



Appeal Decision

Site visit made on 8 August 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15TH AUGUST 2023

Appeal Ref: APP/T2215/X/22/3293833

2a Savoy Road, Dartford DA1 5AW

- 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 Jaswinder Aujla against the decision of Dartford Borough Council.
 - The application ref DA/21/01477/LDC, dated 16 September 2021, was refused by notice dated 24 January 2022.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which an LDC is sought is described on the application form as: 'use class C3(a) dwelling. The annex known as 2a Savoy Road comes under use class C3(c)'
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of the existing use of the appeal site for which an LDC has been sought, as described by the appellant at section 8 of the application form, is provided in the banner heading above. This refers to different use classes defined in The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). The Council's decision notice referred to 'continued use of the side extension (Annex), as a self-contained, rented, studio flat; known as, No 2A Savoy Road'. I have not been provided with confirmation that this amended description was agreed with the appellant.
3. Class C3(a) of the UCO relates to the use as a dwellinghouse (whether or not as a sole or main residence) by a single person or by people to be regarded as forming a single household. Class C3(c) of the UCO relates to the use as a dwellinghouse (whether or not as a sole or main residence) by not more than 6 residents living together as a single household where no care is provided to residents (other than a use within Class C4).
4. The appellant's case relates to the use of 2a Savoy Road as a dwellinghouse separate to 2 Savoy Road. I have therefore considered the appeal on that basis, with regard to the description of the existing use of 2a Savoy Road described by the appellant at section 7 of the application form as 'Use Class C3 (dwelling)'.

Background

5. Section 191(1)(a) of the Act sets out that if any person wishes to ascertain whether any existing use of a building is lawful, they may make an application

for an LDC. For the purposes of the Act, uses are lawful if no enforcement action may be taken in respect of them and they do not constitute a contravention of any of the requirements of any enforcement notice then in force. No enforcement notice was in force at the date of the application in respect of the appeal building.

6. Section 171B (2) of the Act explains 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 4 years beginning with the date of the breach. Section 336 of the Act confirms that 'building' includes any part of a building.
7. The appeal site, as edged in red on the site location plan, is an end of terrace house with a single storey side extension. The single storey side extension has a window on the front elevation and an access door and window on the side elevation. It comprises a studio flat with a sleeping/living/kitchen area and a shower room containing a shower cubicle, toilet and hand basin. The side extension has been referred to as '2a Savoy Road'.

Main Issue

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

Reasons

9. The appellant claims that 2a Savoy Road has been let as a self-contained studio flat since January 2014 other than during 'short periods'. Those periods have been described as being between lets when maintenance and redecoration works were undertaken, or due to 'prospective clients' being unavailable or unable to move in.
10. A council tax record was created for 2a Savoy Road on 22 October 2017 with an effective date of 7 March 2017 in the name of Mr James Hawkins. This was then changed to the appellant's name from September 2017, with council tax paid since. The Council has referred to a 100% 'unoccupied/unfurnished homes' discount as having been applied to the property's council tax bills for the periods 2 March 2019 to 31 March 2019 and 12 April 2020 to 11 May 2020.
11. Certificates of Insurance have been provided for a rent indemnity and legal expenses insurance policy relating to 2 Savoy Road for the period 25 January 2014 to 31 December 2017. Similar Certificates of Insurance have been provided relating to 2a Savoy Road for the period 12 March 2018 to 31 December 2021. The covering letter to the earliest Certificate of Insurance, dated 31 January 2014, is addressed to the appellant and Mrs Sukhuinder Aujla at 2a Savoy Road.
12. Invoices have been provided relating to a rental account concerning the property described as '121261P0 - 2 Savoy Road' for the period 25 January 2014 to 29 November 2016. These refer to a Mr Sofeso between 25 January 2014 and 24 January 2015, and a Mr Smith between 30 March 2015 and 30 November 2017. Up until 20 November 2016, those invoices are addressed to Mr and Mrs Aujla at 2a Savoy Road.
13. Invoices have also been provided relating to a rental account concerning the property described as '172615P9 - 2a Savoy Road'. These refer to a Mr Ijaoba

