

Appeal Decision

Inquiry held on 28 February 2017

Site visit made on 28 February 2017.

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 12 July 2017

Appeal Ref: APP/F5540/X/16/3151796

No. 136 Northfield Road, Hounslow TW5 9JG

- 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 by Mr Jigar Purohit against the decision of the Council of the London Borough of Hounslow.
 - The application ref. 00814/136/LAW1, dated 19 January 2016, was refused by notice dated 23 March 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 of lawful use or development is sought is use of the detached outbuilding as two self-contained units starting in May 2008 and has been in the same use since such date.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Inquiry an application for costs was made by the Council against the appellant. This application is the subject of a separate Decision.

The Inquiry

3. Evidence at the Inquiry was taken under oath or solemn affirmation.

Preliminary matters

4. For purposes of clarity, I should explain that in an appeal under section 195 of the Town and Country Planning Act 1990 as amended (the Act), which relates to an application for a lawful development certificate, the planning merits of the existing use are not relevant, and they are not therefore an issue for me to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
 5. Although the application states that the claimed use of the outbuilding is for 'two self-contained units', it is apparent from all the material presented by both sides that the appellant is trying to establish an existing use as 'two self-contained residential units'. That is the basis upon which I have determined this appeal.
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Background

6. The detached outbuilding for which the LDC application was made stands to the rear of 236 Northfield Road, a semi-detached two-storey house on a relatively modern housing estate in the north-western part of the Borough. The outbuilding is single-storey, brick built with a pitched, tiled roof. It takes up the full width of the plot, and is separated from the house by a timber panel fence with a lockable gate, providing a private outdoor amenity area for the outbuilding. The Council accept that the building was constructed at some time before 2008.
7. Internally, the building is split into 2 separate units that mirror each other to either side of a central partition – designated as Flat 1 to the left on the application plan¹, and Flat 2 to the right. Each has a front door directly into a room labelled as a kitchen/diner. A further room to the rear is designated as a bedroom, off which is a shower compartment with WC and wash hand-basin. The bedrooms are daylit by windows that are probably little more than 0.4 of a metre away from the high rear boundary wall.
8. I saw that the front room of Flat 1 is fitted out with a kitchen, principally comprising cupboards, work surfaces, a sink with hot and cold water, hob, extract hood, microwave oven, washing machine, and a fridge/freezer. There is also a gas boiler to provide heating and hot water. In the rear room I saw there was a sofa, electric piano, television, 4 chairs, and a wardrobe, but no bed.
9. In Flat 2, the kitchen arrangement is very much as for Unit 1, although I noticed there is no washing machine. In the rear room there was netball practice equipment, several suit cases, shelving against one wall with miscellaneous items, and a wardrobe, but again - no bed.
10. I saw nothing in either unit to suggest that the flats were in residential occupation at the time of my visit.

Main issue

11. The main issue before me is whether the Council's decision to refuse the issue of a LDC was well founded. In that regard the principal question is whether on the balance of probabilities the detached outbuilding has been in continuous use as two self-contained units for a period of at least 4 years before the date of the LDC application – 19 January 2016.
12. In an appeal under s.195 against a LDC decision, with matters of fact in dispute, there is well established legal authority to say that 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 appeal, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the case on the balance of probabilities.
13. The Council had received a complaint from a local resident in June 2015 that the outbuilding was being used as residential accommodation, and an advertisement on a lettings website was brought to their attention. Arrangements for a site visit were made with the appellant, and a Council

¹ When looking from outside.

officer visited on 17 August 2015. At the visit the appellant told the officer that the outbuilding was for family use and for educating and helping disabled people. The officer saw such things as a range of children's chairs, board games, and other games designed to assist disabled people.

