The Planning Inspectorate

Appeal Decision

Site visit made on 19 June 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 02 July 2024

Appeal Ref: APP/F5540/X/23/3318653
Chiswick Lodge, 3 Parkside Road, Hounslow, TW3 2BP

- 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 Ash Kohli of C & K Investment Ltd against the decision of the Council of the London Borough of Hounslow.
- The application ref: 00864/3/LAW3, dated 15 November 2022, was refused by notice dated 13 January 2023.
- The application was made under section 191(1)(a) of the Act.
- The use for which a certificate of lawful use or development is sought is described as '9 existing self contained units (use class C3).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the application form the appellant ticked the box to say that the grounds for the application was made on the basis that *'the building works were substantially completed more than four years before the date of this application'*. However, it is clear from the application form and the evidence provided that the appellant submitted the application under section 191(1)(a) of the Act to ascertain whether the existing use of the building is lawful. I shall therefore deal with the appeal on this basis.

Main Issue

3. The main issue is whether the Council's decision to refuse a LDC was well-founded.

Reasons

4. Section 191(1) of the Act provides that if a person wishes to ascertain whether any existing use of buildings or other land is lawful, they may make an application to the local planning authority. Section 191(2) of the Act sets out that uses and operations are lawful at any time if 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 they do not constitute a contravention of any of the requirements of any enforcement notice then in force. It is not disputed that any enforcement notice was in existence at the time of the LDC application.

5. Section 171(B) of the Act sets out the time limits for the taking of enforcement action against a breach of planning control, after which no such action may be taken in respect of that breach. Section 171(B)(2) states that in respect of 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 four years where notices issued before the 25 April 2024 or 10 years where notices are issued on or after 25 April 2024 beginning with the date of the breach.

6. To succeed in this appeal, the appellant will therefore need to demonstrate, on the balance of probabilities, that the material change of use of the building to nine self-contained units (use Class C3) began on or before 15 November 2018 and continued without significant interruption for at least 4 years thereafter. Since each unit comprises a separate planning unit, it would be open to me to grant a LDC for any of the self-contained units of accommodation, so long as the evidence is sufficiently precise and unambiguous to show that the use of a unit was continuous[1] throughout the relevant period.

7. It is the appellant's case that the relevant period for consideration in this instance is 15 November 2018 to 15 November 2022, namely the four years immediately predating the submission of the application. However, in their application, the appellant sets out that the use of the property as nine self-contained flats commenced on the 1 January 2010. Given that the submitted evidence goes back to 2011, I shall therefore consider whether any four year period has been established, on the balance of probabilities, and not limit my consideration solely to the four year period immediately predating the application.

8. In a LDC appeal, the onus of proof is firmly upon the appellant to make their case on the balance of probabilities and the applicant's own evidence does not need to be corroborated by independent evidence. As established in *Gabbitas v SSE & Newham LBC* [1985] JPL 630, if there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted. Issues concerning the planning merits of the appeal do not fall to be considered.

9. The appellant has provided a floor plan dated 7 April 2022 which shows the property arranged as nine flats. This layout is consistent with what I observed on site. Each unit contained a bed, a separate bath/shower room and kitchen facilities including a fridge freezer, sink and a hob.

10. Correspondence dated the 21 September 2022 (the "2022 Correspondence") between the appellant and the Council's Revenues department has been submitted by the appellant. The evidence shows that Flat 9 has been valued at Band A for council tax purposes since 30 June 2005, and Flats 1 to 8 were also valued as council tax Band A since the 15 January 2007. It goes on to explain the periods where council tax has been recorded as payable for each of the nine separate flats; Flat 4 since 2011, Flat 5 since 2012, Flats 1 and 3 since 2014, Flat 9 since 2015, Flat 8 since 2016, Flats 2 and 6 since 2017 and Flat 7 since 2018. This evidence is not in dispute; the Council sought confirmation from their Council Revenues department and it has not provided any evidence to the contrary.

[1] And any period of non-occupation of a unit was *de minimis*

11. It is the appellant's case that the evidence clearly establishes that each flat has been subject to council tax and that this shows continuous occupation and demonstrates that each flat should be considered as falling within Use Class C3 in their own right. The appellant provides no explanation as to what they consider the meaning of 'continuous occupation' to be.

12. The submitted evidence points towards council tax having been paid for more than four years without any significant break in payment for all flats save for Flats 2 and 8, where there are lengthy gaps of approximately five months when council tax is not recorded as having been paid. However, the payment of council tax does not, of itself, show that the units were individually and continuously occupied. For example, it is not unusual for Council Tax to be paid during periods of non-occupation. It has not been shown who occupied each of the flats, the dates of their occupation or the manner in which the occupants occupied those units and whether it was used as their main residence and as self-contained units of accommodation. The significance of individual rooms being liable for council tax payments provides little evidence to explain the manner in which the property was actually used by its various occupants over time.

13. I acknowledge that within the 2022 Correspondence the Council's Revenue department suggests that their email is '*confirmation of continuous occupancy for each of the 9 flats for at least the last 5 years',* however, the role of a Revenue Officer is to ensure the collection of council tax payments. It is unlikely that they would be required to make an assessment of whether a property is occupied and used without significant break as a separate and individual unit for planning purposes.

14. Furthermore, there is no evidence before me to show that a Revenue Officer visited the appeal property. Even if a visit had been carried out, this would have provided only a snapshot in time of the actual layout and use of the property. The use of the words 'continuous occupancy' within the 2022 Correspondence does not, therefore, assist the appellant in demonstrating continuous occupancy of each flat and their use as self-contained unit of accommodation.

15. To be immune from enforcement action under s.171B(2) of the Act, the continuous use of each flat as a self-contained residential unit must be positively established over a four year period and in the appeal case I find that the submitted council tax evidence in isolation is insufficient to demonstrate this.

16. While the Council has not provided any evidence of its own to make the appellant's version of events less than probable, I do not find the appellant's evidence to be sufficiently precise and unambiguous to show that, on the balance of probabilities, any of the flats have been used for at least a four year period without significant interruption, as an independent and separate self-contained unit of residential accommodation. The burden of proof[2] is firmly on the appellant however, in this instance, I consider that the appellant has not discharged that burden of proof.

[2] The standard of proof is the civil standard, which is the 'balance of probabilities' or whether something is more likely than not.

Other Matters

17. Reference is made to other appeal decisions in support of the appeal. However, no specific appeal has been brought to my attention and in any event, I am required to determine the appeal before me on the basis of the relevant facts and law.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of 9 self-contained units was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

E Brownless

INSPECTOR