

Appeal Decision

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 16 May 2017

Appeal Ref: APP/F5540/X/16/3161537
67 Windmill Road, Brentford TW8 0QQ

- 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 (hereinafter “certificate”).
 - The appeal is made by Mrs Andrijana Overton against the decision of the Council of the London Borough of Hounslow.
 - The application ref. 01217/67/LAW2, dated 7 November 2015, was refused by notice dated 10 May 2016.
 - The application was made under section 191(1) (a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate is sought is described at section 8 of the application form as “Continuous use of basement as a self-contained one bedroom flat/apartment currently registered as a store room.”
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Decision

1. The appeal is dismissed.

Main issue

2. The main issue is whether the Council’s decision to refuse to grant a certificate was well founded.

Reasons

3. The appeal concerns a lower ground floor or basement flat within 67 Windmill Road, a property which lies at the end of a terrace next to the junction between Windmill Road and York Road. The property also contains a ground floor flat and a first floor flat. The door to the basement flat faces towards Windmill Road. It is approached via a flight of steps.
 4. Section 191(2) of the 1990 Act as amended indicates that uses are lawful at any time if (a) no enforcement action may then be taken in respect of them because, for instance, the time for enforcement action has expired and (b) they do not contravene any of the requirements of any enforcement notice in force. Lawfulness in this case is to be decided at the time of the application; that is 7 November 2015.
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5. Subsection 191(2) (b) is met here as there is no enforcement notice in force. With regard to subsection 191(2) (a), section 171B(2) says that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The most relevant time for consideration is between 7 November 2011 and 7 November 2015.
6. Paragraph 006 on "Lawful development certificates" in the Planning Practice Guidance explains that: "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."
7. The appellant has submitted a statutory declaration dated 21 October 2015 to declare that she has owned 67 Windmill Road since 7 May 2014 and that to the best of her knowledge the property has been arranged as three flats, including a basement flat, for at least six years. A completion statement issued on 2 May 2014 confirms that she purchased three flats at no. 67 including a basement flat. Mr Samuel Martin Lorimer has produced a statutory declaration dated 22 October 2015 to say that he lived continuously in the basement flat from 5 January 2009 until 25 April 2014. A tenancy agreement between the previous landlord and Samuel (sic) M Lorimer for a "term certain of 12 months" from 5 January 2009 is provided. A second tenancy agreement is submitted for an initial term of 12 months from 19 July 2014 in relation to a tenant named Mrs Oksana Bodnar-Pizyur. From 7 May 2014 until 1 July 2014 the flat was said to be vacant to allow for redecoration and the fitting of new flooring.
8. I am somewhat concerned that the appellant has not been able to produce any other documentary evidence that might be closely associated with Mr Lorimer's or Mrs Bodnar-Pizyur's alleged occupation of the basement flat. This would include further tenancy agreements, bank statements showing the payment or the receipt of rent, energy performance certificates, payments for utilities, Council Tax payments or records and the like.
9. An email from Thames Water dated 20 July 2015 confirms that the basement flat is registered for the purposes of water services but this is of little assistance as the water company's records for the flat are not traced back in time. A survey form from Thames Water, undated and not filled in, is similarly of little use. A Council Tax Bill for 2016-2017 issued on 22 July 2016 is also included in the appeal papers. However, this post-dates the application for the certificate and appears to relate to new occupiers in the basement flat.
10. The Council has submitted evidence to show that the basement flat was not registered for Council Tax purposes until 22 October 2015 or issued with an energy performance certificate prior to 21 July 2014. Furthermore, neither Mr Lorimer nor Mrs Bodnar-Pizyur appears on the electoral roll records from December 2007 to December 2016. The Council also produces information to show that no leasehold information is available on Land Registry records before 21 May 2014. There are no tenancy agreements submitted or referred to that cover the period from 4 January 2010 until 18 July 2014.

11. The Council searched the internet for online lettings and found that the basement flat was first shown there as available for rent on 29 June 2015. It is not clear what occupation took place between 29 June 2015 (or 18 July 2015, the end of Mrs Bodnar-Pizyur's tenancy agreement) and the date of the application, a period of around four months. The flat could have been vacant during that period; this would amount to a material break in occupancy. I say this because in order for the four years use to be made out, the residential occupation must have continued without a material break before accruing immunity and thereby lawfulness. In a similar vein, the vacant period referred to by the appellant should arguably have been declared from 25 April 2014 (according to the evidence from Mr Lorimer) until 19 July 2014 (the start of Mrs Bodnar-Pizyur's tenancy). Such a vacancy of nearly three months could also well amount to a material break in occupancy.
12. The third party who responded to the appeal offers little to the key matter at issue in this appeal. The planning merits of using the basement for residential accommodation are not relevant. However, I see from the Council's delegated report that one representation (name and address not supplied) was received setting out that the basement was previously used for storage, but that within the last two years curtains had been installed. This throws further doubt on the appellant's version of events. I note also that the appellant has not subsequently responded to the points raised in the Council's statement.
13. From the evidence before me, I find that the appellant has not made out the case, on the balance of probability, that the basement has been used as a self-contained one bedroom flat/apartment for a four-year continuous period.
14. For the reasons given above and taking into account all other matters raised, I conclude that the Council's refusal to grant a certificate in respect of the existing use of the basement at 67 Windmill Road as a self-contained one bedroom flat/apartment was well founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Dale

INSPECTOR