



Appeal Decision

Site visit made on 21 November 2023

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2024

Appeal Ref: APP/W5780/X/23/3319010

Rear of 164 Eastern Avenue, Redbridge, Ilford IG4 5AD

- 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 refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mahboob Sarwar against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 3862/22, dated 28 November 2022, was refused by notice dated 17 January 2023.
 - 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 described on the application form as "outbuilding to be used as self-contained flat".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal was described on the application form as "outbuilding to be used as self-contained flat". The term "to be used" suggests a future use but it is clear that a Certificate of Lawfulness of Existing Use or Development (CLUED) is sought under s191(a) of the Town and Country Planning Act 1990 (the Act) for the existing use of the building.
3. It is unclear why the term "flat" has been used given that the building in question is a free-standing structure and not part of another building. In his appeal statement the appellant uses the expression dwelling and sets out that he is seeking a CLUED for the existing use as a dwelling. There is no suggestion that the difference between the term "flat" or "dwellinghouse" has any bearing on the appeal (a self-contained flat could equally be described as a dwellinghouse) but given the particular characteristics of the building in question I consider that the term dwellinghouse is more appropriate.
4. The Council did not expand upon its case within its appeal statement but relies upon the delegated officer report. The Council also suggest that I should disregard any additional detail in support of the appeal that was not submitted to the Council prior to determination, with reference to Section 16 of the Procedural Guide to Planning Appeals – England.
5. That section relates to situations where an appellant seeks to amend a proposal at the appeal stage. Inspectors will generally be unwilling to accept amendments which seek to fundamentally alter a scheme at the appeal stage

because prejudice could arise on account of the fact that the appeal process does not allow for the same degree of consultation as is required at the application stage and interested parties may be deprived of the opportunity to comment on an amended proposal.

6. However, in this case, appellant has not sought to amend the details of the development for which a certificate is sought. That remains the same. What he has done is submitted evidence in support of his position that a certificate should be granted and some of that evidence is information that was not seen previously by the Council. Presumably the appellant considered that the information submitted with the application would be enough to satisfy the Council. The Council did not seek any further information at the application stage but refused the application on the basis of the information submitted. Until that point the appellant would have been unaware that the Council considered his application to be deficient in information and all he has done in the appeal process is to respond to the Council's concerns by submitting more information.
7. There is nothing unusual in that course of events. In fact, apart from householder appeals and some minor commercial appeals, which are dealt with on the basis of documents submitted with the application, it is common practice that appellants will submit information in response to the stated reasons for refusal to try and satisfy the Inspector that the concerns of the Council can be overcome. That is how appeals work. The Council has had the opportunity to comment on the appellant's statement and no prejudice arises as a result of my decision to consider the information provided by the appellant. The fact that the Council decided not to add further comment beyond its officer report is a matter for it.

Main Issue

8. An application for a CLUED is not a planning application and the planning merits of a development are not relevant to my consideration. The main issue is whether the Council's decision to refuse the application was well-founded based on the facts of the case.

Reasons

9. The onus rests with an appellant to provide sufficient information to make their case in relation to a CLUED application. However, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse an application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.
10. The building in question is situated to the rear of 164 Eastern Avenue which is part of a long run of terraced blocks fronting onto the A12, a very busy highway branching off from the North Circular a short distance to the west. The rear garden of the property cannot be accessed from the front, other than by passing through the house itself and vehicular access is gained by passing along the private and largely unmade access track which runs along the rear of the properties at Eastern Avenue, with the closest access point being from Evanston Gardens to the west. Further entrances to the access track are situated some distance to the east, both from Eastern Avenue and Castle Drive.

However, all three access points are securely gated such that only those with a key would be able to open the gate and reach properties to the rear.

