



Appeal Decision

No site visit

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2023

Appeal Ref: APP/Q5300/X/22/3292039

Annexe 300A Nightingale Road, Edmonton N9 8PP

- 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 Mr Kamran Ali against the decision of the Council of the London Borough of Enfield.
 - The application ref 21/01686/CEU, dated 25 April 2021, was refused by notice dated 27 July 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 the premises as a 1 bedroom flat.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description given on the application form is 'My client has a property (300 Nightingale Road) where the Pre existing Garage was converted to a 1 bedroom flat (330A Nightingale Road) in 2012 without planning consent. The property has been in use for over 8 years with no issues. My client wishes to make this a lawful conversion.'. Since the appellant refers to it as a 1 bedroom flat in their application form, I shall use this description in the banner heading above and shall remove wording which does not describe an act of development.
3. The appellant ticked 'The use as a single dwelling house began more than four years before the date of this application' on their application form. Although they also ticked 'The building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application.', the description given on their appeal form is 'The Annex has been occupied as a self-contained flat for a continuous period of four years.'. Their appeal statement also considers the use of the property rather than operational development. The Council dealt with the application on the basis that it was for the use of the premises as a self-contained flat and so shall I.
4. The appellant has provided proposed plans in their appeal statement which show that the entrance porch to the properties would be removed. However, the appellant submitted the application under section 191 and the Council has considered it on this basis. It is therefore not open to me to consider proposed development.
5. I have sought the parties views as to whether the appeals can be determined without the need for a site visit and have received no objection to this

approach. I am satisfied that the appeal can be determined on the evidence before me.

Main Issue

6. The main issue is whether the Council's decision to refuse an LDC was well-founded.

Reasons

7. An application under section 191(1)(a) of the Act¹ seeks to establish whether any existing use of buildings or other land is lawful. Section 191(2) sets out that uses 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.
8. The main thrust of the appellant's case is that the property, 300A Nightingale Road, has been used as a self-contained dwelling for over 8 years. Section 171B(2) of the Act provides 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. This appeal will therefore turn on whether the appellant can show, on the balance of probability, the use of the property changed to use as a self-contained residential unit on or before 25 April 2017²; and if so (ii) whether that use then continued without significant interruption for at least 4 years thereafter.
9. To be immune from enforcement action under section 171B(2), the use of a building as a dwellinghouse must be affirmatively established over the four year period. The question, therefore, is whether there was any time during the relevant four year period when the local planning authority could not have taken enforcement action against the use of the building as a dwellinghouse, even if it was available for use, because it was not actually occupied or used as a dwelling.
10. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the development is lawful. An appellant's evidence should not be rejected simply because it is not corroborated. As established in *Gabbitas v SSE & Newham LBC* [1985] JPL 630, if there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
11. In support of their case, the appellant has provided a series of plans and a statutory declaration made by the owner of the property. The owner of the property advises that they purchased it around 2006 and proceeded to let it out to tenants. In 2012, the owner states that they converted the garage of the property to a self-contained flat which consists of an open plan kitchen and

¹ Town and Country Planning Act 1990 (as amended)

² This being the date 4 years prior to the date of the LDC application.

living room with a hallway leading to a bedroom and bathroom, known as 300A Nightingale Road and that it has been continuously occupied since its conversion.

12. While the owner of the property states that it has been 'continuously occupied', it is not clear from the evidence provided what they mean by this term. They do not identify who has occupied the property, whether there has been any change in occupancy and if so, whether the premises has been vacant for any period of time. In my experience, it is not unusual for rental properties to have several changes in occupancy over such a substantial period, which can lead to a property becoming empty between tenants. While a period of non-occupation could be *de minimis*, a break that is significant as a matter of fact and degree would result in the four year clock starting again.
13. Furthermore, there are no supporting statements or declarations made by individuals who have actually lived in the property. By the owner's own admission, they have never resided at the property and so it is not clear what their knowledge of the day-to-day occupation of the premises is. Although a tenant may have paid rent, they may not have actually used the premises as a dwelling house throughout a four year period.
14. Had the property been occupied since 2012, I would expect there to be some documentary evidence available which would support the appellant's assertions. However, the appellant has not provided any contemporaneous documentary evidence, such as tenancy agreements, utility bills or Council Tax bills. The paucity of documentary evidence regarding occupation of the premises is, in my view, a significant omission.
15. The appellant suggests that no separate utility or Council Tax bills have been provided because the property has not yet been 'legally split'. However, the Council Tax regime is separate to the planning regime and it is not unusual to see properties which have been subdivided without planning permission rated separately for the purposes of paying Council Tax. Moreover, this does not explain why the appellant would not be able to provide other documentary evidence, such as tenancy agreements or documentation to show payment of rent.
16. Thus, for the reasons given above, I find that the appellant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the material change of use of the premises began on or before the relevant date and that it continued without significant interruption for at least 4 years thereafter.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a 1 bedroom 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.

M Savage

INSPECTOR