
Appeal Decision

by Paul Dignan MSc PhD

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

Decision date: 7 December 2016

Appeal Ref: APP/F5540/X/16/3150112
Flat 11a, Devonshire Road, London W4 2EU

- 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 Rajan Sohal against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00354/11a/LAW1, dated 2 March 2016, was refused by notice dated 9 May 2016.
 - The application was made under section 192(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 Conversion of existing flat into 2 self-contained flats.
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Decision

1. The appeal is dismissed.

Reasons

2. There appears to be no dispute that the lawful use of the appeal building as a whole is as a shop at ground floor level and a separate 3-bedroom flat on the first floor. In the LDC application the appellant sought to make use of the planning permission granted by Class G of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) to convert the first floor flat into two flats. That provision enables a change of use of a building from a shop use to a mixed use as a shop and up to 2 flats.
 3. In this case however, the appeal property is a separate residential flat. Notwithstanding that it is above a shop, the GPDO Class G provision simply does not apply. I understand that the LDC application came about following formal pre-application advice from the Council. The GPDO provision is intended to allow ancillary space associated with retail units to be converted into flats, and it may be that the Council thought the flat was living accommodation associated with the shop, as is often the case. It may also be, unfortunately for the appellant, that the advice was simply wrong.
 4. Either way, the planning merits of the proposal are not relevant, and they are not something I can consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended. My decision rests on
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the facts of the case, and on relevant planning law and judicial authority. In this case the subdivision of the existing flat into 2 flats is development that requires planning permission, by reference to sections 55(1), 55(3)(a) and 57(1) of the 1990 Act. It does not benefit from planning permission granted by the GPDO, and hence requires express planning permission. It follows that the Council's decision to refuse to grant an LDC was well founded and the appeal cannot therefore succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Paul Dignan

INSPECTOR.