11. The track was significantly overgrown at the time of my visit, particularly at the Eastern Avenue and Castle Drive access points which was indicative of it being rarely used, certainly at that end of the terrace. The track from Evanston Gardens was more passable, albeit still overgrown. Whilst the appellant maintained at my site visit that residents of the appeal building have a key to the rear access gate the arrangement does raise some questions as to how independent the use of the building has been from the dwelling at No.164.
12. Even if the occupants had the ability to access the rear alleyway, the same would not be available for people visiting, postal workers or other delivery drivers and I saw no evidence of a separate postal address. Thus, it seems likely that deliveries and post etc would be made at No.164. Given the condition of the alleyway and the fact that it is gated, overgrown and unlit it also seems an unlikely arrangement for visitors to use to access the building.
13. Moreover, whilst there was evidence that a fence may have been in situ between the outbuilding and the rear of the dwelling at some point in time, the panels were not in place at the time of my visit and the rear garden of No.164 was accessible from the outbuilding. That is how I gained access on the day, by calling at No.164, being shown through the house and out through the garden to the entrance door at the side of the building.
14. Very little information is provided about the previous tenants of the building in terms of how they occupied the space, how they accessed the building, the level of interaction they had with members of the household at No.164, whether they were previously known to each other or the extent to which space was shared. It appears that the property does not have its own utility meters and the tenancy agreements show that utility bills were paid by the appellant as owner of the property. Having regard to those matters and even though the building contains its own kitchen, bathroom, living space and a bedroom, there is some ambiguity over the extent to which it was occupied in a manner that was genuinely independent from the adjacent dwellinghouse.
15. In fact, at the time the application was made, in November 2022, the appellant's evidence indicates that his daughter was residing in the building. An Assured Shorthold Tenancy Agreement, dated 01 March 2022, between the appellant and his daughter has been provided. However, unlike all the other tenancy agreements presented, it is not signed by the appellant as landlord, there is no reference to any rent that was payable, nor is the duration of the agreement specified. It is not clear why the form of the agreement is different to all others presented but it does give the impression that arrangements were different because the building was being occupied by a close family member.
16. It is not uncommon for family members to reside in outbuildings within the curtilage of a dwellinghouse, be they adult children or elderly relatives. Even if the outbuildings contain all the facilities required for day to day living, it does not necessarily entail that their occupation would amount to use as a separate dwellinghouse. That would depend on the degree of independence and the extent to which residents of the two buildings shared space or whether occupants of the outbuilding used the main dwelling for socialising with other family members, using facilities and the like.

17. In the absence of any information as to the way in which the appellant's daughter occupied the building in those respects it is not clear, on the balance of probability, that the building was in use as a separate and self-contained dwellinghouse on the date the application was made. I find it unlikely that such a close relative would be expected to access the outbuilding from the unlit and overgrown alleyway and likely that she would wish to spend time socialising with other members of the family rather than living a completely independent existence. Certainly, the appellant has failed to adequately set out how the property was occupied at that point in time and the degree to which it was independent.
18. It is a prerequisite of an application for a CLUED that the "existing use" for which a certificate was sought must be the use of the building at the time of the application. If the building was not used for that purpose at the time of the application, and there is some doubt about that, but was actually in use for a different purpose, as an extension to the living accommodation within No.164 as opposed to a separate dwellinghouse, then it is not possible for me to grant a certificate for the use sought.
19. For that reason alone the appeal should fail. However, even if I was to assume that the property was occupied in an independent and self-contained manner by the appellant's daughter, the other evidence presented is not sufficiently precise or unambiguous to demonstrate that the use had gained immunity having regard to the terms of 171B(2) of the Act. That states that no enforcement action may be taken where there has been a breach consisting of a change of use to a single dwellinghouse after a period of four years, beginning with the date of the breach.
20. Therefore, the appellant would need to demonstrate a continuous period of occupation of four years from the date of any breach and once established, that use had not been abandoned or superseded by another use. The building was first erected in 2008 according to the evidence presented, including an electrical installation certificate. Statutory declarations, made in 2013, have also been provided from the appellant and a neighbour at No.162 which state that the building was erected in 2008 and had since been used for residential purposes. A signed letter, also from 2013, from the neighbour at No.160 also says the same.
21. However, the level of detail in those declarations is limited. The appellant declared, "I have built back yard extension building in 2008 and have since used it for resident purposes". The other declaration and letter are to similar effect. There is no mention within the declaration itself of letting the building to tenants and purely on the declarations it could equally be that the appellant and/or his family had made use of the building for residential purposes themselves. Thus, the declarations are inconclusive.
22. Various tenancy agreements have been submitted, dating back to 2008. However, the fact that a person entered into a tenancy agreement isn't, of itself, evidence that the person resided at the property for the whole length of that agreement. In fact the term of most of the agreements was a 12 month period but the appellant's own evidence indicates that people often moved on before the end of a 12 month period because subsequent tenancy agreements were signed before the end of the previous period. That leads to uncertainty over the length of time between tenants and continuity of occupation.

