
Appeal Decision

Site visit made on 27 August 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2024

Appeal Ref: APP/U5360/X/22/3298260

62 Oldhill Street, Hackney, London N16 6NA

- 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 Solomon Kritzler on behalf of Winrose Limited against the decision of the Council of the London Borough of Hackney.
 - The application Ref 2022/0117, dated 12 January 2022, was refused by notice dated 16 March 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 described as "5 flats C3 use".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance in the context of an appeal made under section 195 of the 1990 Act as amended. The appellant must show, on the balance of probability, that the development at the date of application is lawful.

Main Issue

3. The main issue is whether the Council's refusal of an LDC was well founded. In particular, it is necessary to consider whether the appellant has proved on the balance of probability that the use of the appeal site changed to 5 flats (Class C3 use) on or before 12 January 2018 (that being 4 years prior to the date of the LDC application) and that the use then continued without substantial interruption for 4 years after the date of the change.

Reasons

4. Given that the LDC application, is seeking confirmation that the appeal premises changed to 5 self-contained flats on or before 12 January 2018, it is necessary to consider what constitutes a 'dwellinghouse.' Whilst there is no

definition of a dwellinghouse within the Act, case law has established that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. This is a question of fact and both actual use and the physical characteristics needs to be considered. I understand the term 'flat' for town-planning purposes to denote a part of a building that has the characteristics of a dwelling in its own right, that is to say the ability to afford to those who use it the facilities required for day-to-day private domestic existence. It would satisfy the above test, established in case law, if it would generally be considered by reasonable people to comprise such a dwelling.

5. I shall focus first on the appellant's own evidence in relation to each of the flats, the starting point being Mr Solomon Kritzler's 'statutory declaration' dated 22 December 2021, which states that the appeal site was purchased by the appellant's company, Winrose Ltd in October 2002 and that the appeal property has been used and occupied as 5 self-contained units since 17 July 2017.
6. However, this document does not comply with the normal formalities of a statutory declaration as it does not contain the necessary words "and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1835". Furthermore, the statement also has not been witnessed by an authorised person (no signature and details have been provided of the authorised person). Since this this document is not sworn in the presence of a solicitor it cannot be treated as a Statutory Declaration or an affirmation, and therefore I shall treat it as a signed statement.
7. The evidence submitted to the support the LDC application includes:
 - (i) Council Tax (CT) band information showing the date¹ when Council Tax came into effect for 5 flats.
 - (ii) Assured Tenancy Agreements (ATA) for flats 1 to 5.
 - (iii) Oldfield Estates Limited Tenants Statements (TS) submitted for 5 flats.
 - (iv) Housing benefit letters From London Borough of Hackney for 5 flats with dates ranging from 2015 to 2019.
8. With regard to point (i) above no further Council tax bills/statements have been submitted to show that Council tax has been made for each of the 5 flats since March 2015. Whilst supportive of the appellant's case, without more, the CT registrations do not establish that the use of the appeal property changed to 5 self-contained flats on or before the relevant date.
9. Furthermore, the ATAs for each flat range between 6 to 18 months only, well short of any continuous 4-year period. Furthermore, they do not demonstrate that each unit contained the facilities required for day-to-day private domestic existence.
10. Whilst the TS show that some of the bedrooms were occupied since November 2015, well before the relevant date for this application, they all appear to show

¹ 2 March 2015

that no rent was paid for each of the flats/rooms from February/March 2021 up to the date of the LDC application². These TS also fail to demonstrate that the individual rooms each contained the facilities required for day-to-day private domestic existence. Therefore, the TS also fail to provide clarity of continuous use as 5 self-contained flats, without substantial interruption, prior to the submission of this LDC application.

11. Housing benefit payments letters show that the rooms were occupied over a 4-year period from March 2015 to April 2019 prior to the date of this application. However, this again does not demonstrate that the rooms were occupied as 5 self-contained flats for a continuous 4-year period or more. It simply shows tenants of the building met the eligibility criteria for Housing benefit, and that housing benefit was paid between these dates. Furthermore, similar to the TS above, they do not demonstrate continuous occupation as 5 self-contained flats up to the date of this application (12 January 2022).
12. There is no other evidence, such as statements from the tenants; utility bills; Council Tax bills or electoral registration records to corroborate the appellant's claim that building was occupied as 5 self-contained flats since 12 January 2018. For the reasons given, I place little reliance on the CT, ATAs, TSs and housing benefit documents submitted to show when the use of the premises as 5 self-contained flats commenced.
13. Planning permission was previously granted on 16 October 2014, for the change of use from a C3 (Dwellinghouses) to C4 (Houses in Multiple Occupation)³. The approved plans show 4 rooms all with ensuite and a shared communal living room and a shared kitchen on the ground floor. The floorplan submitted with the current LDC application appears similar to the approved plan. The layout of the current building closely follow the approved plan with bedrooms containing small ensuites. The main changes that have occurred from the 2014 permission is the conversion of the shared communal living room on the ground floor to create a fifth bedroom. 'kitchenette' labels have also been inserted to the drawings to identify what are exceedingly small kitchen cupboards and worktops in each room.
14. Given that planning permission has previously been granted for a Class C4 HMO and the appellant has largely maintained that approved layout (albeit adding an extra bedroom) adds further ambiguity regarding the existing use of the premises, and whether the premises relates to 5 self-contained flats.
15. During my site inspection, I observed that all of the rooms appeared very cramped, with the bedroom sizes ranging from 10.26sq.m to 15.4 sq.m. Each room also contained small ensuites ranging from 1.7sq.m to 2.3 sq.m only. It was clear that there was limited storage space, circulation space or clear surfaces required for food preparation or eating meals, and thus insufficient space for tenants to store personal possessions, clothes and food. Indeed, I had difficulty entering bedroom 5 as there was a fridge directly behind the door, blocking clear access and exit from this room. Therefore, whilst most of the bedrooms contain the basic amenities none could, by any stretch of the imagination, be said to provide "the facilities required for day-to-day private domestic existence."

² 12 January 2022.

³ Council ref: 2014/2721.

16. On the basis of all of the evidence submitted including the existing floor plan and the layout of the building, it does not appear that the building has been converted to 5 self-contained flats. Indeed, it is unclear why the building also contains an unlocked communal kitchen on the ground floor, which is accessible and useable by all tenants. There was also clear evidence of a washing machine being used in the communal kitchen, with bed linen drying in the rear yard, and this was the only washing machine in building. As such, the communal kitchen was clearly being used by the tenants, and moreover, there appears nothing to stop this kitchen from being used by anyone in the building, for food preparation and storage of foods, should a tenant wish.
17. I also note that the existing floor plan submitted with this application shows all rooms labelled as a 'bedroom' rather than a 'flat.' The floor plan submitted with the application matches the current layout of the building I also have no reason to believe that the layout of the property has changed since the LDC application was made.
18. The appellant's evidence is far from precise or unambiguous. The ATAs, TSs, CT registration details and housing benefit letters were the principal documents relied upon to corroborate the appellant's account but, for the reasons given, these carry little weight in support of the appellant's case. I conclude that the appellant has failed to discharge the burden on him to show on the balance of probability that the use of the appeal site changed to 5 flats (Class C3 use) on or before 12 January 2018 (that being 4 years prior to the date of the LDC application), such that the refusal of the LDC was well-founded. In these circumstances, I need not consider whether the use then continued for at least 4 years after the date of the change.

Conclusion

19. For the above reasons, I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of "5 flats C3 use" was well-founded, and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Satheesan

INSPECTOR