



Appeal Decision

Site visit made on 29 February 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 18th April 2024

Appeal Ref: APP/A5270/X/23/3314625

73A Lee Road, Perivale, Middlesex, UB6 7DA

- 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 Mousa Abid Mousa against the decision of the Council of the London Borough of Ealing.
- The application ref 224016CPE dated 15 September 2022, was refused by notice dated 6 December 2022.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended (the Act)
- The use for which a certificate of lawful use or development is sought is continuous use as separate residential accommodation (self-contained)

Decision

1. The appeal is dismissed.

Preliminary Issue

2. The original semi-detached dwelling at 73 Lee Road has been extended to provide further living accommodation at ground floor and first floor level. The plan submitted with the application form confirms that it is this extended area which is now referred to as 73A Lee Road which is the subject of the application.

Main Issue

3. The main issue is whether the Council's refusal to grant an LDC for the use of No 73A Lee Road as a self-contained dwelling was well-founded.

Reasons

4. Section 191(2) of the Act states that uses and operations are lawful at any time if, (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
5. The relevant time limit for taking enforcement action under Section 171(B)(2) of the Act regarding the material change of use to a self-contained dwelling is 4 years. The appellant therefore needs to show, on the balance of probability, that the material change of use to separate self-contained accommodation took place on or before the 15 September 2018 and the use subsisted without significant interruption for 4 years thereafter.

6. The Planning Practice Guidance advises that, if a local planning authority has no evidence itself, or any from others, to contradict 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 alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities.
7. To determine the date of a change of use of a building dwellinghouse, caselaw has established that regard should be had to two factors, neither of which is decisive: when the building provided viable facilities for living, with regard to the *Gravesham*¹ characteristics of a dwellinghouse which includes facilities for day to day private domestic existence and when the use actually commenced.
8. The documents submitted by the appellant consist of an open ended tenancy agreement dated the 1 April 2015, various plans, electricity bills for the period between 2015 and 2017, water bills between 2014 and 2016 and council tax bills for 2015-2017.
9. The plans provided and marked as proposed for the extension works indicate that the extension originally provided additional living space for 73 Lee Road with unrestricted internal access. Whilst plans now show 73A as being physically separate from the original dwelling, there is no information before me as to when those works were carried out.
10. With regard to the use, the application form states that the use began in 2009 but there is no information about what occurred in 2009 to support a change of use occurring at that time. The documents provided for the appeal relate to a later period. Some of the bills addressed to the tenant named in the agreement relate to a period prior to the tenancy agreement commencing which is contradictory.
11. The tenancy agreement is open ended and it is not clear when and if continuous use took place. The limited information provided does not show use over a continuous period of 4 years even though the application was made on the basis of many years use. There is limited evidence before me as to when any physical separation works took place and when the use actually commenced.
12. I find the appellant's evidence to be contradictory and imprecise. The appellant has not demonstrated on the balance of probabilities that a material change of use at No 73A began on or before 15 September 2018 nor has it been demonstrated that it continued for at least 4 years thereafter without significant interruption.

Conclusion

13. I conclude that the Council's refusal to grant an LDC in respect of continuous use as separate residential accommodation (self-contained) 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).

E Griffin

INSPECTOR

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306