



Appeal Decision

Site visit made on 11 July 2023

by Thomas Shields DipURP MA MRTPI

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

Decision date: 17 July 2023

Appeal Ref: APP/P2114/X/22/3310765

St Augustine Villa, Esplanade, Ventnor, Isle of Wight, PO38 1TA

- 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 Tom Fahey against the decision of the Isle of Wight Council.
 - The application Ref. 22/00376/CLEUD, dated 24 February 2022, was refused by notice dated 6 June 2022.
 - The application was made under section 191(1)(a) of the Act.
 - The development for which a LDC is sought is for existing use of the upper floor of the property as a residential dwelling.
-

Decision

1. The appeal is dismissed.

Background

2. 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.
3. The burden of proof in satisfying the requirement of s191(2)(a) falls to an appellant (not the Council) and the appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not.
4. The PPG¹ guidance reflects earlier Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.

Main Issue

5. The main issue is whether the Council's decision to refuse a LDC was well founded. This turns on whether the uppermost floor of the property has been in

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

continuous use as a separate dwelling for at least 4 years prior to the date of the application, hence since 24 February 2018 or earlier.

Reasons

6. Augustine Villa is a large three storey property recently acquired by the appellant from its previous owner and there is no dispute that it has been in use as guesthouse for many years. However, the appellant wishes to separately lease the uppermost floor as a separate flat from the rest of the property. He argues to do so would be lawful because the upper floor has been in such continuous use for more than the requisite period of 4 years.
7. As I saw during my visit to the appeal site the upper floor has all of the facilities necessary for day to day living such as cooking, washing, toilet and sleeping facilities, sufficient for use as a "dwellinghouse" consistent with the judgment in *Gravesham*². The Council does not argue otherwise, but maintains that the upper floor has not been used as a separate unit of accommodation from the rest of the property.
8. The appellant's evidence includes a statement from the previous owner. He states that since at least 2007 the property was used as a guest house. Up to that point his family had used some rooms to the rear of the property as their own accommodation but then changed to using only the upper floor, and that continued to be the case to the date the statement is signed (29 June 2021).
9. In his appeal form the appellant describes the use of the upper floor as residential with the lower floors as commercial. However, in land use planning terms it is clear from the evidence that the whole of the property was a single planning unit used for residential purposes as a guesthouse. That included the proprietor and his family also living within that unit.
10. There is nothing in the previous owner's description of his occupation and use which evidences that a *material change of use*³ had taken place from a single guesthouse to two separate uses comprising a guesthouse and a separate dwellinghouse (flat). Indeed, use of a property as a guesthouse commonly includes (as in this case) the proprietor's own accommodation rooms along with rooms for letting and use by guests, all within a single planning use as a guesthouse.
11. That the upper floor continues to share the same utility supplies as the rest of the property, with no evidence or claim before me that it has been billed separately for such utilities, is further indication that no separate occupation unconnected with the use as a guesthouse has occurred. There is no evidence of anyone occupying the upper floor other than the proprietor and his family.
12. It would be a different scenario if (for at least 4 years) the upper floor had been let out to unrelated persons who occupied it as their own separate flat, responsible for their own utility supplies and other bills, and with no connection to the operation of the guesthouse use of the property, but that is not the case here.

² *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

³ Development which would have required planning permission - a "material change of use" - section 55 of the Act

13. The separate pedestrian access from the rear of the upper floor to Hambrough Road, and the shared access available via the main stairway at the property, are capable of being relevant physical factors to take into account in assessing whether a new separate residential use might have occurred. However, for the reasons I have already outlined above, and on the balance of probability, the evidence overall clearly indicates that there has only been a continuing single planning use as a guesthouse to at least 2021, rather than two separate independent uses.
14. As such, use of the upper floor as a separate residential dwelling for a period of 4 years prior to the date of the application has not been established.
15. Consequently, I conclude on the evidence now available, on the balance of probabilities, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the upper floor as a separate residential dwelling was well-founded.
16. The appeal is dismissed.

Thomas Shields

INSPECTOR