
Appeal Decision

Hearing held on 23 May 2017

by B M Campbell BA(Hons) MRTPI

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

Decision date: 30 May 2017

Appeal Ref: APP/R5510/X/16/3163426

108 Willow Tree Lane, Hayes, Middlesex UB4 9BL

- 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 Ms K Bains against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 65865/APP/2016/3079, dated 11 August 2016, was refused by notice dated 4 October 2016.
 - 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 use of dwellinghouse as two self-contained flats.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Application for costs

2. At the hearing an application for costs was made for Ms Bains against the Council. This application is the subject of a separate decision.

Reasons

3. Section 191(2) of the Act says a use is lawful at any time if (a) no enforcement action could be taken in respect of it and (b) it does not constitute a contravention of the requirements of any enforcement notice in force. Subsection (b) is met since there is no enforcement notice relating to the property. With regard to subsection (a), the change from a dwellinghouse to two flats was a material change of use requiring planning permission (s55(3)(a) of the Act). No such permission was sought. Section 171B(2), however, says where there has been a breach consisting in the change of use of any building¹ to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
4. Thus, in respect of each flat, if there has been a four year period of continuous use as a dwellinghouse before the date of the application, the use would have

¹ S336 of the Act says "building" includes any part of a building

- become lawful at that time and remained so provided there was no subsequent material change in circumstances.
5. The Appellant says the property was converted into two flats in 1993 and has remained as two flats ever since. A letter from the previous owner indicates that the first floor flat was occupied until 4 September 2004 following which it was left vacant as a great deal of remedial work was needed and the owner did not wish to cause disturbance to the occupier of the ground floor flat. The ground floor flat was occupied until 12 July 2008. The Council Tax records corroborate the date of conversion as the property has been rated as two flats since 1993.
 6. Further evidence supporting historic use as two flats is provided by British Gas confirming separate registration of the two properties since 2000; a Planning Inspector in 2010 noting that the Council had become aware that the property had been converted into two flats without planning permission; and a photograph taken at that time clearly showing two external front doors.
 7. The Appellant says she bought the property in 2009 when it was already divided into two flats. She has been able to provide tenancy agreements for each flat which show occupancy of each through from April 2009 (108A) and June 2009 (108) to the date of the application. That is a continuous period of some seven years. There are no gaps in the agreements for flat 108A and two gaps in the tenancy agreements for flat 108, each of about a month which is not unusual where a new tenant is being sought.
 8. In addition, the Appellant brought Landlord Insurance Certificates for the two properties to the hearing, starting in March 2010 – although those for two years: March/April 2014-15 and March/April 2015-16 were missing. Finally, at the hearing, the Appellant's father confirmed orally that he had managed the two flats for his daughter since the property was purchased in 2009 and that they had been continuously let since that date.
 9. The Council brings no evidence of its own to show how the property has been used historically and nothing to contradict the Appellant's version of events. Although accepting at the hearing that it had been converted to two flats in 1993, it says that insufficient evidence has been brought to demonstrate that the use has become lawful over time.
 10. I cannot agree. In my view, on the basis of the evidence provided, it seems highly likely that the use as two flats has continued since the property was converted in 1993 such that the Council could have taken action at any time. Neither occupation, nor physical state alone is determinative of use but both are relevant. Applying the test as identified in *SSE and Terry Holding v Thurrock BC* [2002] EWCA Civ226, with two external front doors; the physical layout of the property as two flats with all facilities necessary for day to day living; and the units being separately rated for Council Tax purposes since 1993, it seems to me that there would have been no time when the Council would not have been able to take enforcement action in respect of the breach such that it could not count towards the rolling period of years giving rise to immunity.
 11. Nonetheless, even if one discounts the period before the Appellant acquired the property in 2009, a seven year continuous period of tenancy agreements with only de-minimis breaks backs up the Appellant's statement that the flats have

been used as two flats ever since she purchased the property. That is more than the four years required by s171B(2).

12. The evidence that I have is precise and unambiguous. There is nothing to contradict it and no reason to doubt its veracity. To the contrary there are numerous documents submitted to support the proposition of long term use as two flats. This seems to me to be a case where there is no good reason to refuse a certificate on the balance of probability given that the Council has no evidence itself, nor any from others, to contradict or otherwise make the Appellant's clear version of events less than probable.
13. To require even more documentary evidence where there is absolutely nothing to cast doubt on the Appellant's version of events is, in my view, applying the more rigorous test of "beyond reasonable doubt" rather than "balance of probability".
14. I conclude that it is more likely than not that the property has been in use as two flats for a period in excess of four years prior to the date of the application.
15. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of 108 Willow Tree Lane, Hayes, Middlesex as two self-contained flats was not well-founded and that the appeal should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr S S Basuta	Planning Consultant
Mr G Bains	Appellant's father

FOR THE LOCAL PLANNING AUTHORITY:

Mr S Volley	Appeals Officer
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DOCUMENT submitted at the hearing

1 Landlord household insurance certificates

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 11 August 2016 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

No enforcement action could be taken in respect of the use because the time for taking such action had expired (s191(2)(a) of the Act) and the use does not contravene the requirements of any enforcement notice in force (s191(2)(b) of the Act)

B M Campbell

Inspector

Date: 30 May 2017

Reference: **APP/R5510/X/16/3163426**

First Schedule

Use of dwellinghouse as two self-contained flats

Second Schedule

Land at 108 Willow Tree Lane, Hayes, Middlesex UB4 9BL

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 May 2017

by B M Campbell BA(Hons) MRTPI

Land at 108 Willow Tree Lane, Hayes, Middlesex UB4 9BL

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Not to Scale

