



Appeal Decision

Site visit made on 25 April 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

Appeal Ref: APP/B5480/X/21/3287823

2 Dartfields, Romford RM3 8DA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development ("LDC").
 - The appeal is made by Mr AM PM Estates Ltd against the Council of the London Borough of Havering.
 - The application Ref E0025.21 is dated 30 June 2021
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as *'Existing Use of the Property as Six Self-Contained Residential Units.'*
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Decision

1. The appeal is dismissed.

Background

2. The appellant made the application on the basis of the claim that the dwellinghouse accommodated six self-contained flats.
3. In an appeal under s195 of the Act against the refusal of a LDC the burden of proof is upon the appellant. Leaving aside the legal issue as to the actual use of the property for the moment, the test of the evidence would need to show that the flats had been used on an uninterrupted basis since at least 30 June 2017 – otherwise known as the 'material date' - being four years prior to the date of the application made.
4. The onus of proof is on the appellant to demonstrate, on the balance of probability, that the property has been used in such a manner, thereby confirming that the planning position is as claimed. Accordingly, the key is that the evidence should be precise and unambiguous to this end.
5. Where LDCs are involved the planning merits of the development applied for do not fall to be considered. Instead, the decision will be based strictly on the evidential facts and on relevant planning law.

Main Issue

6. The main issue in this appeal is whether, on the balance of probability, the use was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990.

Reasons

7. S191(2) goes on to say that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them because the time for enforcement action has expired, and they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
8. A 'self-contained flat' is defined within s254 of the Housing Act 2004 as a separate set of premises (whether or not on the same floor) which forms part of a building, either the whole or a material part of the building and in which all three basic amenities – defined as a toilet, personal washing facilities and also cooking facilities – are available for the exclusive use of its occupants.
9. In contrast a House in Multiple Occupation (HMO), in its simplest definition, is a property in which 3 or more tenants from more than one family reside, sharing one or more facilities (for example a kitchen, toilet or bathroom). HMOs can include dwellinghouses converted into bedsits and also dwellinghouses which have undergone conversion, but where the resulting flats are not completely self-contained.
10. In terms of statute S254(1)(a) of the Housing Act provides that a building, or part of a building, is a HMO if it meets the conditions of 'the standard test', of which criterion (f) is that two or more of the households who occupy the living accommodation share one or more of the basic amenities or the living accommodation is lacking in one or more basic amenities.
11. The judgement in *Gravesham BC v SSE & O'Brien* [1982] sets out the distinctive characteristic of a dwellinghouse, being its ability to afford to those who use it the facilities required for day to day private domestic existence.
12. In taking account of the above factors I consider that the distinction between HMOs and self-contained flats lies in the physical and social separation of the living areas, with HMOs usually characterised by having certain facilities such as toilets or bathrooms shared between separate households occupying exclusive bedrooms or bedsits. In contrast, self-contained flats are usually characterised by having exclusive use of all facilities within their own physical envelope. In this particular instance, I note there is a communal kitchen available for use and, from my site visit inspections, each of the 'flats' have only limited facilities in this regard.
13. In examining the various tenancy agreements I note that all six flats have two very pertinent entries. Provided by the appellant, the tenancy agreements signed by Grant Nicholl (Flat 1) in April 2021, Thomas McBride (Flat 2) in December 2020, John Paul Martin (Flat 3) in December 2020, Stephen John Dodd (Flat 4) in March 2021, Ahmed Albouni (Flat 5) in both August 2019 and January 2021, and Christopher Henry Anthony (Flat 6) in December 2020 all include the following clauses:

(30) 'Not to leave the cooker, washing machine or tumbler dryer on in the communal kitchen when going out'; and

(31) 'There is an absolute prohibition on any form of cooking in the room contained in this tenancy. Any cooking may only take place in the communal kitchen.'

14. In simple terms the flats, or rather bedsits in this instance, are not self-contained residential units, with the tenancy agreements directing the occupiers to use the communal kitchen as, otherwise, they will be in breach of the tenancy agreement signed, all of which highlighted were signed after 30 June 2017 (the material date) and before 30 June 2021 (the date the application was made). The Council has also drawn attention to the electrical safety certificates for the bedsits which do not refer to kitchen equipment provided within. This evidence therefore fundamentally contradicts the claim for which there is a notable lack of precision or unambiguity.
15. Given the evidence the appellant's statement which says in paragraph 4.1 "*... it has been demonstrated, on the balance of probability, that the dwelling has been occupied as six self-contained residential dwellings for a period in excess of 4 years*" is an incorrect assertion as the residents would have necessarily relied/will necessarily rely on the shared use of communal cooking and clothes washing facilities to such a material extent sufficient for the property to instead be considered as a HMO. The *Gravesham* judgement is obviously applicable in this appeal.
16. Having interpreted and weighed up all the evidence available I must conclude that, given the situation, the appellant has not discharged the burden of proof. Accordingly, for the reasons given above I conclude, on the evidence available, that the use was not lawful on 30 June 2021, within the meaning of section 191(2) of the Town and Country Planning Act 1990.
17. Accordingly, I will exercise my powers under section 195(3) of the Act.

Timothy C King

INSPECTOR