



Appeal Decision

Hearing held on 7 February 2024

Site visit made on 7 February 2024

by Graham Dudley BA (Hons) Arch Dip Cons AA

an Inspector appointed by the Secretary of State

Decision date: 06 March 2024

Appeal Ref: APP/X5990/X/22/3313732

9 Cumberland Street, LONDON, SW1V 4LS

- 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 Martin Osborne against the decision of City of Westminster Council.
 - The application ref 22/02379/CLEUD, dated 7 April 2022, was refused by notice dated 3 August 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 confirmation that the existing use of the appeal site is a ground floor studio flat as shown on drawing ref 4352 and Title Number NGL923336 (it is described as Use Class C3).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. An application for costs was made by the appellant against the City of Westminster Council and that is the subject of a separate decision.
3. This is an application for an LDC, so planning policy is not an issue in relation to the appeal. I have referred to the unit as 1A in this decision.

Reasons

4. The Council confirmed at the hearing that the operational development of the building was not an issue in the appeal. The main issues relate to whether, on the balance of probability, four years continuous use has been demonstrated prior to the application date and whether 1A itself is a dwellinghouse.

Use

5. The appellant notes that he moved into 1A in 2016 and has occupied it ever since and there is a sworn declaration in front of a witness dated July 2022 to that effect.
6. The appellant has provided information to back up his claim for the use. Some of that information relates to building works at the beginning and up to 2016, such as the boxing out of the entrance, unspecified electrical works, building materials information, building regulation certificates, email exchange relating to legal work and sales information. There is also information relating to ownership. This evidence indicates that works were done over 4 years ago but

tells little in relation to whether there has been continuous use, but suggests it was probably available for use. The operational development is not at issue.

7. In relation to the continuous use, there is various evidence related to service charge payments going back to at least 2016. While this tells us that the building is there and has been required to make service charge payments they do little to actually show the building has been used, as these would be payable whether used or not. There are telephone/internet quarterly bills going back to at least 2016. The appellant says the tariff was an inclusive one, so individual calls are not identified. These do not show continuous use but do add to the overall picture. The fact that someone has paid for the service for a continuous period does carry weight.
8. There is also a statutory declaration from Denise Dillion dated December 2022, which supersedes the first one made in 2021. She is a solicitor and will be aware of the need to be accurate in such a statement. She notes that Mr Osborne was living in the flat prior to December 2016 and has continued to live in the flat up to the date of the declaration.
9. There is also a statutory declaration from Martin Cooper of Cooper Associates, Consulting Structural Engineers, this is dated December 2022. He confirms that Mr Osborne currently lives in the flat known as 1A Cumberland Street as described on the attached floor plan and has been living in the flat since September 2016.
10. There is an email exchange between the Council and appellant, where the Council notes at one point it will be making a recommendation. The appellant has assumed that was for approval, but the Council say that is not the case, and a recommendation can be for approval or refusal. In this case it was a refusal.
11. For LDCs the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict it or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence is precise and unambiguous to justify the grant of a certificate on the balance of probability.
12. The Council say its main reason for refusal was based on whether 1A is a dwellinghouse or not, but also that the continuous use is not demonstrated. The Council noted that the appellant had used the wording 'my London Home' which to it suggested a home elsewhere. It also noted the appellant had ownership of another building with flats, seen in another planning application and took the view it would be unlikely for the appellant to live at 1A, if better accommodation was available to the appellant elsewhere. It also considered the first declaration from the solicitor did little in relation to continuous occupation as it did not cover this issue as does the second later declaration. The Council concludes there has not been continuous occupation.
13. In relation to 'London Home' the appellant explained that as he is Australian, it is there which is considered 'home', but he has no actual property there and when he goes to Australia it is simply to visit relatives. The updated declaration makes it clear that 1A is his current and only home and that has been the case since 2016.

14. The appellant did own other flats, but that was his business; developing properties. He did not stay in these premises and subsequently things have changed and they are not in his possession any more.
15. Overall, the evidence shows on the balance of probability that 1A was available for use by 2016. I attach significant weight to the statutory declarations which confirm such use and BT statements add a little to this. I do not consider that the Council has evidence to make the appellant's version of events less than probable, so I accept that the appellant has lived there from about 2016.

Dwellinghouse

16. 1A has a floor area a little under 7m² and has been carefully designed to maximise the use of the space available. The appellant notes the designer used techniques from boat design to maximise space. There is a small port hole window for a little light and ventilation and it has a glazed external door. There is a wc pan which is open to the space and a shower that has a glass door and screen.
17. Facilities include a sink, a small microwave oven, a single worktop type hob, fridge and washer/dryer. There are some narrow cupboards floor to ceiling along one wall and some small cupboards adjacent to the sink. There is storage beneath the raised-up floor and beneath the seats that form the siting/dining/bed area. The seating and table convert to a single bed similar to a caravan or boat.
18. I have had regard to the cases of *Gravesham Borough Council v Secretary of State for the Environment and Another* Queen's Bench Division (1984) 47 P. & C.R. 142 and *Stephen Grendon v The First Secretary of State*, *Cotswold District Council* Case No: CO/1399/2006, High Court of Justice Queen's Bench Division Administrative Court, [2006] EWHC 1711 (Admin), which were discussed at the hearing.
19. Gravesham in dismissing the appeal, noted that whether a building was or was not a "dwelling-house" for the purposes of the Order of 1977 was a question of fact; that a distinctive characteristic of a dwelling-house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence; that not every case was to be determined by having regard only, or even primarily, to the use to which a building was in fact put, nor was the duration or frequency of the user always relevant.
20. I accept that the appellant has lived at 1A since around 2016. However, the arrangement with toilet open to the space, part of the space located under a staircase, the very narrow passage down the room, the limited cooking facilities and the very small space leads me to conclude, overall, that this is not a dwelling-house and does not have the ability to afford to those who use it the facilities required for day-to-day private domestic existence. I acknowledge that the appellant is able to live in it, but I consider that the use is tantamount to that of a small caravan or boat and not a dwelling-house and does not fit with C3 use class.

Conclusion

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'confirmation that the existing use of the Appeal Site as a ground floor studio flat as shown on

drawing ref 4352 and Title Number NGL923336 (described as Use Class C3)' 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.

Graham Dudley

INSPECTOR