



Appeal Decision

Site visit made on 17 October 2023

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2023

Appeal Ref: APP/T5150/X/22/3306173

1 Wyld Way, Wembley HA9 6PP

- 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 K Patel against the decision of the Council of the London Borough of Brent.
 - The application ref 22/1943, dated 27 May 2022, was refused by notice dated 22 July 2022.
 - 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 ground floor side extension of No 1 Wyld Way as a separate self contained studio flat to the ground floor side of No 1 Wyld Way.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the use on the application form is set out in two versions. I have used the more detailed and precise one in my above heading.

Reasons

3. Section 191(2)(a) of the Town and Country Planning Act 1990 as amended (the 1990 Act) sets out that a use is lawful at any time if no enforcement action may 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). Section 171B(2) of the 1990 Act clarifies that no enforcement action may be taken after the end of the period of four years beginning with the date of a breach consisting in the change of use of any building to use as a single dwellinghouse.
4. 'Building' includes any part of a building and so the studio flat can be treated as such. The single dwellinghouse subject of this appeal is a self-contained studio flat that has been formed by separating a toilet and shower room, together with the entire ground floor of a previous side extension to the property fully from the main part of an existing dwelling at 1 Wyld Way. In addition to the toilet and shower room, the studio flat contains a kitchen as well as a room that can be used for living and sleeping.
5. I am, therefore, satisfied that the studio flat contains all the facilities required for day-to-day private domestic existence and, as such, has the distinctive characteristics of a dwellinghouse. It is also distinct from a situation that appeared to exist in the 1970s following construction of the extension where

some independent occupation of the same floorspace has been described, but there was an interconnecting door between what is now the studio flat and the remainder of the dwelling.

6. It has been confirmed in *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226, and *Swale BC v FSS & Lee* [2005] EWCA Civ 1568 that for a lawful use to be established, the use must have continued uninterrupted throughout the four-year period. This is different to the situation outlined in *Panton and Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461 that clarifies that once the lawfulness of a use has been affirmatively established it could still be considered as existing, even if it later becomes dormant or inactive, and so is not relevant to the present case.
7. Where there have been breaks between tenants, no matter how common an occurrence this may be, it must be determined whether any such break caused a substantial interruption in the use or can be regarded as *de minimis* in light of the particular circumstances of each case, rather than considering them as a proportion of the overall time that the unauthorised use has been ongoing.
8. The evidence describes the use of the studio flat as a single dwellinghouse commencing in May 2016. There was then a break between tenants from 1 May 2018 to 16 June 2018. The appellant has explained that it took time to find new tenants because they did not use an estate agent and advertised only via the flat window and in nearby shops.
9. However, the appellant has not given any detailed evidence as to when advertisements were placed, or what efforts were made to continue the breach of planning control, that is to re-let the studio flat, from the point that the tenant gave notice to leave, which was contracted to be a month before the termination of the tenancy. While a deposit for the next tenant appears to have been paid on 5 June, this makes the break of substantial duration.
10. Moreover, unlike in respect of a later break when various maintenance activities at the studio flat have been described, and in another case at 1 Olive Road where a lengthy break was said by the appellant to be required in respect of electrical works, there is no detailed evidence to demonstrate any particular use of the studio flat during this time that might demonstrate that there was a continuation of the breach during the break.
11. Without such evidence, I find the 2018 break between tenants to be substantial such that the use did not continue uninterrupted at this time. The 4 year period must, therefore, start again on 17 June 2018 as the evidence indicates that the use of the studio flat as a dwellinghouse commenced again at this time. That was less than 4 years before the appeal application was made and, therefore, at that time, it was possible for the Council to take enforcement action.
12. For the reasons given above I conclude that, on the balance of probabilities, the Council's refusal to grant a certificate of lawful use or development in respect of the use of the ground floor side extension of No 1 Wyld Way as a separate self contained studio flat to the ground floor side of No 1 Wyld Way 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 Bale INSPECTOR