14. There were no cooking stoves in either unit, and photograph of the Flat 1 kitchen/diner taken at the visit shows the position in the worktop where there is now a hob to be covered with trays of children's games, and the electric lead to the extract hood is not visible. This compares with the photographs of June 2015, advertising Flat 1 for rent, which clearly show a bed in the bedroom, and a kitchen with a gas hob and extract hood.
15. The appellant admits in his evidence that he had removed the stoves. On the basis of the setting-up of the two units, and the conversation with the appellant, the Council were satisfied that the building was used in a manner that was incidental to the use of the main house, and that no enforcement action could be taken.
16. A further visit was made by another Council officer in March 2016 in connection with the LDC application. On that occasion I understand the appellant said the outbuilding was not currently in residential use, and had not been since the end of 2014. The officer recorded that both units had fully equipped kitchens, and that the appellant said the use had not changed since the August 2015 visit, except to the extent that stoves had been installed. On that visit the officer had seen no indications of residential occupation of either flat. The bedroom of Flat 1 was set up as a sitting room, with a sofa, TV, and storage units. The bedroom of Flat 2 had appeared to be in use for storage.
17. I have examined the tenancy agreements put forward for the two flats in the Schedule of Tenancies submitted with the LDC application. Regarding agreements that the appellant says relate to Flat 1 – the first of these (Dias) is for 6 months, dated 7 May 2008, and describes the property as 'the first floor 1-bedroom flat'. The tenant received his returned deposit for this letting on 1 November 2008. The second agreement (Khokhar) is dated 17 January 2011 for the 'rear studio', and I note that the tenant was served a s.21 Notice of Intended Possession², and there is nothing to indicate that he did not leave on the stated date. The next agreement (Gaspari/Raga) is for 6 months, dated 11 July 2012, but does not identify the flat – merely giving the address of the main house. There is nothing to show when the premises were vacated. The next tenancy (Sobolewski/Masiuk), again for 6 months, started on 31 May 2013, and apparently ended on about 27 January 2014, when the tenants' deposit was returned. The flat was not then let until 16 July 2014 to tenants called Padala for a 6 month period, apparently ending on 15 January 2015. The last tenancy for Flat 1 started on 11 June 2015 (Bal/Jarszak), and apparently ended by 9 August 2015, when the deposit was returned, although the appellant claims this tenancy was 'rolled over' to a statutory periodic tenancy.
18. Regarding the purported tenants of Flat 2, as listed in the Schedule of Tenancies, the first (Tayagarajan) dated 3 May 2008 is for 6 months. The property is identified as '136 Northfield Road', with the appellant himself living at another address in West Drayton. A handwritten note at the bottom of the first page of the agreement – and the only page put forward – originally stated

² Under the Housing Act 1988.

'furnished house'. This has been crossed out and the word 'flat' substituted. Furthermore, the appellant claims this tenant remained in the property until November 2009. However, this would have overlapped with the two following tenancies referred to below. Alternatively, if this tenant had been in Flat 1 – as the appellant also claims in his later list of tenants – this would have overlapped with the Dias tenancy.

19. The next purported tenancy (Silva), for the 'Ground Floor Garden Studio', is dated 9 November 2008. It was originally for 12 months, but the tenants left after two months. Following that another 12 month tenancy (Moyo/Malaza) for the 'Garden Studio' is dated 31 January 2009. However, I note that the appellant claims that the Moyo/Malaza tenancy rolled over. Furthermore, the Moyo/Malaza tenancy apparently overlaps with the next tenancy (Haddad/Kundratova) for the 'Rear Studio', which is for 6 months and dated 6 December 2009. A s.21 notice was served on these tenants - to leave the property after 5 June 2010 - but the appellant says they stayed until December 2010. The tenants Kalia/Bala signed a six month tenancy on 1 April 2011 for the 'Back Garden Flat'. The appellant says this tenancy rolled over, but no evidence is provided of this. The next six month tenancy (Iqbal) for 'Studio 1' was dated 23 November 2012, and a s.21 notice was served requiring possession on the first date after 22 May 2013. However, the date on the receipt for the return of the tenant's deposit was 22 May 2011. No explanation was given of this discrepancy.
20. There then appears to be a considerable gap, before the next 6 month tenancy dated 16 February 2014 (Bielinska/Batog). Although the appellant says this tenancy rolled over, this appears unlikely, since it is claimed the following tenants (Conceição/Fernandes) moved in on 4 September of that year. In this 6 month tenancy the property is identified as 136 Northfield Road, but no flat is indicated. Again it is claimed the tenancy rolled over, but no evidence is provided.
21. On the basis of the tenancy agreements presented it appears that there was no occupancy of either flat at the beginning of the 4 year period in January 2012, and that Unit 1 was not subsequently occupied until July 2012, or Unit 2 until 21 November 2012.
22. Looking at the overall picture, the evidence for occupation of both the flats in 2008 is somewhat thin – since neither of the 2008 tenancies appears on their face to relate to the outbuilding. For Flat 1 there is no significant evidence of occupation until the Khokhar tenancy in January 2011. Although it is claimed this tenant stayed until November 2012 there is no substantial evidence that he stayed there beyond the end date of the tenancy in July 2011. Furthermore, the claimed end date would overlap with the Gaspari/Raga tenancy which started in July 2012 and would have ended in January 2013. However, the part of the agreement provided does not identify the flat any more than giving the address of the main house. There is then an apparent gap until the beginning of the Sobolewski/Masiuk tenancy on 31 May 2013, which probably ended on about 27 January 2014, when the tenants' deposit was returned. There was then another gap of some 6 months before the start of the Padala tenancy on 16 July 2014, and of some 5 months between the end of that tenancy and the beginning of the Bal/Jarszak tenancy on 11 June 2015.

