consequently, "for more than 4 years" does not confirm any definite period of time before 19 May 2017. Similarly, due to the dates they were sworn, A2 (Hafeez) and A3 (Khan) do not cover the period before 24 May 2017.

³ Notice requiring possession by virtue of section 21 of the Housing Act 1988

⁴ From 15 January 2020 to 6 February 2020, and again from 7 August 2020 to 15 October 2020

18. A2 (Hafeez) states that he has lived at 363 Ley Street. However, he does not state for how long he has lived there, or whether continuously without break. Furthermore, he does not say that he knew or even visited any of the tenants of the ground floor flat. The affidavit is very short on detail and vague overall. As such, given a lack of any convincing evidence in his affidavit to the contrary, it is manifestly unclear to me how he can realistically confirm that there was continuous uninterrupted occupancy of the ground floor flat. I attach very little weight to it in support of allowing the appeal.
19. Other than in respect of his name and address, A3 (Khan) is identical in content to A2. For the same reasons as above for A2 I attach very little weight to it in support of allowing the appeal.
20. Other than as expressed in the affidavits, letters L1 to L4 provide no additional evidence in terms of the writers' detailed knowledge of continuous residential occupation of the flat. As such, they attract no additional weight in support of allowing the appeal.
21. The VOA letter is dated 11 November 2020. It confirms an alteration to the rating list to include the ground floor flat. However, it only relates to a period from 8 February 2020 onwards and for rating purposes only.
22. The Carpet Express invoice does not refer in any way to the rear flat. It is addressed to the mini-cab office at 363 Ley Street. The Ebay screenshot with a "Hamad" email address also states delivery of a holdall to 363 Ley Street. There is nothing within these submissions that positively points to the use of the rear of the property as a self-contained flat. They add no weight in support of allowing the appeal.
23. The Council in their evidence submit the approved plans for a planning permission granted in 2017 for shopfront alterations⁵, which do not show the flat in either existing or proposed layouts. It is argued on behalf of the appellant that the absence of the flat in the plans was because the architect at the time did not visit the property and based the plans on a previous layout. Furthermore, that the plans only needed to show the alterations to the shopfront.
24. However, even accepting that were the case, there can be no doubt that the approved plans of the ground floor existing and proposed layout in 2017 are patently inconsistent and hence ambiguous with what the appellant now claims.

Conclusion

25. In coming to a conclusion I have had regard to the approach to be taken as established by the Courts, as I set out earlier in paragraph 5. It is for the appellant to make his case with sufficient evidence.
26. Overall, I find that the appellant's evidence is sparse, imprecise and inconsistent. It falls far short of what might be considered as sufficient to demonstrate, on the balance of probabilities, that the rear ground floor of the property had been continuously used as a self-contained flat for more than 4 years so as to be immune from enforcement action at the date of the application.

⁵ Council Ref. 4103/17 – Removal of ground floor front bay window. New shopfront.

Formal Decision

27. For all 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 self-contained 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 as amended.

28. The appeal is dismissed.

Thomas Shields

INSPECTOR