23. The first tenancy agreement before me was for a 12 month term and is dated 15 August 2008. The appellant maintains that the tenant continued to reside in the building until August 2011. I appreciate that it is not an automatic requirement for a tenant to enter into a new agreement at the end of a fixed term tenancy but there is little other corroborative evidence, no bills or receipts or evidence of payments from that individual, to show continuous occupation over that three year period.
24. A second tenancy agreement, also for 12 months and signed on 10 October 2011. Even taking the appellant's version of events that would have resulted in a break in occupation of at least 2 months, if the first tenant occupied the property for three years until August 2011. Until such time as a use has become lawfully established as a result of the passage of time a significant break in occupation during any four year period will effectively "reset the clock". In effect, the Council could not have served an enforcement notice during that break in occupation because no breach was taking place at that point in time.
25. The only evidence at all relating to the second tenant is the tenancy agreement that covered a 12 month period from October 2011. The appellant maintains that the tenant stayed until April 2013 but again, corroborative evidence is lacking with no bills, statements from the tenant or other documentary evidence. Consequently, it is unclear if there was a break in occupation before the third tenancy agreement was entered into, covering 12 months from 30 June 2013. Again, no supporting information at all is provided in relation to the third tenant to corroborate the assertion that they stayed for the full term of the tenancy. Even if they did, the fourth tenancy was not entered into until 29 September 2014 which is three months after the third tenancy period. Again, that is not an insignificant period and there is no evidence as to whether the property was simply unoccupied or used by members of the household at No.164.
26. The fourth tenant seemingly didn't stay long because a fifth tenancy was entered into on 21 November 2014, covering a 12 month period. Notwithstanding that, the appellant maintains that the fifth tenant resided at the property until March 2016. There is some supporting evidence for that in the form of an email from the appellant to the Council Tax department informing them that the tenant had moved out and that a new tenant was due to move in. However, no tenancy agreement for that subsequent period has been provided and the appellant claims it has been lost. The only information at all about what would have been the sixth tenant is that email from the appellant to the Council Tax department. There is nothing to corroborate if they actually moved in or how long they stayed. Consequently, there is a lack of precise evidence over how the property was occupied from March 2016 until 26 November 2017 when the next tenancy agreement was signed.
27. From that point onwards, bank details purportedly depicting rent deposits from tenants to the appellant have been provided and that at least provides some corroborative evidence in addition to the tenancy agreements. Prior to November 2017 corroborative evidence is limited. Screenshots of email communication with the Council Tax department and identification of Council Tax liability are only of specific snapshots in time relating to limited periods and do not provide sufficient evidence of continuous occupation. The fact that the appellant may have been liable for Council Tax for certain periods on the

records shown does not provide evidence of exactly when specific tenants moved on. All it shows is a record of when he notified the Council Tax department.

28. A planning enforcement officer visited the property in November 2013 and wrote to the appellant confirming that the property was being let to tenants at that point in time. The letter also notes that the appellant alleged at the visit that the use had continued for over four years and requested that he submitted evidence to that effect. It is clear that the Council did not take any further action at that point in time but there is no record from them of the investigation and it is not readily apparent what information was before them at the time.
29. An email from a Council enforcement officer to the appellant, dated 08 December 2022, suggested that the investigation was closed in January 2014 on the basis that the development was immune from enforcement action. However, only a small snapshot of the email correspondence is provided and the title of the email is "Building enforcement for rear of 164 Eastern Avenue". Without the full correspondence it is not clear if the investigation was closed in respect of the building itself, which had clearly been in situ for more than 4 years or also in respect of the use.
30. A further email from the same enforcement officer, dated 13 December 2022, advised the appellant to apply for a CLUED if he wanted to ascertain whether the use of the building was lawful. Thus, there is some ambiguity about previous enforcement investigations but the Council has not formally confirmed to the appellant that the use is lawful at any point as far as I can ascertain, nor had the appellant sought a CLUED until the present application. I can only deal with the matter on the information before me and the fact that the building was seemingly let to tenants in November 2013 when the Council visited is not evidence of continuous occupation over a four-year period prior to that point.
31. Similarly, subsequent visits by an Environmental Health Officer in 2014 do not shed any light on who was occupying the building over specific periods, nor does the evidence relating to EPC certificates.
32. From November 2017 onwards, the bank statements provided do depict payments into the appellant's account which appear to correspond to rental payments from tenants of the property. The statements cover the period after a 12 month tenancy agreement was entered into by two tenants on 26 November 2017 at a rent of £900 per month. An initial payment of £1500 is made on 28 November, possibly higher to cover the deposit, with subsequent payments of £900 recorded in December, January and March. Beyond that, the next recorded payment is in July 2018 from a different tenant who entered into a tenancy agreement in June 2018. It is not clear precisely when the previous tenants moved out but a gap in payments of a few months is not insignificant in the context of demonstrating continuous occupation, particularly in the absence of any other evidence as to how the building was used in that period..
33. From July 2018 monthly payments were recorded from the same tenant until March 2019. Another new tenant, who I shall refer to as "Mr W" to protect anonymity, signed a 6 month tenancy agreement running from 25 April 2019 to 24 October 2019 at a rent of £1000 per month, payable up front. Two deposits

