

Appeal Decision

Site visit made on 23 August 2016

by Paul Freer BA (Hons) LL.M MRTPI

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

Decision date: 20 September 2016

Appeal Ref: APP/F5540/X/16/3145971

96a Hibernia Road, Hounslow TW3 3RN

- 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 Nadeem Ahmed against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00603/96A/LAW1, dated 23 December 2015, was refused by notice dated 15 February 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the building of a rear dormer.
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Summary Decision: the appeal is dismissed.

Reasons

1. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.
 2. At the time of my site visit, the property was undergoing refurbishment and was not occupied. By comparison with the floor plans submitted with the application, it is apparent that some of the internal partition walls on the ground floor have been removed, thereby creating one large room on each side of the main entrance. The kitchen had been re-fitted with new appliances and storage space. On the first floor, the bathroom has been re-located to the rear of the property and was also furnished with a new bathroom suite, fixtures and fittings. Whilst not fully completed at the time of my visit, my clear impression was that the property had been laid out as single family dwelling.
 3. However, Section 192(2) of the 1990 Act indicates that, in order to be lawful, the use or in this case operations described in the application must be considered as if instituted or begun at the time of the application. The photographs taken by the Council's case officer during a site visit conducted in
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January 2016 show a different configuration of the property to that evident at the time of my site visit. These photographs, which were taken after the date on which the application was made, show a number of internal doors with locks. The case officer's site visit notes indicate that access could not be obtained to some of the upstairs rooms because these doors were locked.

4. The Council has also provided documentary evidence to show that the property has been registered for Council Tax purposes as two separate flats since 2009. This is supported by a request made in April 2014 by the occupier of one of the flats for a second wheelie bin because sharing one bin with the occupier of the other flat was proving inconvenient to both occupiers. The Council's photographs taken in January 2016 show two wheelie bins, suggesting that the occupiers request was acceded to. Furthermore, the record of a noise complaint received by the Council in March 2012 describes the property as being in flats.
5. The appellant has offered no evidence to counter that provided by the Council. Consequently, on the balance of probability, I conclude that the appeal property was in flats at the time that the application made. It follows that, even though laid out as a single family dwelling at the time of my site visit, the works to facilitate the use as a dwellinghouse had not been instituted at the time of the application and the appeal property was not is use as a dwellinghouse at the time the application was made.
6. The enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted under the provisions of Article 3, Schedule 2, Part 1, Class B of the Town and Country (General Permitted Development) (England) Order 2015 (GPDO). The Interpretation section of the GPDO explains that, other than in relation to Part 3 of Schedule 2, the definition of a dwellinghouse does not include a building containing one or more flats, or a flat contained within such a building. The appeal property was in flats at the time the application was made. It follows that the appeal property was not a dwellinghouse for the purposes of Article 3, Schedule 2, Part 1, Class B of the GPDO at the time the application was made and therefore could not benefit from the provisions within that Class.
7. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the building of a rear dormer at 96a Hibernia Road, Hounslow TW3 3RN was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

8. The appeal is dismissed.

Paul Freer

INSPECTOR