



Appeal Decision

Site visit made on 25 June 2024

by D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 5th August 2024

Appeal Ref: APP/J0405/X/23/3333443

15 Chalgrove Walk, Aylesbury, Buckinghamshire HP21 8NT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Ghazala Chaudhary against the decision of Buckinghamshire Council.
 - The application ref: 23/02656/CPE, dated 18 August 2023, was refused by a notice dated 17 November 2023.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The existing use for which a certificate of lawful use or development is sought is use as 2 flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The main part of the appeal property is a 2-storey semi-detached house in a row of similar properties in a residential street. To the side and rear of that main part are single storey extensions. At my site visit I was only able to gain access to the single storey side extension and the first floor. From the evidence before me it appears that the rear ground floor extension does not form part of the ground floor flat. I noted at the site visit that there is a large outbuilding at the rear of the garden area. Entry to the first floor flat is through the side extension. A gated archway between 15 and 17 Chalgrove Walk provides access to the garden area, first floor flat, rear extension and outbuilding.
3. The description of the use for which an LDC is sought is taken from the section of the application form relating to the reason for the LDC. The Council amended this to '*conversion into two flats*'. However, the word 'conversion' is sometimes used to describe works which facilitate a material change of use. Nevertheless, I am not determining whether the operational development that enabled the property to be divided into a flat in part of the ground floor and a flat on the first floor and in the side extension nor any other operational development at the appeal site nor the existing use of the remainder of the appeal property is/are lawful. As such, I have dealt with the appeal on the basis of the description in the banner heading above.
4. The evidence before me refers to planning merits, including the need for housing. Nevertheless, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rest on the facts of the case, on relevant planning law and judicial authority.

Reasons

5. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded. In order for an LDC to be granted under section 191 of the 1990 Act, the burden of proof is with the appellant and the appropriate test of the evidence is the balance of probabilities. The onus is firmly on the appellant to show that the use as 2 flats was lawful at the time the application was made. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
6. Section 191(2) of the 1990 Act states that '*For the purposes of this Act 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.*' Subsection 191(2)(b) is met in this case as there is no evidence before me to indicate that there was an enforcement notice in force at the date of the LDC application.
7. Section 55(3)(a) of the 1990 Act, states that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used. The claim made by the appellant is that 15 Chalgrove Walk has been used as 2 flats for more than four years and hence is immune from enforcement action and therefore lawful by virtue of section 171B(2) of the 1990 Act.
8. The date of the LDC application is the 18 August 2023 therefore the appellant needs to show, on the balance of probability, that the material change of use to 2 flats began on or before 18 August 2019 and has continued for at least 4 years thereafter without significant interruption. On the application form the appellant states that the use was begun on 2 July 2018. However, elsewhere on that form it states, '*2 flats in existence since 2019*' and '*15 Chalgrove walk has been split since 2018 as per application submitted in 2019*'.
9. The 2019 planning application¹ cited in the evidence before me was for the '*conversion of four bedroom dwelling into 3 separate units and conversion of garden outbuilding into one dwelling*' and is cited in the Council's Delegated Officer Report (OR). That OR indicates that the application was refused and the subsequent appeal was dismissed. The appellant has stated that the split already existed when the 2019 application was submitted and that '*the officer came from the appeals department and saw the property internally and saw it was split into flats*'. However, that appeal decision nor the plans or any other details from the 2019 planning application are not part of the evidence before me. Therefore, it is not clear as to whether the development cited in the 2019 application was proposed or had already been implemented.
10. The appellant has also stated that the tenants have lived there for 5 years in one of the flats, the current tenant for 4 months in the other flat (15a) but that

¹ Reference: 19/04026/APP

the previous tenant had been living there for 4 years. She also states that the tenants spoke to an Inspector and stated these facts to them. It is not known who the appellant is referring to in this context and the appellant's statement is not in the form of a statutory declaration. Furthermore, there is no corroborating evidence before me, such as bank statements, to indicate that the appellant has received any rental payments from individual tenants from 2018 onwards. There are no statutory declarations from the tenants indicating when they occupied the flats nor any tenancy agreements. Nor is there a statutory declaration from the appellant explaining how the property has been used since 2018 and the dates tenants have occupied it.

11. The appellant goes on to state that the Royal Mail website shows 15 and 15a as separate addresses. However, even if this is correct this fact does not show when the material change of use began. In addition, copies of a Council Tax bill, energy bills and a Guarantee Agreement were submitted with the LDC application. The Council Tax bill is for 2022/23 and is for 15 Chalgrove Walk. It therefore does not provide any evidence in support of there being 2 flats within the appeal property. The one energy bill is for the period 31 July 2023 – 1 September 2023 and is for gas provided to 15A Chalgrove Walk. The other energy bill is for the period 26 February 2023 to 28 February 2023 and is for both gas and electricity provided to 15 Chalgrove Walk. Both energy bills appear to be addressed to the same person as the Council Tax bill. Those energy bills indicate that energy was being provided separately to 15 and 15a Chalgrove Walk at those dates only. The Guarantee Agreement does not contain any details to indicate that it relates to 15 or 15A Chalgrove Walk as the room type and location only states that it relates to an 'Ensuite Bronze Plus, Roost OPCO 3 Limited or such other rooms....'
12. Taking into account all of the above, there is insufficient precise and unambiguous evidence before me to show when the change of use to 2 flats began and that it continued for at least 4 years thereafter without significant interruption.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of the use as 2 flats 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.

D Boffin

INSPECTOR