23. Flat 2 is variously described as the 'Ground Floor Garden Studio', 'Studio 1', and the 'Rear Studio'. The Bielinska/Batog agreement only gives the address of the main house. The Conceição/Fernandes agreement refers to '136A Northfield Road'. For Flat 2 there are significant gaps in tenancies, notably from the end of the Haddad/Kundratova tenancy in early June 2010, and the beginning of the Kalia/Bala tenancy on 1 April 2011. There is no record of the end of this tenancy, but had it ended on the due date at the end of August 2011, there would be a gap of some 14 months before the Iqbal tenancy, which started on 23 November 2012. On the appellant's evidence, Mr Iqbal's deposit was returned to him on 22 May 2011, which is quite inconsistent with the tenancy agreement evidence.
24. These significant periods of vacancy appear to be rather longer than might be expected for re-letting the flats as tenancies ended. The appellant seeks to explain this by claiming that the tenancies had 'rolled over' to a statutory periodic basis. In this regard he submitted lists of tenants staying in what he calls 'Flat 1(A) – Left Side', and 'Flat 2(B) – Right Side', with a note to nearly all of the listed tenancies to the effect that *'the contract had been renewed with mutual understanding after 6 months'*. This is irrespective of the fact that some of the tenancies were for 12 months, and conflicts with other evidence of deposits being returned – notably Bal/Jarszak, where a receipt signed by the tenant and the appellant shows the deposit was returned on 9 August 2015, suggesting the tenancy lasted barely 2 months.
25. The only evidence available of roll-over of tenancies is on the say-so of the appellant. No evidence is provided of tenants requesting extension of their original short-term tenancies, or indeed any evidence at all from tenants.
26. The list of tenants of Flat 1(A) and Flat 2(B) records the same tenants as in the earlier Schedule, but with some of those previously listed in Flat 1 now listed in Flat 2, and *vice versa*. The inconsistent identification of the let property, and the uncertainty as to which tenants occupied which flats, leads to a highly confusing picture, that can by no means be described as precise or unambiguous.
27. The tenancy agreements do not specifically identify to which unit they refer. Various terms are used such as 'rear studio', 'studio 1', 'garden flat (aft)', and 'back garden studio flat'. Two of the agreements (Batog/Bielenska, and Conceição/Fernandes) could be seen as applying to the main house, since that is the address given for the let property, without any clear description of whether a flat or a house.
28. The appellant put forward virtually no other evidence to support his argument that both flats had been occupied continuously for the required period. I would have expected to see such documentary material as rent books, bank statements showing rents received, utility bills, confirmations of deposit protection, Council Tax payments, or other records of the letting arrangements. I can give little credence to the appellant's claim that he did not keep records because he did not believe that tax was payable on rental income.
29. In the appellant's statement for the Inquiry he states that he removed the stoves/cookers from the units in order to 'avoid any conflicts while the accommodation was being advertised'. Whatever reason he had for this action, removal of the cooking facilities resulted in the units not providing all the facilities necessary for day-to-day living, and they could not reasonably have

been regarded as in residential use in August 2015. The result of this action was itself a distinct break in any residential use of the two units.

30. In this case I consider the appellant's evidence is far from precise, and is highly ambiguous. On the documentary evidence available there have been several breaks in the continuity of occupation of both units since 2008. Furthermore, it is not reasonably possible to establish which flat was occupied by which tenant, and for what period. There is nothing to support the claim that a number of tenancies rolled over to the statutory periodic basis, apart from the appellant's assertions.
31. I do not accept that on the balance of probabilities a four year period of continuous residential occupation of the two self-contained units has been established from 2008 onwards, and prior to the appellant's own action of removing cookers from the units in 2015, which was in itself decisive in terminating any such use.

Conclusions

32. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of use of the detached outbuilding as two self-contained residential units starting in May 2008, and in the same use subsequently, was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Stephen Brown

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jigar Purohit
Mr G A Shah

The appellant.
Neighbour of the appellant.

FOR THE LOCAL PLANNING AUTHORITY:

Edward Grant

of Counsel, instructed by
HB Law, on behalf of
The Head of Legal Services
Hounslow Borough Council.

He called:
Matt Robinson

Planning Enforcement Officer
Hounslow Borough Council.

DOCUMENTS

- 1 Attendance list.
- 2 The Council's letter of notification of the appeal, dated 22 February 2017.
- 3 Statement of Common Ground.
- 4 Documents submitted with Mr Purohit's statement.
- 5 Appendices to Mr Robinson's proof of evidence.
- 6 Site visit notes and photographs from Council Officer's visit of 9 March 2016.