- between 12 April 2018 and 11 March 2020, and a Miss Fasanya between 25 February 2021 and 24 June 2021. They are all addressed to Mr and Mrs Aujla at 2 Savoy Road.
14. Various other documents have also been provided by the appellant, including: the first page of an assured shorthold tenancy agreement relating to 2a Savoy Road between the appellant and Miss Faye Jones for the period 1 February 2017 to 31 January 2018; a tenancy deposit scheme document for Mr Sofeso relating to 2 Savoy Road for the period 25 January 2014 to 24 January 2015; a letter dated 5 January 2015 confirming the appellant had accepted an offer for Mr Smith to be a tenant at 2 Savoy Road for a 12 month initial term commencing 30 January 2015, subject to contract and references; a lease between Sukhvinder Kaur Aujla and House to Home Lettings Limited relating to 2a Savoy Road for a 36 month period from 1 March 2017; and an Energy Performance Certificate relating to 2a Savoy Road dated 9 March 2017.
 15. The Council opened a planning enforcement investigation into the alleged unauthorised use of 2a Savoy Road as a separate dwellinghouse in May 2017. In August 2017 the appellant advised the Council that a shower and kitchen had existed within that part of 2 Savoy Road when he purchased it in August 2013. It was claimed that the extension described as 2a Savoy Road was used by the appellant's parents when visiting from abroad, as they were unable to climb the stairs within the main part of the house. The appellant advised the Council at that time that planning permission would be sought for a 'granny annex'. Separately, the appellant's agent advised the Council in 2021 that the appellant's parents had passed away in 2017.
 16. Planning application 17/01620/FUL was submitted to the Council by the appellant in September 2017. That application proposed a side and rear extension to 2 Savoy Road. The Council has advised that the existing and proposed plans showed an internal doorway between 2a Savoy Road and the hallway of 2 Savoy Road. This would have suggested 2a Savoy Road was used as part of the main house, rather than as a separate dwelling, at that time.
 17. It is evident that 2a Savoy Road previously had an internal connection to the hallway of 2 Savoy Road. The doorway has been 'sealed up' by what appears to be plywood nailed/screwed in place on the hallway side of that opening. Within 2a Savoy Road, a door without a handle remains in place, with hinges which appear to suggest that it opened into the extension. The makeshift blocking of this doorway suggests that it has not been closed off consistently for a long period.
 18. Overall, the evidence provided by the appellant to support their case is inconsistent and lacking in detail. It is evident that the appellant has rented at least part of 2 Savoy Road out to tenants at various points since 2014, but it is by no means clear whether the extension now referred to as 2a Savoy Road has been used as a single dwellinghouse for a consistent period of at least 4 years. There is no explanation why any of the documents referring to 2 Savoy Road may relate to 2a Savoy Road.
 19. The invoices show that Mr Smith paid £500 rent in respect of 2 Savoy Road between 30 March 2015 and 30 November 2017, whereas the sole page from the tenancy agreement with Miss Jones suggests she would have paid £750 a month in respect of 2a Savoy Road between 1 February 2017 to 31 January 2018. It would therefore appear that while Miss Jones may have occupied 2a

Savoy Road during that period, Mr Smith presumably occupied another part of the house. It would be fair to apply the same reasoning to Mr Sofeso's tenancy, as the only documents referring to him also only relate to 2 Savoy Road, rather than 2a.

20. The above would explain how the appellant's parents may have been able to occupy the extension for periods up until 2017. However, I strongly doubt that they would have occupied it independently on account of its limited floorspace and internal connection to the rest of the house.
21. I note that the tenancy agreement with Miss Jones conflicts with the council tax bill relating to 2a Savoy Road in the name of Mr Hawkins between 7 March 2017 and 30 August 2017. I therefore doubt whether Miss Jones occupied 2a Savoy Road for anything more than 5 weeks from 1 February 2017, if at all. There may be other reasons for the inconsistencies in the evidence, but they have not been explained.
22. Even if I was to accept that 2a Savoy Road was occupied independently as a dwellinghouse by tenants for the 36-month period of the lease with House to Home Lettings Limited, starting on 1 March 2017, there is no clear and unambiguous evidence that it was then occupied between 11 March 2020 and 25 February 2021 or between 24 June 2021 and the date of the LDC application on 16 September 2021. The 100% council tax discounts applied to 2a Savoy Road as an unoccupied and unfurnished home between 2 March 2019 to 31 March 2019 and 12 April 2020 to 11 May 2020 provide evidence of significant weight that it was not occupied between those dates.
23. I do not take the appellant's payment for a rent indemnity and legal expenses insurance policy relating to 2a Savoy Road since 12 March 2018 as sufficient to show that the extension was used as an independent dwellinghouse between then and the date of the application. It is not clear why previous policies related to 2 Savoy Road, rather than 2a. Even if they did in fact relate to 2a Savoy Road, there is the significant unexplained gap between one policy ending on 31 December 2017 and the next policy starting on 12 March 2018.
24. The appellant's evidence is brief, unclear, and ambiguous. I am unable to conclude, on the balance of probability, that the use of 2a Savoy Road as a dwellinghouse has been taking place consistently for at least 4 years. The evidence indicates that it has not been used in such a manner for a continuous period of at least 4 years on account of an internal connection to 2 Savoy Road and significant periods of vacancy.

Conclusion

25. 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 use of 2a Savoy Road as a dwellinghouse 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.

L Douglas

INSPECTOR