
Appeal Decision

Accompanied site visit made on 10 March 2014

by Felix Bourne BA(Hons) LARTPI Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 March 2014

Appeal ref: APP/G5750/X/13/2202687

53 West Ham Lane, London, E15 4PH

- The appeal is made by Mr Y Levy under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by the London Borough of Newham to grant a lawful development certificate (LDC).
- The application Ref 13/00651/CLP dated 18 April 2013 and validated on 27 May 2013 was refused by notice dated 22 July 2013.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The proposal for which a LDC is sought is conversion of a single flat into two above a shop.

Summary of decision: The appeal is dismissed.

Preliminary matters

1. Whilst described as a proposal in the application for a LDC, and thus submitted under section 192 of the 1990 Act as amended, a visit made by the Council found that the property was already being used as two separate self-contained flats. At the site inspection I sought clarification as to when the use commenced but this could not be provided. Bearing in mind that the application was made under section 192, I have proceeded on the basis that, when the application was submitted, the proposed development had not yet taken place.
2. For the avoidance of doubt, I should explain that the planning merits of any future use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Main Issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Discussion

4. Whether or not the development subject of appeal requires express planning permission depends on the correct interpretation of Article 3 and Class F in Part 3 of Schedule 2 to the Town and Country Planning (General Permitted

Development) Order 1995, as amended by the Town and Country Planning (General Permitted Development)(Amendment)(England)(No. 2) Order 2012 (the 2012 Order). This provides that a change of use of a building – (a) to a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and as up to two flats, from a use for any purpose within Class A1 of that Schedule; (b) to a mixed use for any purpose within Class A2 (financial and professional services) of the Schedule to the Use Classes Order and as up to two flats, from a use for any purpose within Class A2 of that Schedule; (c) where that building has a display window at ground floor level, to a mixed use for any purpose within Class A1 (shops) of the Schedule to the Use Classes Order and as up to two flats, from a use for any purpose within Class A2 (financial and professional services) of that Schedule, constitutes 'permitted development' not requiring express planning permission.

5. The provision is subject to conditions, contained at paragraph F.1, which include the following: (a) some or all of the parts of the building used for any purposes within Class A1 or Class A2, as the case may be, of the Schedule to the Use Classes Order shall be situated on a floor below the lowest part of the building used as up to two flats; (b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor shall not be used in whole or in part as a flat; (c) a flat shall not be used otherwise than as a dwelling (whether or not as a sole or main residence) – (i) by a single person or by persons living together as a family, or (ii) by not more than six residents living together as a single household (including a household where care is provided for residents).
6. The appellant contends that, as the existing flat is on the first and second floors of a building where the ground floor is a shop within Class A1, conversion to two flats constitutes permitted development. However, the Council contend that the wording of the legislation indicates that two flats above a shop may only be created under permitted development where the change is from a use falling within Class A1; i.e. a shop and its ancillary storage space.
7. In this case I believe that the Council is correct in their interpretation, for this is consistent with the Explanatory Memorandum to the 2012 Order, issued by the Department of Communities and Local Government. The Council themselves quote from paragraph 7.2, which explains what the Government is doing, and why, indicating that 'while the current provision allows for converting ancillary A1/A2 space into a single flat, we now want this provision to be extended to no more than two flats so as to incentivise the conversion to housing of vacant space above retail units in town centres'. The purpose of the 2012 Order is also explained at paragraph 2.1 of the Explanatory memorandum and this refers to amending the 1995 Order 'to allow buildings used as shops, or for financial and professional services, to change to a mixed use incorporating up to two flats (increased from one), and to revert back to those non-residential uses, without the need to apply for planning permission'.
8. In this case, however, the scheme is not one to convert ancillary Class A1/Class A2 space into residential use: indeed it is described in the application as 'conversion of a single flat into two above a shop'. Accordingly I conclude that the 2012 Order does not render the scheme permitted development and, whilst I note the decisions submitted by the appellant in support of his case, these do not lead me to doubt the validity of the Council's approach based, as it is, on the Explanatory Memorandum to which I have referred.

9. For the reasons given above I conclude that the Council's refusal to grant a lawful development certificate in respect of the conversion of a single flat into two above a shop, at 53 West Ham Lane, London, E15 4PH, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Formal decision

10. The appeal is dismissed.

Felix Bourne

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INSPECTOR