of £500 and the one off rental payment of £6000 can be seen in the appellant's bank statement.

34. Peculiarly, there then appears a one off payment of £1100 on 26 September 2019 entitled 'rent' from a former tenant of the property, who was said to have vacated before Mr W moved in. It is not clear why that payment was made if they were no longer resident.
35. From November 2020 onwards, after the 6 month tenancy had ended, bank details have been provided for the account of the appellant's daughter. Mr W continued to make monthly payments into that account, of varying amount but broadly corresponding to the rent of £1000 per month, up until October 2021. There is then a gap until a further single payment in January 2022. However, no rental agreement has been provided between Mr W and the appellant's daughter and there is no indication that the ownership of the building transferred to her. It would seem strange for someone to transfer large amounts of money to another's bank account without some form of contract and no real explanation as to why Mr W would make regular payments to her instead of the appellant has been provided. Moreover, there is nothing to directly link those payments to his occupation of the building in question and no statement or other information from Mr W himself.
36. Accordingly, the bank account details provide ambiguous evidence of occupation and even taking them at face value, there are gaps in payments of a few months between March 2018 and July 2018 and again between October 2021 and January 2022. Those periods are not necessarily de minimis and had the Council visited during those times and found the premises to be unoccupied it would have been difficult to conclude that any unauthorised activity was taking place.
37. Beyond that it is suggested that the building was occupied by the appellant's daughter from March 2022, up to and beyond the time of the application in November 2022. Overall, I have no reason to doubt that the property has been let to tenants over a considerable time span, possibly going as far back as 2008. However, the continuity of occupation is unclear from the evidence before me such that I am unable to conclude, on the balance of probabilities, that the building has ever been occupied continuously for a period of four years, without interruption. Nor can I conclude that any periods in which the property was unoccupied were insignificant. Prior to November 2017 the evidence is sketchy and inconclusive and although bank statements are provided after that date, they also point to gaps in occupation and are ambiguous in other respects as described above.
38. Moreover, there is a lack of information as to precisely how any residents of the building used the space and whether there were any day to day links with the residential use at No.164 Eastern Avenue. Those concerns are particularly relevant in the period when the appellant's daughter occupied the building given that she was a close member of the family with an increased likelihood that she would share space and cohabit as part of the wider household as opposed to living entirely independently. Even if the building had been used as a separate dwellinghouse by tenants in preceding years, which is not made out, it is far from clear that it remained in that use when occupied by the appellant's daughter.

39. The appellant has referred to an appeal decision relating to a case where the Inspector granted a CLUED in relation to the use of 2 self-contained flats, notwithstanding that there was some ambiguity over periods of occupation and him making note of the fact that he would have liked to see more written information in support of the application. Inevitably any application for a CLUED will be dependent on the specific facts of the case and I cannot be certain that the evidence presented was similar to that before me. Accordingly, reference to it does not alter my conclusions on the current appeal.
40. For all of those reasons, whilst the Council has provided little evidence of its own, the appellant's evidence is imprecise and ambiguous in various respects. On the balance of probability I am not satisfied that the building was necessarily in use as a self-contained dwellinghouse at the time of the application and, even if I were wrong on that point, the evidence does not demonstrate that it had been continuously occupied as an separate dwellinghouse for a period of four years or more at any point. It follows that the Council's decision to refuse to grant a CLUED was well-founded and I shall dismiss the appeal.

Chris Preston

INSPECTOR